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Tuesday
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Selected Subjects

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Selected Subjects

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Olives Grown in California Amendment of Subparts-Rules and Regulations and Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires that advertising by handlers under the olive marketing order must include a reference to the California origin of the olives advertised to qualify for credit against a handler's assessment. Also, this rule terminates two provisions concerning size requirements and reserve funds, which are obsolete. This rule also establishes expenses and rate of assessment for the 1984 fiscal year to provide for maintenance and functioning of California Olive Committee.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on December 2, 1983 (48 FR 54361), which contained the amendment actions established herein with respect to Subpart-Rules and Regulations. That proposed rule provided an opportunity for the public to file comments through December 22, 1983. None were received.

This amendment is issued under the Marketing Order No. 932 (7 CFR Part 932), regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the California Olive Committee and upon other available information. It is found that this amendment will tend to effectuate the declared policy of the Act.

Section 932.140 establishes a reserve in an amount not to exceed approximately one crop year's expenses. That section, however, is now obsolete and should be terminated. Section 932.40 was amended in 1982 (47 FR 32908) and changed the procedures with respect to reserves.

Section 932.45(a)(2) authorizes, and 932.145 implements, procedures whereby handlers may receive credit against their assessment obligations for certain media expenses incurred in placing their paid advertising. To insure that such advertising promotes the sale and consumption of California olives, and applies only to such olives, § 932.145(a) should be amended to provide that creditable advertising must include a verbal or visual reference, acceptable to the Committee, with respect to the California origin of the olives advertised. The change should apply to all olives handled in the 1984 fiscal year, which begins January 1, 1984, and subsequent fiscal years.

Section 932.156 should be terminated. That section established procedures for handler exemption from outgoing size requirements and is no longer applicable.

Finally, § 932.318 should be added to Subpart-Expenses and Rate of Assessment to establish pursuant to §§ 932.38 and 932.39, respectively, the expenses and rate of assessment for the 1984 fiscal year (January 1–December 31, 1984). The committee would use these funds collected from handlers for its maintenance and functioning.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking with respect to expenses and assessment rate, and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) Some of the changes are deletions of provisions no longer authorized under the order; and (2) the amendment with respect to expenses, assessments and assessment crediting would apply to the 1984 fiscal year which begins January 1, 1984, and handlers are aware of the changes and need no additional time to comply therewith.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

PART 932—[AMENDED]

Therefore, Subpart-Rules and Regulations (7 CFR 932.108–932.161) and Subpart-Expenses and Rate of Assessment (7 CFR 932.217) are amended as follows:

§ 932.140 [Removed]

1. Remove § 932.140.

2. Paragraph (a)(5) is added to § 932.145 (48 FR 9633) to read as follows:

§ 932.145 Marketing promotion, including paid advertising and crediting for handler paid advertising.

(a) * * *

* * * * * *

(5) To be creditable, each advertisement must include a visual or verbal reference, acceptable to the Committee, with respect to the California origin of the olives advertised.

* * * * * *

§ 932.156 [Removed]

3. Remove § 932.156.

§ 932.217 [Removed]

4. Section 932.217 is removed and § 932.218 is added to read as follows (this final rule expires December 31, 1984, and will not be published in annual Code of Federal Regulations):

§ 932.218 Expenses and assessment rate.

Expenses of $2,009,518 by the California Olive Committee are authorized for the fiscal year January 1, 1984, through December 31, 1984. The rate of assessment for that period shall be established at $42.76 per ton, less any amount credited pursuant to § 932.45 but not to exceed $16.54 per ton. Unexpended funds may be carried over as a reserve.

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

Dated: December 28, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-34830 Filed 12-30-83; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1430

1983–84 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the procedures under which a reduction of 50 cents per hundredweight is to be made in the price received on all milk produced in the United States and marketed by producers for commercial use during the period December 1, 1983 through March 31, 1985. The 50-cent reduction is required to be made by section 201(d)(2) of the Agricultural Act of 1949, as amended by section 102 of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98–180).

EFFECTIVE DATE: This rule is effective with respect to milk marketed after November 30, 1983.

FOR FURTHER INFORMATION CONTACT: Dwight Tayman, Fiscal Division, ASCS–USDA, 6172 South Building, P.O. Box 2415, Washington, D.C. 20013: (202–447–2862).

SUPPLEMENTARY INFORMATION: This rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "major" since the reduction in milk proceeds required by section 201(d)(2) of the Agricultural Act of 1949, as amended (the 1949 Act), and by this rule will have an effect on the economy exceeding $100 million. The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) 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. Section 102(b) of the Dairy and Tobacco Adjustment Act of 1983 (the 1983 Act) specifies that the provisions of section 201(d) of the 1949 Act, as amended by the 1983 Act, shall be implemented without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in 5 U.S.C. 553, or in any directive of the Secretary.

This notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 201(d)(2) of the 1949 Act, as amended by the 1983 Act, requires the Secretary of Agriculture to provide for a reduction of 50 cents per hundredweight from the price received on all milk produced in the United States and marketed by producers for commercial use. For purposes of that portion of section 201(d) of the 1949 Act which relates to the 50-cent reduction, the term "United States" is defined to mean the forty-eight contiguous States in the continental United States. Section 201(d)(2) specifies that the reduction shall apply to milk marketed in the period beginning on the first day of the first calendar month following the date of enactment of the 1983 Act and ending on March 31, 1985. Since the 1983 Act was signed by the President on November 29, 1983, the reduction is required for all milk marketed by producers for commercial use during the period beginning December 1, 1983 and ending March 31, 1985. Section 201(d)(2) further specifies that the funds represented by the reduction shall be collected and remitted to CCC at such time and in such manner as prescribed by the Secretary by each person making payment to a producer for milk purchased from the producer, except that, in the case of a producer who markets milk of the producer's own production directly to consumers, such funds shall be remitted directly to CCC by that producer.

Section 201(d) of the 1949 Act previously provided for two 50-cent deductions to be made with respect to milk marketed commercially by producers. Determinations implementing those deductions were published on March 17, 1983 (48 FR 11253), and August 2, 1983 (48 FR 34933). Regulations governing the collection of the deductions were issued on November 30, 1982 (47 FR 53831). Amended regulations were published on August 1, 1983 (48 FR 34725). These regulations remain applicable for milk marketed prior to December 1, 1983.

The regulations in this Final Rule provide for remittance by "responsible persons" of the funds represented by the 50-cent reduction required by section 201(d) of the 1949 Act, as amended by the 1983 Act. A "responsible person" is defined as any person paying a producer for milk except where the producer markets milk of his own production to consumers either directly or through wholesale or retail outlets in the form of milk and milk products, in which case the producer is considered the "responsible person". "Responsible persons" paying producers for milk must remit the funds represented by the reduction to CCC on the date of final payment to the producers, or by the end of the month following the month in which the milk is marketed, whichever is earlier. Where the producer is the "responsible person", the remittance must be made by the producer to CCC by the end of the month following the month in which the milk is marketed.

The regulations provide that the reduction shall be made and the funds represented by the reduction shall be remitted with respect to all milk marketed in any of the forty-eight contiguous States or the District of Columbia, unless it is established to the satisfaction of CCC that the milk was produced outside the forty-eight contiguous States.

The regulations also provide for certain penalties required by statute. Section 201(d)(5) of the 1949 Act provides for a penalty of up to $1,000 for any program violation. Section 201(d)(5) also provides that any person as to whom there is a failure to make a reduction in the price of milk as required by section 201(d)(2) or who fails to remit to CCC the funds required to be collected and remitted in accordance with section 201(d)(2)(B) shall be liable for a marketing penalty. The marketing penalty shall be equal to the support price for milk in effect at the time the failure occurs multiplied by the quantity of milk involved in such failure. The marketing penalty may be reduced, however, if it is determined that the failure was unintentional or without knowledge on the part of the person concerned.

The regulations also contain various administrative provisions, such as the procedures for assessing penalties and for review of determinations with respect to amounts owed by responsible persons. The manner in which late payment charges shall be applied is also set forth.

The informational collection requirements of the regulations have been reviewed and approved by the Office of Management and Budget for purposes of the Paperwork Reduction Act and, as set forth in § 1430.331, have been assigned OBM number 0581–0132.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

Accordingly, 7 CFR Part 1430 is amended as follows:

1. Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers is amended to read "Regulations Governing Certain Deductions on Milk Marketings of Producers Prior to December 1, 1983".

2. A new subpart entitled "Subpart—Regulations Governing Reduction in the Price of Milk Marketed by Producers, December 1, 1983–March 31, 1985" is added which reads as follows:

PART 1430—[AMENDED]

Subpart—Regulations Governing Reduction in the Price of Milk Marketed by Producers, December 1, 1983–March 31, 1985

Sec.

Authority: Section 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 et seq.).

Subpart—Regulations Governing Reduction in Price of Milk Marketed by Producers, December 1, 1983–March 31, 1985

§ 1430.320 General.

(a) *Purpose*—This subpart implements the provisions of Section 201(d) of the Agricultural Act of 1949, as amended by the Dairy and Tobacco Adjustment Act of 1983, under which the Secretary of Agriculture is required to provide for a reduction of 50 cents per hundredweight in the price received on all milk produced in the United States and marketed by producers for commercial use. The purpose of the reduction is to encourage the adjustment of milk production to levels consistent with national demand for milk and the products of milk. Funds represented by the reduction are to be remitted to the Commodity Credit Corporation (CCC) to offset a portion of the cost of the milk diversion program which is required to be established in accordance with section 201(d) of the 1949 Act.

(b) *Applicability*—The provisions of this subpart shall apply to all milk that is marketed for commercial use by producers during the period beginning December 1, 1983 and ending March 31, 1985, in the forty-eight contiguous States in the continental United States and the District of Columbia, unless it is established, by meeting such requirements as may be specified by CCC, that the milk was not produced in the forty-eight contiguous States.

§ 1430.321 Definitions.

For purpose of this subpart:

(a) "ASCS" means the Department's Agricultural Stabilization and Conservation Service.

(b) "CCC" means the Commodity Credit Corporation.

(c) "Dairy Division" means the Dairy Division of the Department's Agricultural Marketing Service.

(d) "Department" means the United States Department of Agriculture.

(e) "Person" means any individual, partnership, corporation, association or other business or government unit.

(f) "Producer" means any person who produces milk through the milking of cows.

(g) "Reduction" means that amount by which the price received for milk marketed for commercial use by producers is reduced in accordance with the provisions of this subpart.

(h) "Responsible person" means:

(1) Any person who pays a producer for milk marketed by a producer for commercial use, except as otherwise prescribed in paragraph (h)(2) of this section. This shall include a handler regulated under a Federal milk order to the extent of any payments for milk that are transmitted by the handler to the market administrator for transmittal by the market administrator to individual producers; and

(2) Any producer with respect to milk of his own production that he markets for commercial use in the form of milk or milk products to consumers either directly or through retail or wholesale outlets.

(i) "United States" means the forty-eight contiguous States in the continental United States (i.e., all fifty States of the United States, excluding Hawaii and Alaska).

(j) "United States bank" means a bank organized under the laws of the United States, a State of the United States or the District of Columbia.

§ 1430.322 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of funds represented by the reductions. Administrative subpoenas as may be determined to be necessary for the administration of this subpart may be issued by the Executive Vice President, CCC, or his designee.

§ 1430.323 Required reductions and remittances.

(a) *Reductions*—A reduction of 50 cents per hundredweight shall be made in the price received on all milk marketed by producers for commercial use.

(b) *Remittances by Responsible Persons Paying for Milk*—Each responsible person who pays a producer for milk marketed for commercial use during any month, or portion thereof, shall remit to CCC by the last day of the following month, or at the time of making final payment to the producer for such milk, whichever is earlier, an amount equal to the number of hundredweight of milk for which payment to the producer is being made multiplied by 50 cents.

(c) *Remittances by Other Responsible Persons*—Each responsible person who markets milk of his own production for commercial use to consumers (either directly or through wholesale or retail outlets) in the form of milk or milk products during any month shall remit to CCC by the last day of the following month an amount equal to the number of hundredweight of such person's own production used in such marketings multiplied by 50 cents.

(d) *Remittance Report*—When remitting funds to CCC in accordance with paragraphs (b) and (c) of this section, each responsible person shall file a report prescribed by the Dairy Division which shall include:

(1) The identity of the responsible person, including such person's business address;

(2) The month, or portion thereof, in which the applicable producer marketings occurred;

(3) The total pounds of milk to which the remittance applies; and

(4) Any additional information required by the Dairy Division.

(e) *Remittance of Funds*—Remittances to CCC shall be made by negotiable instruments payable in United States currency, drawn on a United States bank and made payable to "Commodity Credit Corporation." Remittances and reports required under this subpart shall

be mailed to the location designated by the Dairy Division.

§ 1430.324 Availability of records and facilities.

(a) *Records to be maintained*—Each responsible person shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) *Availability of records and facilities*—Each responsible person shall make available to authorized representatives of CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records*—All records required under this subpart shall be retained by each responsible person for a period of three years beginning at the end of the month to which such records pertain, or for such longer period as the Dairy Division or CCC may require by notice to the responsible person.

§ 1430.325 Adjustment of accounts of responsible persons.

Whenever the Department determines through an audit of a responsible person's reports, records, books or accounts or through any other means that any funds are due CCC, such person shall be notified of the amount due. The responsible person shall then remit any amount due CCC by the next date for remitting reductions as provided in § 1430.323. Overpayments shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amounts due in succeeding months or refunded if this subpart is not applicable to milk marketed in succeeding months.

§ 1430.326 Charges and penalties.

(a) *Charge for dishonored negotiable instruments*—Each responsible person who issues a negotiable instrument to CCC that is not honored because of insufficient funds or any other reason shall be assessed a charge of $25. This charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late payment charge*—Any unpaid obligation due CCC under this subpart shall be increased by a late payment charge. Such charge shall be applied on the first day after the date such obligation was due and on the same day of each succeeding month until such obligation is paid. The charge shall be an amount equal to one-twelfth (rounded to the nearest one-hundreth of one percent) of: (1) the annual rate of interest published as a notice in the Federal Register by CCC in accordance with the provisions of 7 CFR Part 1403 or (2) such other annual rate of interest made generally applicable to CCC obligations in substitution for the publication of a rate of interest in accordance with 7 CFR Part 1403. The timeliness of payment to CCC shall be determined based upon the applicable postmark date. Notwithstanding any other provision of this section, the late payment charge shall not apply to any interest previously accrued on the obligation. The late payment charge shall otherwise apply to all amounts which may become due under this subpart.

(c) *Penalties*—(1) Any person as to whom there has been a failure to make a reduction in the price of milk received by such person as required in this subpart or who fails to remit to CCC the funds required to be collected and remitted by this subpart shall be liable, in addition to any other amount due, for a marketing penalty at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk as to which the failure applies. The Executive Vice President, CCC, or his designee, may reduce any such penalty in such amount as is determined equitable in any case in which it is determined that the failure was unintentional or without knowledge on the part of the person concerned.

(2) In addition to the marketing penalty prescribed in paragraph (1), any person who knowingly violates any of the provisions of this subpart shall be liable for a civil penalty of not more than $1,000 for each violation.

(3) The Executive Vice President, CCC, or his designee shall notify any person against whom a penalty is proposed to be assessed under this section of the intention to assess such penalty and provide such person with an opportunity for an administrative hearing.

§ 1430.327 Scheme or device.

Any person who is determined to have knowingly adopted any scheme or device which tends to defeat the implementation of the provisions of this subpart or made any fraudulent representation or misrepresented any fact affecting a determination under this subpart shall be considered to have knowingly violated the provisions of this subpart.

§ 1430.328 Continuing obligations.

The obligations of any person that arise under this subpart shall continue in effect until final payment or other disposition agreed to by CCC even though the reductions provided for in this subpart may no longer be required for current marketings of milk.

§ 1430.329 Administrative review.

Except with respect to the assessment of penalties under § 1430.326(c), any person who is dissatisfied with any determination of an amount determined to be owing under this subpart may obtain reconsideration of such determination by filing a request for reconsideration with the Controller, CCC, within 15 days of the date on which a written demand for payment is made. If the person is dissatisfied with the determination of the Controller upon reconsideration, the person may obtain a review of such determination and an informal hearing by filing an appeal with the Executive Vice President, CCC. Such appeals must be filed within 15 days of the date of the redetermination. Such appeals to the Executive Vice President, CCC, will be conducted in the same manner as administrative appeals which are conducted under 7 CFR Part 780. The decision on such appeal shall constitute the final agency action in the matter.

§ 1430.330 Setoffs.

CCC may set off any amounts due CCC under this subpart in accordance with the provisions of 7 CFR Part 1408, Setoff, Withholding, and Stop Payment Policies of CCC, or any provisions issued in lieu of such provisions.

§ 1430.331 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Number 0581–0132 has been assigned.

Signed at Washington, D.C., on December 28, 1983.

John R. Block,

Secretary of Agriculture.

[FR Doc. 83–34838 Filed 12–30–83; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 463

[Docket No. ERA-R-79-19]

Annual Reports From States and Non-Regulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice and publication of Form ERA-166.

SUMMARY: Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain nonregulated utilities to submit, to the Department of Energy (DOE), annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. Under the present DOE regulations (10 CFR Part 463), as amended by revising § 463.3 (a) and (c) (47 FR 33679, August 4, 1982), each of the reporting entities must file an annual report by February 28, 1984, covering the calendar year 1983 reporting period. All reports are to be made on Form ERA-166, a copy of which is appended to this Notice.

DATE: Reports are due by February 28, 1984.

ADDRESS: All completed Forms ERA-166 should be addressed to: Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, Form ERA-166, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Coal and Electricity Division, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Room GA-033, Washington, D.C. 20585, Phone (202) 252-1657.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1979 (44 FR 47264, August 13, 1979), the ERA of the DOE issued a rule (10 CFR Part 463) setting forth the manner in which State regulatory authorities and certain nonregulated gas and electric utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b), and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*).

On August 4, 1982, DOE published a Final Rule (47 FR 33679), amending Part 463 to Chapter II, Title 10 of the Code of Federal Regulations by revising § 463.3 (a) and (c). The Final Rule requires the reporting entities to file their annual report on February 28 of each year beginning with 1983. Each of these annual reports must cover the immediately preceding calendar year (for example, the report due on February 28, 1984, shall cover the period January 1, 1983–December 31, 1983).

II. The Report Form

The Form ERA-166 is identical to the form published on January 13, 1983 (48 FR 1606) except for date changes. It was approved by the Office of Management and Budget (OMB Control Number 1903-0060), and is being published today as an appendix to this Notice. It will provide reporting entities with the earliest opportunity to prepare their reports for the calendar year.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*)

Issued in Washington, D.C. on December 22, 1983.

Robert L. Davies,

Director, Coal and Electricity Division, Economic Regulatory Administration.

BILLING CODE 6450-01-M

Appendix

Form ERA-166 is reproduced below.

Form Approved
OMB No. 1903-0060
(Expires 9-30-84)

PURPA ANNUAL REPORT OF ELECTRIC AND GAS UTILITIES

This report is mandatory under the Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617) sections 116 and 309. Late filing or failure to report may result in criminal fines, civil penalties, and other sanctions as provided by law. See instructions regarding confidentiality.

Blue Section: Instructions

White Section: Questions to be Answered

Name of Regulatory Authority (or covered Nonregulated Utility)	Date (Mo, Da, Yr)

ERA-166 (11-83)

Form Approved
OMB No. 1903-0060
(Expires 9-30-84)

PURPA ANNUAL REPORT OF ELECTRIC AND GAS UTILITIES

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PURPA ANNUAL REPORT ON ELECTRIC AND GAS UTILITIES

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GENERAL INFORMATION

I. Purpose

The PURPA Annual Report on Electric and Gas Utilities, Form ERA-166, will be used by the Economic Regulatory Administration (ERA) for annual reporting to the President and Congress on the progress of State regulatory authorities and certain nonregulated electric and gas utilities in considering and making determinations with respect to the standards established by PURPA.

II. When to Submit

A. Submit this report no later than February 28, 1984.

B. This report covers the period of January 1, 1983 to December 31, 1983.

III. What and Where to Submit

A. Submit pages:

27
28
30
31
35 (duplicated for each utility)
36 (duplicated for each utility)
43 (duplicated for each utility)

To:

PURPA Annual Report on Electric and Gas Utilities
Coal and Electricity Division
Economic Regulatory Administration
Department of Energy, Forrestal Building
1000 Independence Avenue, S.W., Room GA-033
Washington, D. C. 20585

B. ERA reserves the right to request any supplementary information from the State regulatory authority or covered nonregulatory utility as needed to fully understand the report.

C. ERA reserves the right to return any incorrectly completed reports. The official submission date will be assigned upon receipt of the correctly completed form.

For information concerning this report call
Steven Mintz
(202) 252-1657

IV. Who must Submit

A. Each State regulatory authority (with respect to each covered electric and gas utility for which it has rate making authority) and each covered nonregulated electric and gas utility must submit this report.

B. Covered Utilities

(1) Electric Utilities. The regulated and nonregulated electric utilities covered by this report are those whose total sales of electric energy (for purposes other than resale) exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediate preceding calendar year.

(2) Gas Utilities. The regulated and nonregulated utilities covered by this report are those whose total sales of natural gas (for purposes other than resale) exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediate preceding calendar year.

(3) Exclusion of Wholesale Sales. When determining eligibility, do not include regulating sales of electric energy or natural gas for purposes of resale.

(4) Published List. ERA published in the Federal Register a list of utilities covered under PURPA for each reporting year. The inclusion or exclusion of any utility on the list does not affect the legal obligation to report by such utility or the responsible State regulatory authority under PURPA.

V. Provisions of Confidentiality of Information

The information contained on these forms may be (i) information which is exempt from disclosure to the public under the exemption for trade secrets and confidential commercial information specified in the Freedom of Information Act of 5 USC 552(b)(4)(FOIA) or (ii) prohibited from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing satisfactory to the Department concerning its confidential nature.

Therefore, respondents should state briefly and specifically (on an element-by-element basis, if possible), in a letter accompanying submission of the form, why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by their companies and the industry, and the type of competitive hardship that would result from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.

If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should be withheld from the public, DOE will assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new written justification need not be submitted each time the ERA-166 is submitted if:

a. views concerning information items identified as privileged or confidential have not changed; and

b. a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available, upon request, to the Congress or any Committee of Congress, and to the General Accounting Office.

I. The PURPA Annual Report on Electric and Gas Utilities consists of 3 parts (these are included in Section II):

Part I: General Information on the State Regulatory Authority or Covered Nonregulated Utility

Part II: Questions Pertaining to Each of the Eleven Standards

Part III: Standard Specific Questions

II. In Section II, complete Parts II and III for each electric utility listed in Part I. Complete only questions pertaining to the termination of service (TOS) and advertising (ADV) standards for each gas utility listed in Part I. Enter NA for questions that are not applicable to either the electric or gas utility, or state regulatory authority.

III. Enter the electric or gas utility name, as appropriate, in the top right corner of each returned answer sheet from Parts II and III. If the utility provides both services, submit two answer sheets for the utility.

IV. Information regarding the consideration process for each standard must, to the extent practical, be summarized from the written determination and orders issued.

V. To facilitate data collection for this form, utilities which are unable to respond to questions as of the year ending December 1983 may choose to respond on a 1983 fiscal year basis. However, utilities must be consistent throughout the form as to which option is chosen.

(A) Class-With respect to electric and gas consumers, any group of such consumers who have similar characteristics of electric or gas energy use.

(B) Consideration Process-With respect to any of the standards established by sections 111, 113, or 303 of PURPA, the set of appropriate procedures carried out by a State regulatory authority or nonregulated utility culminating in a decision to adopt or reject such standard or in a determination required by PURPA. (See Section I on regulations).

(C) Electric Consumer-Any person, State agency, or Federal agency to which electric energy is sold other than for purposes of resale.

(D) Electric Utility-Any person, State agency, or Federal agency that sells electric energy.

(E) Evidence-Any testimony, data, staff reports, technical analyses, briefs, or any other statements, documents, or information admitted into the record of the proceedings respecting the consideration of the standards.

(F) Federal Agency-An executive agency (as defined in section 105 of the United States Code).

(G) Gas Consumer-Any person, State agency, or Federal agency to which natural gas is sold other than for purposes of resale.

(H) Gas Utility-Any person, State agency, or Federal agency engaged in the local distribution of the sale of natural gas.

(I) Load Management Technique-Any technique (other than a time-of-day or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including (but not limited to): ripple, radio, or automatic control mechanisms; other types of interruptible electric service, energy storage devices; and load-limiting devices.

(J) Nonregulated Electric Utility-Any electric utility with respect to which no State regulatory authority has rate making authority.

(K) Nonregulated Gas Utility-Any gas utility with respect to which no State regulatory authority has ratemaking authority.

(L) Person-An individual, partnership, corporation, unincorporated association or any group, organization, or entity.

(M) Rate- (1) Any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of electric energy by an electric utility to an electric consumer or the sale of natural gas to a gas consumer;

(2) Any rule, regulation, or practice respecting any such rate, charge, or classification; and

(3) Any contract pertaining to the sale of electric energy to an electric consumer or the sale of natural gas to a gas consumer.

(N) Ratemaking Authority-Authority to fix, modify, approve, or disapprove rates.

(O) Sale-A transfer to a purchaser for consideration and, when used with respect to electric energy, includes any exchange of electric energy; or, when used with respect to natural gas, includes any exchange of natural gas.

(P) Standard-Refers to either the six ratemaking standards or the five regulatory standards.

The six ratemaking standards and their abbreviations as employed in this report include:

Cost-Of-Service standard	COS
Declining Block Rate standard	DBR
Time-Of-Day rate standard	TOD
SeasonaL Rate standard	SLR
INTerruptible rate standard	INT
Load Management Techniques standard	LMT

The five regulatory standards and their abbreviations as employed in this report include:

Master-Metering standard	MM
Automatic Adjustment Clause standard	AAC
Information To Consumers standard	ITC
Termination Of Service standard	TOS
ADVertising standard	ADV

(Q) State-A State, the District of Columbia, and Puerto Rico.

(R) State Agency-A State, political subdivision thereof, and any agency or instrumentality of either.

(S) State Regulatory Authority-Any State agency that has ratemaking authority with repsect to: the sale of electric energy by an electric utility other than by such State agency (in the case of an electric utility with respect to which the TVA has ratemaking authority, such term means the TVA); or the sale of gas by any gas utility (other than by such State agency).

REGULATIONS APPLICABLE TO THE 6 RATEMAKING STANDARDS: COS, DBR, TOD, SLR, INT, LMT

Section 111(a-c) of PURPA requires consideration of six ratemaking standards, as follows:

"Sec. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.

(a) CONSIDERATION AND DETERMINATION - Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each non-regulated electric utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable state law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) PROCEDURAL REQUIREMENTS FOR CONSIDERATION AND DETERMINATION.

(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be:

(A) in writing

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112(a), and in sections 121 and 122, the procedures for the consideration and determination referred to in sub-sections (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) IMPLEMENTATION.

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or non regulated electric utility may, to the extent consistent with otherwise applicable State law:

(A) Implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to such electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefore. Such statement of reasons shall be available to the public.

Sections 112, 121, and 122 of PURPA also establish requirements for this standard.

For the purpose of this report, for consistency with the joint committee managers report, and for consistency with terminology used in the regulatory community, the term "adopt" will be used throughout in the following questions as a synonym for the term "implement".

REGULATIONS APPLICABLE TO THE COS STANDARD

Section 111(d)(1) of PURPA establishes the cost-of-service standard (COS) which states:

"Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115(a)."

Section 115(a) states:

"In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111(d)(1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated utility). Such methods shall to the maximum extent practicable:

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence attributable to differences in customer, demand, and energy components of costs. In prescribing such methods, such State regulatory authority and nonregulated electric

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FOR PURPOSES OF ANSWERING COS RELATED QUESTIONS

The cost-of-service standard (COS) has been:

A. Adopted by a State regulatory authority, when such authority has:

1. specified methods for a utility covered by the standard to use to determine cost of service, in accordance with section 115(a) above;

2. issued a written policy (or order) that a utility covered by the standard shall provide cost-of-service data or studies in accordance with these methods with each rate application or rate processing, or on a specified regular basis, or both; and

3. issued a written policy that rates charged by a utility covered by the standard for each consumer class shall be designed, to the maximum extent practicable, to reflect the costs of service to such class, as provided in section 111(d)(1).

B. Adopted by a nonregulated utility, when such nonregulated utility has:

1. specified methods that it will use for determining cost of service, in accordance with section 115(a) above;

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REGULATIONS APPLICABLE TO THE COS STANDARD (CONTINUED)

utility shall take into account the extent to which total costs to an electric utility are likely to change if:

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers."

FOR PURPOSES OF ANSWERING COS RELATED QUESTIONS (CONT)

2. issued a written policy that it will develop cost-of-service data in accordance with these methods with each rate proceeding or on a specified regular basis, or both; and

3. issued a written policy that rates charged for each consumer class will be designed, to the maximum extent practicable, to reflect the costs of service to each class, as provided in section 111(d)(1).

C. Rejected by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt.

REGULATIONS APPLICABLE TO THE DBR STANDARD

Section 111(d)(2) of PURPA establishes the declining block rates standard (DBR) which states:

"The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of eletric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period."

FOR PURPOSES OF ANSWERING DBR RELATED QUESTIONS

The declining block rates standard (DBR) has been:

A. Adopted by a State regulatory authority, when such authority had issued written policies (or orders) providing:

1. that rates charged by utility covered by the standard shall not have declining block energy charges except to the extent that the utility has made the required demonstration (as defined in section 111(b)(2)); and

2. that the State regulatory authority will make a written determination of whether the utility has made the required demonstration.

B. Adopted by a nonregulated utility when such nonregulated authority had issued a written policy (or order) that its rates shall not have declining block energy charges except to the extent that it has made in writing the required demonstration, as defined in section 111(b)(2).

C. Rejected by a State regulatory or nonregulated utility when it had issued written policies (or orders) declining to adopt.

REGULATIONS APPLICABLE TO THE TOD STANDARD

Section 111(d)(3) of PURPA establishes the time-of-day rates standard (TOD), which states:

"The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115(b)."

Section 115(b) states:

"In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each class of electric consumers if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates."

For the purpose of answering the questions in this schedule, the term "time-of-day rate" means a rate that is on a time-of-day basis and that reflects the costs of providing electric service at different times of the day to the consumer class to whom it is charged.

FOR PURPOSES OF ANSWERING TOD RELATED QUESTIONS

The time-of-day rates standard (TOD) has been:

A. Implemented by a State regulatory authority, when it had issued written policies for orders providing:

1. that a utility covered by the standard shall charge time-of-day rates (as defined above) to each consumer class unless such rates are not cost-effective with respect to such class; and

2. that the State regulatory authority will make a written determination of the cost-effectiveness of such rates in accordance with section 115(b).

B. Implemented by a nonregulated utility when it had issued written policies (or orders) providing:

1. that it shall charge time-of-day rates (as defined above) to each consumer class unless such rates are not cost-effective with respect to such class; and

2. that it will make a written determination of the cost-effectiveness of such rates in accordance with section 115(b).

C. Rejected by State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.

REGULATIONS APPLICABLE TO THE SLR STANDARD

Section 111(d)(4) of PURPA establishes the seasonal rates standard (SLR) which states:

"The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class for such utility."

For the purpose of answering the questions in this schedule, the term "seasonal rate" means a rate that varies by season and that reflects the costs of providing electric service at different seasons of the year to the consumer class to whom it is charged.

FOR PURPOSES OF ANSWERING SLR RELATED QUESTIONS

The seasonal rates standard (SLR) has been:

A. Adopted by a state regulatory authority when such authority has issued written policies (or orders) providing:

1. that it will determine the costs of providing electric service to each consumer class at different seasons of the year for each utility covered by the standard; and

2. that a utility covered by the standard shall charge seasonal rates (as defined above) to each consumer class to the extent that such costs vary seasonally.

B. Adopted by a nonregulated utility, when such nonregulated utility has issued written policies (or orders) providing:

1. that it will determine the costs of providing electric service to each consumer class at different seasons of the year; and

2. that it shall charge seasonal rates (as defined above) to each consumer class to the extent that such costs vary seasonally.

C. Rejected by a State regulatory authority or nonregulated utility when it had issued written policies (or orders) declining to adopt this standard.

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REGULATIONS APPLICABLE TO THE INT STANDARD

Section 111(d)(5) of PURPA establishes the interruptible rates standard (INT) , which states:

"Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member."

For the purpose of answering the questions in this schedule, the term "interruptible rate" means an interruptible rate that reflects the cost of providing interruptible service to the consumer class to whom it is charged.

FOR PURPOSES OF ANSWERING INT RELATED QUESTIONS

The interruptible rates standard (INT) has been:

A. Adopted by a state regulatory authority when such authority has issued written policies (or orders) providing:

1. that a utility covered by the standard shall offer each industrial and commercial electric consumer an interruptible rate; and

2. that the state regulatory authority will determine the costs of providing interruptible electric service to each consumer class that includes industrial or commercial consumers.

B. Adopted by a nonregulated utility, when such nonregulated utility has issued written policies (or orders) providing that it shall offer each industrial and commercial consumer an interruptible rate that reflects its determination of the costs of providing interruptable service to each consumer class that includes industrial or commercial consumers.

C. Rejected by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.

REGULATIONS APPLICABLE TO THE LMT STANDARD

Section 111(d)(6) of PURPA establishes the load management techniques standard (LMT) which states:

"Each electric utility shall offer to its electric consumers such load management techniques as the state regulatory authority (or the nonregulated electric utility) has determined will:

(A) be practicable and cost-effective, as determined under section 115(c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility."

Section 115(c) states:

"In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated eletric utility, to be cost-effective if:

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

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FOR PURPOSES OF ANSWERING LMT RELATED QUESTIONS

The load management techniques standard (LMT) has been:

A. Adopted by a State regulatory authority, when such authority has issued written policies (or orders) providing:

1. that it will make a written determination of the cost-effectiveness of load management techniques relevant to each utility covered by the standard, in accordance with section 115(c);

2. that it will make a written determination of whether each technique will be practicable and cost-effective (as defined above), be reliable, and provide useful energy or capacity management advantages to the electric utility; and

3. that a utility covered by the standard shall offer its electric consumers those load management techniques that the state regulatory authority has determined will meet the criteria above (in A.2).

B. Adopted by a nonregulated utility, when such nonregulated utility had issued written policies (or orders) providing:

1. that it will make a written determination of the cost-effectiveness of relevant load management techniques, in accordance with section 115(c);

(Continued on next page)

REGULATIONS APPLICABLE TO THE LMT STANDARD (CONTINUED)

(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique."

For the purpose of answering the questions in this schedule, the term "load management techniques" means any technique (other than a time-of-day rate or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including (but not limited to): ripple, radio or automatic control mechanisms; other types of interruptible electric service; energy storage devices; and load-limiting devices.

FOR PURPOSES OF ANSWERING LMT RELATED QUESTIONS (CONT)

2. that it will make a written determination of whether each such technique will be practicable and cost-effective (as defined above), be reliable, and provide useful energy or capacity management advantages to the electric utility; and

3. that it will offer its electric consumers those load management techniques that it has determined will meet the criteria above (in B.2.)

C. Rejected by State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.

REGULATIONS APPLICABLE TO THE FIVE REGULATORY STANDARDS: MM, AAC, ITC, TOS, ADV

Section 113(a) of PURPA requires public notice, hearing(s), and other actions respecting five regulatory standards established for electric utilities covered under Title I of PURPA, and Section 303(a) requires similar actions respecting two of these regulatory standards for gas utilities covered under Title III. With respect to the master metering (MM), automatic adjustment clause (AAC), information to consumer (ITC), termination of service (TOS), and advertising (ADV) standards, these sections establish the following requirements:

"Section 113/303. ADOPTION OF CERTAIN STANDARDS.

(a) Adoption of Standards--Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric (gas) utility for which it has ratemaking authority), and each nonregulated electric (gas) utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall:

> (1) adopt the standards established by subsection (b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law, and
>
> (2) adopt the standard established by subsection (b)(4) if, and to the extent, such authority or nonregulated electric (gas) utility determines that such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 123(307), the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory or nonregulatory electric (gas) utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law."

Sections 121 and 122 of PURPA establish specific procedural requirements for this process with respect to electric utilities, and sections 121 and 305 establish the authority of the Secretary to intervene in appropriate proceedings for electric and gas utilities.

For the purposes of answering the questions on the advertising standard, the term "sufficient criteria" refers to the criteria established in section 113(a)(1), above: "appropriate to carry out the purposes of this title[1], otherwise appropriate, and consistent with otherwise applicable state law."

For the purposes of answering the questions on the termination of service standard the term "sufficient criteria" refers to the criteria established in section 113(a)(2), above: "appropriate and consistent with otherwise applicable State law."

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[1] That is, to encourage: the conservation of energy supplied by electric and gas utilities; the optimization of the efficiency of use of facilities and resources by electric and gas utilities; and equitable rates to electric consumers.

REGULATIONS APPLICABLE TO THE MM STANDARD

Section 113(a)(1) states:

"Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if:

(1) there is more than one unit in such building,

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building."

For the purpose of answering the questions in this schedule:

(A) The term "master metering" (MM) applies to all cases where:

(1) There is more than one unit in the building and the electric metering does not permit identification of the energy consumption in individual units; or

(Continued on next page)

FOR PURPOSES OF ANSWERING MM RELATED QUESTIONS

The master metering standard (MM) has been:

A. Adopted by a State regulatory authority, when such authority has:

1. specified methods and procedures to be used by a utility covered by the standard in evaluating benefits versus costs of separate metering, in accordance with section 115(d)(3), and in determining whether separate metering is appropriate for a new building, in accordance with section 115(d); and

2. issued a written order that a utility covered by the standard shall not provide master metered service to new buildings except to the extent determined appropriate under those methods and procedures specified above.

B. Adopted by a nonregulated utility, when such nonregulated utility has:

1. specified methods and procedures that it will use in evaluating benefits versus costs of separate metering, in accordance with section 115(d)(3), and in determining whether separate metering is appropriate for a new building, in accordance with section 115(d); and

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REGULATIONS APPLICABLE TO THE MM STANDARD (CONTINUED)

(2) More than one such unit is treated as a single account for billing purposes.

(B) The term "separate metering" applies to all other cases.

FOR PURPOSES OF ANSWERING MM RELATED QUESTIONS (CONT)

2. issued a written policy that it will not provide master metered service to new buildings except to the extent determined appropriate under those methods and procedures specified above.

C. Rejected by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) stating that it has determined not to adopt the standard.

REGULATIONS APPLICABLE TO THE AAC STANDARD

Section 13(b)(2) of PURPA establishes the automatic adjustment clauses standard (AAC), which states: "No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e)."

Section 115(a) states:

"(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if:

(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

(B) such clause is reviewed not less often than every two years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to each utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economics in those operations and purchases which affect the rates to which such clause applies.

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FOR PURPOSES OF ANSWERING AAC RELATED QUESTIONS

The automatic adjustment clauses standard (AAC) has been:

A. Adopted by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) providing that every automatic adjustment clause in effect at a utility covered by the standard must undergo the quadrennial determination and biannual review specified in section 115(e)(1) and (2) of PURPA.

B. Rejected by a State regulatory authority or non regulated utility when it has issued written policies (or orders) stating that it has determined not to adopt the standard.

REGULATIONS APPLICABLE TO THE AAC STANDARD (CONTINUED)

(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other item(s).

(3) As used in this subsection and section 113(b), the term 'automatic adjustment clause' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing. In rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate."

REGULATIONS APPLICABLE TO THE ITC STANDARD

Section 113(b)(3) of PURPA establishes the information to consumers standard (ITC) which states: "Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f)."

Section 115(f) states:

"(1) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer:

(A) not later than sixty days after the date of commencement of service to such consumer or ninety days after the standard established by section 113(b)(3) is adopted with respect to such electric utility, whichever last occurs, and

(2) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year:

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FOR PURPOSES OF ANSWERING ITC RELATED QUESTIONS

The information to consumers standard (ITC) has been:

A. Adopted by a State regulatory authority when such authority has:

1. ordered that a utility covered by the standard shall transmit rate information to its electric consumers according to certain time requirements, in accordance with sections 115(f)(1) and (2) of PURPA; and

2. specified consumption data to be transmitted upon consumer request, and the conditions under which such data shall be considered to be not reasonably ascertainable by the utility, in accordance with section 115(f)(3) of PURPA.

B. Adopted by a nonregulated utility when such nonregulated utility has:

1. issued a written policy statement that it will transmit rate information to its electric consumers according to certain time requirements, in accordance with sections 115(f)(1) and (2) of PURPA; and

2. specified consumption data to be transmitted upon consumer request, and the conditions under which such data shall be considered to be not reasonably ascertainable by the utility, in accordance with section 115(f)(3) of PURPA.

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REGULATIONS APPLICABLE TO THE ITC STANDARD (CONTINUED)

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) An identification of any classes whose rates are not summarized. Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulatory electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption for degree-day adjusted consumption of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility)."

FOR PURPOSES OF ANSWERING ITC RELATED QUESTIONS

C. Rejected by a State regulatory authority or nonregulated utility when it has issued written policies (or orders) declining to adopt this standard.

REGULATIONS APPLICABLE TO THE TOS STANDARD

Section 113(b)(4) of PURPA establishes the termination of service standard (TOS) for electric utilities, and section 303(b)(1) establishes the same standard for gas utilities, stating: "No electric (gas) utility may terminate electric (natural gas) service to any electric (gas) consumer except pursuant to procedures described in section 115(g)/304(a)."

Section 115(g)/304(a) state:

"The procedures for termination of service referred to in section 113 (d)(4)/303(b)(1) are procedures prescribed by the State regulatory authority (with respect to electric (gas) utilities for which it has ratemaking authority) or by the nonregulated utility which provide that:

(1) no electric (gas) service to an electric (gas) consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to an electric (gas) consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric (gas) utility for which it has ratemaking authority) or nonregulated electric (gas) utility, and such consumer establishes that:

(Continued on next page)

FOR PURPOSES OF ANSWERING TOS RELATED QUESTIONS

The termination of service standard (TOS) has been:

A. Adopted by a State regulatory authority when such authority has:

1. prescribed specific procedures, in accordance with sections 115(g)/304(a) of PURPA;

2. ordered that a utility covered by the standard shall not terminate electric (gas) service to any electric (gas) consumer except pursuant to such procedures.

B. Adopted by a nonregulated utility when such nonregulated utility has:

1. prescribed specific procedures, in accordance with sections 115(g)/304(a) of PURPA;

2. issued a written policy that it shall not terminate electric (gas) service to any electric (gas) consumer except pursuant to such procedures.

C. Rejected by a State regulatory authority or nonregulated utility when it had issued written policies (or orders) stating that it has determined not to adopt the standard.

REGULATIONS APPLICABLE TO THE TOS STANDARD (CONTINUED)

(a) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(b) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers."

REGULATIONS APPLICABLE TO THE ADV STANDARD

Section 113(b)(5) of PURPA establishes the advertising standard (ADV) for electric utilities, and section 303(b)(2) establishes the same standard for gas utilities, stating: "No electric (gas) utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h)/304(b)."

Sections 115(h)/304(b) state:

"(1) For purposes of this section and section 113(b)(5)/303(b)(2):

(A) The term "advertising" means the commercial use, by an electric (gas) utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric (gas) consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(Continued on next page)

FOR THE PURPOSES OF ANSWERING ADV RELATED QUESTIONS

The advertising standard (ADV) has been:

A. Adopted by a State regulatory authority when such authority has issued a written policy (or order) that it will disallow (for ratemaking purposes) any direct or indirect expenditure by a utility covered by the standard for promotional or political advertising, as defined in accordance with section 115(h)/304(b).

B. Adopted by a nonregulated utility when such nonregulated utility had issued a written policy that it will not recover from any person other than the stockholders (or other owners) any direct or indirect expenditures for promotional or political advertising, as defined in accordance with section 115(h)/304(b).

C. Rejected by a State regulatory authority or nonregulatory utility when it has issued written policies (or orders) stating that it has determined not to adopt the standard.

REGULATIONS APPLICABLE TO THE ADV STANDARD (CONTINUED)

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric (gas) utility or the selection or installation of an appliance or equipment designed to use such utility's service.

(2) For the purposes of this subsection and section 113(b)(5)/303(b)(2), the terms "political advertising" and "promotional advertising" do not include:

(A) advertising which informs electric (natural gas) consumers how they can conserve energy (natural gas) or can reduce peak demand for electric (natural gas) energy.

(B) advertising required by law or regulation, including advertising required under part I of title II of the National Energy Conservation Policy Act.

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility.

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

END BLUE SECTION

WHITE SECTION

PURPA ANNUAL REPORT ON ELECTRIC AND GAS UTILITIES

SECTION II

PART I

General Information on State Regulatory Authority or Covered Nonregulated Utility

IDENTIFICATION DATA

1.1 State Regulatory Authority (or Covered Nonregulated Utility)

(a)Name

(b)Street

(c)City (d)State (e)Zip Code

1.2 Designated Point(s) of Contact for the Electric Utility Portion of this Report:

(a)Name	(f)Name
(b)Title	(g)Title
(c)City, State	(h)City, State
(d)Zip (e)Phone ( )	(i)Zip (j)Phone ( )

1.3 Designated point(s) of contact for the gas utility portion of this report: (If same as 1.2, enter "SAME".)

(a)Name	(f)Name
(b)Title	(g)Title
(c)City, State	(h)City, State
(d)Zip (e)Phone ( )	(i)Zip (j)Phone ( )

CERTIFICATION

I certify that I am the chairman of this State regulatory authority or the chief executive officer of this nonregulated utility or another commissioner or officer authorized to file an official report on behalf of this authority or utility. I further certify that the data presented in this report (Section II, Parts I through III and attachments) are true, accurate, and complete to the best of my knowledge, and I hereby authorize its release as an official report on behalf of this authority or utility for the purpose of complying with sections 116 and 309 of the Public Utility Regulatory Policies Act (P.L. 95-617).

1.4 Name 1.5 Title

1.6 Signature 1.7 Date

18 USC 1001 makes it a crime for any person knowingly and willfully to make to any Agency or Department of the United States any false, fictitious, or fraudulent statements as to any matter within his or her jurisdiction.

[THIS SHEET IS TO BE RETURNED]

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FOR ANSWERING 1.8 to 1.10:

Which of the following steps have you taken regarding the requirements of sections 121 and 122 of PURPA?

(If your consideration process for all of the standards was completed before November 9, 1978, check NA. Otherwise, check Yes or No.)

1.8 Established a written policy or order, consistent with section 121 of PURPA, that covers the consideration proceedings and provides for intervention, participation, and access to information.

☐ Yes ☐ No ☐ NA

1.9 Adopted a procedure for compensation to certain intervenors that is consistent with section 122(a)(2) of PURPA.

☐ Yes ☐ No ☐ NA

1.10 Provided an alternative means for providing adequate compensation to certain intervenors that is consistent with section 112(b) of PURPA.

☐ Yes ☐ No ☐ NA

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[THIS SHEET IS TO BE RETURNED]

INSTRUCTIONS

I. On pages 30 and 31, column "a", list the covered utilities for which you have ratemaking authority; if none, write "NONE". (For nonregulated utilities, list name.)

For Electric Utilities: Answer question 1.11 on page 30.

For Gas Utilities: Answer question 1.12 on page 31.

II. In the case of utilities that sell both electricity and gas (for regulated and nonregulated utilities), list the utility twice; once in 1.11 and once in 1.12.

III. List utilities in alphabetical order and place an (I) for investor-owned, a (P) for publicly owned, or a (C) for cooperatively-owned after the utility name.

IV. In the space provided next to the utility name, indicate the average number of retail customers, for the year ending December 1983 by: residential class, commercial and industrial class, and all others.

V. In the space provided next to the utility name, indicate total consumption by retail consumers for the year ending December 1983, in GWHR or MMCF by: residential class, commercial and industrial class, and all others. If desired, the utility may answer on a 1983 calendar year or 1983 fiscal year basis. Please see General Instructions on page 4 for more information on this option.

VI. If more space is required, duplicate the form provided and renumber the lines accordingly (for example, E1 will become E16 and G1 will become G16).

IDENTIFICATION OF UTILITIES (CONTINUED)

1.11 Electric Utility Name (a)	(I) (P) (C)	Number of Retail Customers			Consumption (GWH)		
		Residential (b)	Commercial & Industrial (c)	Other (d)	Residential (e)	Commercial & Industrial (f)	Other (g)
(E1)							
(E2)							
(E3)							
(E4)							
(E5)							
(E6)							
(E7)							
(E8)							
(E9)							
(E10)							
(E11)							
(E12)							
(E13)							
(E14)							
(E15)							

[THIS SHEET IS TO BE RETURNED]

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IDENTIFICATION OF UTILITIES (CONTINUED)

1.12 Gas Utility Name (a)	(I) (P) (C)	Number of Retail Customers			Consumption (MMCF)		
		Residential (b)	Commercial & Industrial (c)	Other (d)	Residential (e)	Commercial & Industrial (f)	Other (g)
(G1)							
(G2)							
(G3)							
(G4)							
(G5)							
(G6)							
(G7)							
(G8)							
(G9)							
(G10)							
(G11)							
(G12)							
(G13)							
(G14)							
(G15)							

[THIS SHEET IS TO BE RETURNED]

PURPA ANNUAL REPORT ON ELECTRIC AND GAS UTILITIES
SECTION II
PART II
Questions Pertaining to each of
the Eleven Standards

INSTRUCTIONS

I. (1) For Electric Utilities: Duplicate the answer sheet on page 35. Prepare one sheet for each electric utility named on page 30.

(2) For Gas Utilities: Duplicate the answer sheet on page 36. Prepare one sheet for each gas utility named on page 31.

II. Enter the utility name in the space provided on the answer sheet. Prepare one answer sheet per utility. For utilities providing both electricity and gas service, you will have one answer sheet for the electric portion of the utility's business and one for the gas portion of the utility's business.

III. (1) For Electric Utilities: Answer all questions for each of the eleven standards.

(2) For Gas Utilities: Answer all questions for only the TOS and ADV standards.

Place all responses on the answer sheets under the abbreviation for that standard and corresponding to the question number.

IV. If the answer box on the answer sheet is shaded, do not answer that question. If instructed to skip a question, leave that answer box blank.

V. Include comments pertaining to a specific utility on the back of that utility's answer sheet. For example, if a ratemaking standard has been adopted, but is still being phased-in, a comment to that effect would be appreciated. General comments are encouraged and should be included on a separate sheet (with appropriate identification).

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QUESTION 2.1

2.1 What was the status of the STANDARD as of December 31, 1983?

STATUS CODES

0 - Consideration process has not begun

1 - Hearing has been scheduled or review process has begun

2 - Consideration process has started but hearing has not been completed

3 - Hearing has been completed

4 - Official determination has been made regarding whether or not it is appropriate to adopt this standard to encourage conservation of electric energy, utility efficiency and equitable rates to consumers, but decision regarding adoption or rejection of this standard has not been made for this utility

5 - Standard has been adopted (i.e., put into effect) as defined in the PURPA regulations (pages 7-26)

6 - Standard has been rejected as defined in the PURPA regulations (pages 7-26)

7 - State law has mandated standard

8 - State law has prohibited standard

BEFORE CONTINUING TO ANSWER THIS REPORT READ THE FOLLOWING:

For each utility whose status code in Question 2.1 is:

STATUS CODES

0,1,2,3,8 - Do not complete remaining questions in Parts II or III.

5 - Complete all questions in Parts II and III.

4 or 6 - Answer only questions 2.2 through 2.5 in Part II. Answer all questions in Part III.

7 - Answer only questions 2.6 through 2.12 in Part II and all questions in Part III.

QUESTION 2.2

2.2 Have your proceedings and actions conformed to the requirements of Title I and/or Title III of PURPA for the STANDARD, as defined in the regulations applicable to each standard detailed in pages 7 through 26.

[Enter: Y (Yes)
N (No)]

QUESTIONS 2.3 through 2.5

In your consideration process, have you made written determination that it is (or is not) appropriate to adopt the STANDARD to carry out:

[Enter: Y (Yes it is appropriate);
N (No it is not appropriate;
O (Other, no written determination was made or no conclusions resulted from consideration process).]

2.3 Conservation of energy?
2.4 Optimization of efficiency?
2.5 Equitable rates?

QUESTION 2.6

2.6 Are all consumers in all classes covered by the STANDARD and billed under rate schedules which conform to the adopted or mandated STANDARD?

[Enter: Y (Yes), if Yes, Skip to Part III.
N (No), if No, answer 2.7 through 2.12.]

QUESTIONS 2.7 through 2.9

How many retail consumers who are covered by the STANDARD are billed under rate schedules which conform to the adopted or mandated STANDARD? Report the average number of consumers for the year ending December 1983 for the following "rate schedules":

2.7 Residential class?
2.8 Commercial and industrial class?
2.9 All others?

QUESTIONS 2.10 through 2.12

What were the sales (GWH) to retail consumers who are covered by the STANDARD and are billed under rate schedules that conform to the adopted or mandated STANDARD? Report for the year ending December 1983 for the following rate schedules:

2.10 Residential class?
2.11 Commercial and industrial class?
2.12 All others?

NOTE: If desired, the utility may answer on a 1983 calendar year or 1983 fiscal year basis. Please see General Instructions on page 4 for further information on this option.

ANSWER SHEET FOR PART II

ELECTRIC UTILITY NAME _____

QUESTIONS	(a) COS	(b) DBR	(c) TOD	(d) SLR,	(e) INT	(f) LMT	(g) MM	(h) AAC	(i) ITC	(j) TOS	(k) ADV
2.1 (Status Code:0-8)											
2.2 (Y or N)											
2.3 (Y, N or O)											
2.4 (Y, N or O)											
2.5 (Y, N or O)											
2.6 (Y or N)											
2.7 (Number of Customers)											
2.8 (Number of Customers)											
2.9 (Number of Customers)											
2.10 (GWH)											
2.11 (GWH)											
2.12 (GWH)											

COS:Cost of service standard
DBR:Declining block rate standard
TOD:Time of day rates standard
SLR:Seasonal rates standard
INT:Interruptible rate standard
LMT:Load management technique standard
MM: Master metering standard
AAC:Automatic adjustment clause standard
ITC:Information to consumers standard
TOS:Termination of service standard
ADV:Advertising standard

[THIS SHEET IS TO BE DUPLICATED AND RETURNED]

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ANSWER SHEET FOR PART II

GAS
UTILITY Name _____

QUESTIONS	(j) TOS	(k) ADV
(Status) 2.1 Code:0-8)		
2.2 (Y or N)		
2.3 (Y, N or O)		
2.4 (Y, N or O)		
2.5 (Y, N or O)		
2.6 (Y or N)		

TOS: Termination of Service Standard
ADV: Advertising Standard

[THIS SHEET IS TO BE DUPLICATED AND RETURNED]

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SECTION II
PART III
Standard Specific Questions

INSTRUCTIONS

I. Prepare duplicates of the answer sheet on page 44, as necessary, for each gas utility and electric utility named on pages 30 and 31.

II. Enter the name of each utility in the space provided on the answer sheet. If the utility provides both electric and gas services, prepare two answer sheets for the utility, one for each service.

III. Answer questions 3.1 through 3.34 for each electric utility. When answering questions for a gas utility, answer only questions 3.29 through 3.34.

IV. Include comments pertaining to a specific utility on the back of that utility's answer sheet. General comments are encouraged and should be included on a separate sheet.

QUESTIONS 3.1 through 3.5: COS Standard

- If you have not made a determination on the Cost Of Service standard, go on to question 3.6.

For Questions 3.1 through 3.5:

- If an official determination has been made concerning the Cost of Service standard, if the standard has been adopted or if it has been mandated (status codes 4,5, or 7 for question 2.1), does your standard address the methods described in 3.1 through 3.5?

  [Enter: R (Methods are required by standard)
  A (Methods are allowed by standard)
  F (Methods are forbidden by standard)
  NC (Methods are not covered by standard)]

- OR,
  If you have REJECTED the Cost of Service standard (status code 6 for question 2.1), had you considered using the methods described in 3.1 through 3.5?

  [Enter: Y (Methods were considered)
  N (Methods were not considered)]

3.1 Methods that permit identification of customer demand and energy-related cost of service for each class of customer?

3.2 Methods that take into account the change in total costs resulting from adding capacity to meet peak demand?

3.3 Methods that take into account the change in total costs resulting from delivery of additional kWh?

3.4 Methods that permit the use of embedded cost data in setting rates?

3.5 Methods that permit the use of marginal cost data in setting rates?

QUESTIONS 3.6 through 3.7: DBR Standard

- If a determination has not been made concerning the Declining Block Rate standard, go on to question 3.8.

- If a determination has been made concerning the Declining Block Rate or if it has been mandated by state law (status codes 4,5,6 or 7 for Question 2.1), does your declining block rate standard, as adopted, address the following methods:

  [Enter: R (Required by standard)
  A (Allowed by standard)
  F (Forbidden by standard)
  NC (Not covered (addressed) by standard
  NA (Not applicable, standard not adopted)]

3.6 The use of methods for determining the costs attributable to the energy component of a declining block rate?

3.7 Energy (i.e. kWh) charges that decl[illegible] only to the extent that energy-related costs of service decline with increases in consumption?

QUESTIONS 3.8 through 3.11: TOD Standard

- If a determination has not been made concerning the Time-of-Day rate standard, go on to question 3.12.

For Questions 3.8 through 3.11:

- If an official determination has been made concerning the Time-of-Day rate standard, if the standard has been adopted, or if it has been mandated (status codes 4,5, or 7 for Question 2.1), does your standard address the methods described in 3.8 through 3.11?

  [Enter: A (Methods are allowed by standard)
  F (Methods are forbidden by standard)
  NC (Methods are not covered by standard)

- OR,
  If you have REJECTED the Time-of-Day rate standard, had you considered using the methods described in 3.8 through 3.11?

  [Enter: Y (Methods were considered)
  N (Methods were not considered)]

3.8 Methods for determining costs of providing electric service at different times of day?

3.9 Methods that take into account the change in total costs resulting from adding capacity to meet peak demand?

3.10 Methods that take into account the change in total costs resulting from delivery of additional kWh?

3.11 Methods that permit the determination of the cost-effectiveness of time-of-day rates?

QUESTION 3.12: SLR Standard

- If a determination has not been made concerning the Seasonal Rate standard, go on to question 3.13.

- If a determination has been made concerning the Seasonal Rate standard, or if it has been mandated by state law, answer the following:

  [Enter: R (Required by standard)
  A (Allowed by standard)
  F (Forbidden by standard)
  NC (Not covered (addressed) by standard)
  NA (Not applicable, standard not adopted)]

3.12 Does the Seasonal Rate standard, as adopted, address the use of methods prescribed by you for determining cost incurrence by season of the year for each class of customer?

QUESTIONS 3.13 through 3.17: IRT Standard

- If a determination has not been made concerning the Interruptible Rate standard, go on to 3.18.

For Questions 3.13 and 3.14:

- If an official determination has been made concerning the Interruptible Rate Standard, if the standard has been adopted, or if it has been mandated (status codes 4,5, or 7 for Question 2.1), does your standard address the methods described in 3.13 through 3.14 for determining costs of providing interruptible electrical power service to the industrial and commercial class:

[Enter:
R (Methods are required by standard)
A (Methods are allowed by standard)
F (Methods are forbidden by standard)
NC (Methods are not covered by standard)]

- OR,
If you have REJECTED the Interruptible Rate standard (status code 6 for question 2.1), had you considered using the methods described in 3.13 and 3.14?

[Enter: Y (Methods were considered)
N (Methods were not considered)]

3.13 Methods that take into account the change in total costs resulting from adding capacity to meet peak demand?

3.14 Methods that take into account the change in total costs resulting from the delivery of additional kWh?

For rate schedules in effect as of December 31, 1983 and that complied with your interruptible rates standard:

3.15 How many commercial and industrial consumers were eligible to be billed under interruptible rates? Report the average number of consumers for the month ending December 1983.

3.16 How many commercial and industrial consumers were actually billed under interruptible rates? Report the average number of consumers for the month ending December 1983.

3.17 What is the number of megawatts of interruptible load contracted for from such interruptible consumers? Report as of December 31, 1983.

QUESTIONS 3.18 through 3.21 LMT Standard

- If a determination has not been made concerning the Load Management Technique standard, go on to 3.22.

For Questions 3.18 through 3.21:

- If an official determination has been made concerning the Load Management Technique standard, if the standard has been adopted, or if it has been mandated (status codes 4,5, or 7 for Question 2.1) does your standard address the methods described in 3.18 through 3.21?

[Enter: R (Methods are required by standard)
A (Methods are allowed by standard)
F (Methods are forbidden by standard)
NC (Methods are not covered by standard)]

- OR,
If you have REJECTED the Load Management Technique standard (status code 6 for Question 2.1), had you considered using the methods described in 3.18 through 3.21?

[Enter: Y (Methods were considered)
N (Methods were not considered)]

3.18 Methods that take into account the change in total costs resulting from adding capacity to meet peak demand?

3.19 Methods that permit a determination of a likely reduction in maximum kilowatt demand on the electric utility from utilization of available load management techniques?

3.20 Methods that permit a determination of likely long run cost savings to the utility of reductions in maximum KW demand?

3.21 Methods that permit a determination of whether an available technique is practicable, cost-effective, reliable, and provides useful energy or capacity management advantages to the electric utility?

QUESTIONS 3.22 through 3.23: MM Standard

- If a determination has not been made concerning the Master Metering standard, go on to question 3.24.
- If a determination has been made concerning the Master Metering standard or if it has been mandated by state law, does your Master Metering standard require specific criteria for separate metering, including:

[Enter: Y (Criteria required)
N (Criteria not required)
NA (Not applicable, standard not adopted)]

3.22 The occupant of each unit having control over a portion of the electric energy used in such unit?

3.23 The long-run benefits to the electric consumer in the building exceeding the costs of purchasing and installing separate meters?

QUESTIONS 3.24 through 3.25: AAC Standard

- If a determination has not been made concerning the Automatic Adjustment Clause standard, go on to 3.26.
- If a determination has been made concerning the Automatic Adjustment Clause or if it has been mandated by state law, does the Automatic Adjustment Clauses standard, as adopted, require the following or, if the standard was not adopted, did you consider the following in your hearing process:

[Enter: Y (Yes)
N (No)]

3.24 Evidentiary hearings to be held not less often than every 4 years to determine whether each clause covered by the standard provides incentives for efficient use of resources by the electric utility?

3.25 Is your review of each covered clause not less often than every 2 years to ensure maximum economies in operations and purchases that affect automatic adjustment clause rates?

QUESTIONS 3.26 through 3.28: ITC Standard

- If a determination has not been made concerning the Information to Consumers standard, go on to 3.29.
- If an official determination has been made or if the standard was mandated by state law, does the Information to Consumers standard, as adopted, require the following:

QUESTIONS (CONTINUED)

[Enter: Y (Yes)
N (No)
NA (Not applicable, standard not adopted)]

3.26 Transmittal of information to consumers of existing rate schedule and any rate schedule applied for as specified in PURPA?

3.27 Transmittal of a summary of the existing rate schedules applicable to each of the major consumer classes for which there is a separate rate to consumers, not less frequently than once each year?

3.28 Transmittal of the identification of any classes whose rates are not summarized, not less frequently than once each year?

QUESTIONS 3.29 through 3.32: TOS Standard

- If a determination has not been made concerning the Termination of Service standard, go on to question 3.33.
- If an offical determination has been made concerning the Termination of Service standard or if it is mandated by state law, does the Termination of Service standard, as adopted, require the following:

[Enter: Y (Yes)
N (No)
NA (Not applicable, standard not adopted)]

3.29 Prior notice of termination?

3.30 Prior notice to include third party notification, or other special procedures for notifying elderly and handicapped consumers?

3.31 A notice of rights and remedies to be provided to the consumer with all termination notices?

3.32 Service not to be terminated when:
(a) Consumer's health is in danger and;
(b) he is unable to pay in accordance with the utility's billing practices and;
(c) he has established that he can only afford to pay in installments?

QUESTIONS 3.33 through 3.34: ADV Standard

- Answer questions 3.33 and 3.34 if an official determination has been made concerning the Advertising Standard or if it has been mandated by state law.

[Enter: Y (Yes)
N (No)
NA (Not applicable, standard not adopted)]

3.33 Definitions of political and promotional advertising which conform to those given in sections 115(h)(1) and (2) or 304(b)(1) and (2) of PURPA (see pages 25 and 26)?

3.34 Prohibitions on the recovery of political and promotional advertising expenses from rate-payers or any persons other than shareholdes (or other owners)?

ANSWER SHEET FOR PART III

ELECTRIC UTILITY NAME _____
OR
GAS UTILITY NAME _____

(If answering questions for an electric utility, answer questions 3.1 through 3.34; If answering questions for a gas utility, answer only questions 3.29 through 3.34.)

COS

3.1	
3.2	
3.3	
3.4	
3.5	

SLR

3.12	

INT

3.13	
3.14	
3.15	
3.16	
3.17	

MM

3.22	
3.23	

DBR

3.6	
3.7	

AAC

3.24	
3.25	

TOS

3.29	
3.30	
3.31	
3.32	

TOD

3.8	
3.9	
3.10	
3.11	

LMT

3.18	
3.19	
3.20	
3.21	

ITC

3.26	
3.27	
3.28	

ADV

3.33	
3.34	

COS:Cost of service standard
DBR:Declining block rate standard
TOD:Time of day rates standard
SLR:Seasonal rates standard
INT:Interruptible rate standard
LMT:Load management technique standard
MM: Master metering standard
AAC:Automatic adjustment clause standard
ITC:Information to consumers standard
TOS:Termination of service standard
ADV:Advertising standard

[THIS SHEET IS TO BE DUPLICATED AND RETURNED]

ERA-166 (11-83)

[FR Doc. 83-34760 Filed 12-30-83; 8:45 am]
BILLING CODE 6450-01-C

RETURN THE FOLLOWING PAGES:

27
28
30
31
35 (duplicated for each utility)
36 (duplicated for each utility)
43 (duplicated for each utility)

RETURN THEM TO:

PURPA Annual Report on Electric and Gas Utilities
Coal and Electricity Division
Economic Regulatory Administration
Department of Energy, Forrestal Building
1000 Independence Avenue, S.W., Room GA-033
Washington, D.C. 20585

RETURN THEM BY:

February 28, 1984

IF YOU HAVE ANY QUESTIONS CALL:

Steven Mintz
(202) 252-1657

ERA-166 (11-83)

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 83-59]

Rules, Policies and Procedures for Corporate Activities; Rules of General Applicability, and Employee Stock Option and Stock Purchase Plans

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule eliminates the requirement that the Office of the Comptroller of the Currency (Office) approve employee stock option and stock purchase plans. That regulatory requirement is removed because it is burdensome and unnecessary. This final rule will benefit national banks by reducing costs and burdens. Additionally, a clarifying amendment is made to 12 CFR 5.2(b).

EFFECTIVE DATE: February 2, 1984.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Manager, Policy, Bank Organization and Structure (202) 447-1184; Robyn Ide, Paralegal Specialist, Securities and Corporate Practices Division (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Office's Corporate Activities Review and Evaluation (CARE) Program, described in 45 FR 68586, dated October 15, 1980, involves a comprehensive review of the Office's rules, policies, procedures and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE Program are to minimize costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

As part of that ongoing program, on September 9, 1983, the Office issued for public comment a notice of proposed rulemaking (48 FR 40735) that proposed elimination of the requirement that national banks receive prior approval of this Office for employee stock option and stock purchase plans ("employee compensation plan") (12 CFR 5.51). In proposing elimination of the rule, this Office requested comments on whether its prior approval of stock option and stock purchase plans was necessary, in light of the safeguards afforded under existing laws and through the bank examination process. The proposal cited, among other things, protection provided by the tax laws governing employee compensation plans, corporate procedures requiring shareholder approval of plans, the fiduciary obligations of bank directors to bank shareholders and the disclosure obligations to such shareholders under the federal securities laws. As a general matter, employee compensation plans must be approved by shareholders after receiving adequate disclosure of the terms of the plan and all material facts relating to such plan.

Summary of Comments

A total of 11 comments were received concerning the notice of proposed rulemaking. Ten comments were from national banks and one was from a bank trade association. All commenters supported the proposal and raised no additional considerations.

Recision of 12 CFR 5.51

After careful consideration of the comments received in response to the proposal, the Office has determined to rescind 12 CFR 5.51, as proposed. It believes that existing legal requirements applicable to employee compensation plans currently serve to protect shareholders against potential abuses. In addition, the bank examination process is designed to promote a high degree of compliance by banks, bank officers and directors with applicable laws and regulations. Accordingly, we believe it unnecessary to require national banks to receive the prior approval of this Office before adopting employee compensation plans.

Clarifying Amendment to Rules of General Applicability (12 CFR 5.2(b))

The clarifying amendment to § 5.2(b) was not addressed in the notice of proposed rulemaking pertaining to employee compensation plans. The amendment only clarifies a matter of office procedure and, therefore, is not subject to the notice and comment requirements of 5 U.S.C. 553.

Section 5.2(b) currently states:

> The Office reserves the right to adopt different procedures when it deems it necessary and reasonable in acting upon any particular application or filing.

The quoted language in § 5.2(b) applies to all the procedures set forth in 12 CFR Part 5. However, that language, when read in conjunction with § 5.2(a), could possibly be misinterpreted as applying to only those procedures set forth in Subpart A of Part 5. To remove any ambiguity, § 5.2(b) is amended to read:

> The Office reserves the right to adopt procedures different from those described in this Part when it deems such action appropriate in acting on any particular application or filing.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Secretary of the Treasury certifies that the elimination of 12 CFR 5.51 will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Office has determined that this final rule is not a "major rule" and, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 12 CFR Part 5

National banks, Employee stock option plan, Employee stock purchase plan.

Authority and Issuance

PART 5—[AMENDED]

For the reasons set out in the preamble, 12 CFR Part 5 is amended as follows:

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. Section 5.2(b) is revised to read as follows:

§ 5.2 Rules of general applicability.

* * * * *

(b) The Office reserves the right to adopt procedures different from those described in this Part (5) when it deems such action appropriate in acting on any particular application or filing.

* * * * *

§ 5.51 [Removed]

3. Section 5.51 is removed.

Dated: December 9, 1983.

C. T. Conover

Comptroller of the Currency.

[FR Doc. 83-34798 Filed 12-30-83; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 544 and 552

[No. 83-743]

Charters and Bylaws Available to Federal Associations and Savings Banks; Corrections

December 22, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; corrections.

SUMMARY: The Board has adopted technical corrections to its recently revised charter and bylaw regulations for federal associations.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: In regard to federally chartered mutual institutions, David A. Permut, Attorney, Division of Corporate and Regulatory Structure, Office of General Counsel (202-377-6962), and in regard to federally chartered stock institutions, James C. Stewart, Attorney, Division of Securities and Corporate Analysis, Office of General Counsel (202-377-6457), Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On September 15, 1983, the Federal Home Loan Bank Board promulgated final amendments to its regulations governing the types of charters available to federal associations. Board Resolution No. 83-528; 48 FR 44174, September 28, 1983. The amendments simplified and streamlined the regulations governing federal charters and bylaws by updating and clarifying existing charters and replacing bylaw requirements with standards governing internal management.

In connection with these amendments, a provision was adopted inadvertently making corporate management of a mutual association more difficult; it had the effect of requiring mutual institutions to conduct costly determinations of their exact membership each time there is a meeting. Because it was the Board's clear intention to simplify the charters and internal corporate administration, the provision has been amended to re-institute the Board's long-standing regulatory method of determining membership for the purpose of holding meetings. In addition, several provisions of the final regulation were adopted to simplify or clarify procedures. In practice, they have raised additional questions. Consequently, those provisions, dealing with charter reissuance, the size of a board for quorum purposes, and the amendment of stock bylaws, have been further clarified. Finally, several provisions contained numerical references that were inconsistent with earlier sections; by its action today, the Board has corrected those references.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12, and the delay of the effective date as prescribed by 5 U.S.C. 553(d) and 12 CFR 508.14 is not necessary because the changes are of a minor technical corrective nature.

Accordingly, the Board hereby corrects Parts 544 and 552, Subchapter C, Chapter V of Title 12, *Code of Federal Regulations*, as published on September 28, 1983 (48 FR 44174), as set forth below.

PART 544—CHARTERS AND BYLAWS

§ 544.1 [Amended]

1. Amend the third to the last sentence in Section 6 of § 544.1 by removing the phrase "A majority of the outstanding voting shares," and replacing it with the phrase "Any number of members present and voting,".

§ 544.2 [Amended]

2. Amend the first sentence of § 544.2(c) by removing the phrase "ten amended copies," and replacing it with the phrase "one executed, and three conformed copies,".

§ 544.5 [Amended]

3. Amend the third sentence of § 544.5(b)(2) by removing the word "rights" and replacing it with the word "capital"; amend the fifth sentence of § 544.5(b)(8) by inserting the word "authorized" before the word "directors"; and amend the second sentence of § 544.5(b)(16) by removing the word "entire" and replacing it with the word "authorized".

PART 544—APPENDIX [AMENDED]

4. In the Appendix to Part 544, amend the fifth sentence of Section 8 by inserting the word "authorized" before the word "directors"; and amend the first sentence of Section 16 by removing the word "entire" and replacing it with the word "authorized".

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

§ 552.4 [Amended]

5. Amend the first sentence of § 552.4(d) by removing the phrase "10 amended copies" and replacing it with the phrase "one executed, and three conformed copies".

PART 552—APPENDIX [AMENDED]

6. In the Appendix to Part 552, amend the first sentence of Article II, Section 5 by substituting the number "10" for the number "20"; amend the second sentence of Article II, Section 5, by removing the term "Section 5" and replacing it with the term "Section 6"; amend the second sentence of Article II, Section 6, by substituting the number "10" for the number "20"; amend the last sentence of Article III, Section 5, by removing the term "Section 11" and replacing it with the term "Section 12"; and amend the first sentence of Article XI by substituting the word "majority" for the word "two-thirds".

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 402, 403, 407, 48 Stat. 1256, 1260, as amended (12 U.S.C. 1725, 1728, 1730); Reorg. Plan No. 3 of 1947; 12 FR 4981 3 CFR Parts 1943-1948 Comp p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-34662 Filed 12-30-83; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 43, 45, and 91

[Docket No. 23767; Amdt. No. SFAR 27-5]

SFAR 27-5 Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Compliance With Revised EPA Emission Standards and Test Procedures

Correction

In FR Doc. 83-34153 beginning on page 56735 of the issue of Friday, December 23, 1983, make the following correction on page 56739. In the middle column, in § 11.101, the first line following "(b) * * *" should read "SFAR 27 2120-0508".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release Nos. 33-6501; 34-20509; 35-23176; IC-13686; FR-15]

Interpretive Release Relating to Accounting for Extinguishment of Debt

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is rescinding Financial Reporting Release (FRR) No. 3, its interpretive release relating to extinguishment of debt through "in-substance defeasance" arrangements, because the Financial Accounting Standards Board (FASB) has recently issued a standard on that topic. The Commission also emphasized the importance of certain aspects of the new standard.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Dorothy E. Walker, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202)–272–2130).

SUPPLEMENTARY INFORMATION:

Background

In Financial Reporting Release (FRR) No. 3, issued in August 1982 (47 FR 38868), the Commission announced its support of the tentative view of the FASB that, except in certain limited circumstances, debt should not be accounted for as extinguished unless the debtor has no further legal obligation. The Commission indicated that, to avoid inconsistent accounting, registrants should follow that tentative position while the FASB was considering the issue. Recently, after study and deliberation, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 76, "Extinguishment of Debt", which clarifies the accounting for such "quasi-defeasance ' or "in-substance defeasance" arrangements. Accordingly, the Commission has determined to rescind FRR No. 3.

Requirements for Extinguishment of Debt

SFAS No. 76 provides that a debtor shall consider debt to be extinguished under three circumstances. The first two are the traditional criteria for extinguishment of debt (payment of the debt and legal release as primary obligor). The third, described in paragraph 3(c), is new and provides for extinguishment under certain conditions when eligible assets are irrevocably placed in a trust to be used solely for satisfying scheduled payments on the debt.

SFAS No. 76 does not have any specific eligibility requirements for the trustee of the trust created pursuant to paragraph 3(c) of that standard. The Commission believes, however, that paragraph 3(c) of the standard contemplates that the trustee should be independent with respect to the company.[1]

Paragraph 4 of SFAS No. 76 provides that the assets used to effect an extinguishment of debt under paragraph 3(c) must be monetary assets essentially risk free as to the amount, timing, and collection of interest and principal. These requirements are designed to assure that all interest and principal payments are made on time. Accordingly, they are very important and must be strictly interpreted.

Paragraph 4 lists the three types of assets in U.S. dollars that might meet those requirements: (1) Direct obligations of the U.S. government, (2) obligations guaranteed by the U.S. government, and (3) securities that are backed by U.S. government obligations as collateral under an arrangement by which the interest and principal payments on the collateral generally flow immediately through to the holder of the security (for example, as in a closed trust). The Commission believes that very few securities of the types listed in (2) and (3) above can satisfy the essentially risk free requirements, particularly because the requirement for the assets to be risk free as to timing of collection applies to the risk of late as well as early payments. For example, if a guarantee provides only for the ultimate collection, but not for the collection of interest and principal in sufficient time to ensure payments on the defeased debt as they become due, the security would not qualify.

The Commission notes that the determination whether debt can be considered to be extinguished requires an assessment as to the likelihood of the debtor being required to make future payments with respect to the debt, not only because of an inadequacy of trust assets attributable to a failure to realize scheduled cash flows, but also because of an acceleration of the debt's maturity. An acceleration might occur because of a violation of a covenant of the debt issue being extinguished, or, under cross-default provisions, because of a violation of a covenant of another debt issue.

The determination whether debt can be considered to be extinguished is also affected by the irrevocable nature of the trust. The trust must be designed so that neither the corporation nor its creditors or others can rescind or revoke it, or obtain access to the assets.

The Commission emphasizes that the qualifications of the trustee and nature of the trust and of the assets in the trust are areas of concern and that it expects registrants which extinguish debt under paragraph 3(c) to carefully evaluate those areas.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated to

1. Delete old Section 217, entitled as follows:

217 Accounting for Extinguishment of Debt

2. Add new Section 217, entitled as follows:

217 Accounting for Extinguishment of Debt

3. Include in Section 217 the sections of this release entitled, "Background," and "Requirements for Extinguishment of Debt," numbered as specified below:

.01 Background

.02 Requirements for Extinguishment of Debt

This codification is a separate publication issued by the SEC; it will not be published in the **Federal Register**/ Code of Federal Regulations System.

List of Subjects in 17 CFR Part 211

Accounting, Reporting and recordkeeping requirements, Securities.

Commission Action

The Commission hereby amends Subpart A 17 CFR Part 211 by deleting the reference to Release No. 3, Interpretive Release Relating to Accounting for Extinguishment of Debt and adding the reference to this Release No. 15, Interpretive Release Relating to Accounting for Extinguishment of Debt.

By the Commission.
December 22, 1983.
Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-34758 Filed 12-30-83; 8:45 am]
BILLING CODE 8010-01-M

[1] Trustees that meet the eligibility requirements for trustees under Sections 310(a)(1) and 310(a)(2) of the Trust Indenture Act of 1939 (the "1939 Act"), for example, will be presumed by the staff of the Commission to be appropriate trustees. Those sections of the 1939 Act provide that a trustee must be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by Federal, State, Territorial or District of Columbia authority, and (c) has combined capital and surplus of at least $150,000.

17 CFR Part 271

[Release No. IC-13691]

Applications of Foreign Investment Companies Filed Pursuant to Section 7(d) of the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Statement of Commission position.

SUMMARY: The Securities and Exchange Commission advises any foreign investment company domiciled in a civil law country which desires to sell its shares in the United States to consider organizing a separate company in the United States and offering the latter's shares in this country instead of filing an application under Section 7(d) of the Investment Company Act of 1940 ("Act") for permission to register under the Act and sell its own shares. The Commission makes this suggestion because of the difficulties a foreign company may face in meeting the existing requirements of the Act. The Commission also announces that it is recommending legislation to the Congress to amend Section 7(d) of the Act to make it easier for operating foreign investment companies to register with the Commission when that is consistent with the purposes of the Act and the protection of investors.

EFFECTIVE DATE: December 23, 1983.

FOR FURTHER INFORMATION CONTACT: Glen A. Payne, Assistant Director (202) 272-3018, Mary A. Cole, Special Counsel (202) 272-3023, or Brian M. Kaplowitz, Staff Attorney (202) 272-3024, Division of Investment Management, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") has determined to issue the following release in order to describe problems that certain foreign investment companies may encounter in filing applications for orders under Section 7(d) of the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a-7(d)], and to suggest that any such company desiring to offer its shares for sale in the United States should consider forming a separate company in the United States and offering the latter's shares.

Background

Section 7(d) of the Act prohibits foreign investment companies from offering their shares in the United States unless the Commission issues an order permitting them to register under the Act. Under the section, the Commission must find that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of [the Act] against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors." In 1975, the Commission published an interpretive release ("Guidelines") setting forth its policy and guidelines for filing an application for an order under Section 7(d). The Guidelines included an analysis of the standards foreign investment companies should meet in order to enable the Commission to make the finding required by Section 7(d).[1] This release supplements the Guidelines.

The Commission recognized in the Guidelines that differences in foreign law and capital markets may make it difficult or impossible for foreign investment companies to comply with all the requirements of the Act or with those of Rule 7d-1 under the Act [17 CFR 270.7d-1].[2] Accordingly, the Commission indicated that it would entertain applications for orders pursuant to Section 7(d) and, where necessary, grant exemptive relief from other provisions of the Act pursuant to Section 6(c) of the Act [15 U.S.C. 80a-6(c)].[3] The Commission further stated, however, that any foreign investment company requesting an order under Section 7(d) should, at a minimum, demonstrate: (a) That the protections accorded to investors by the legal and regulatory system under which it operates are substantially equivalent to provisions of the Act; and (b) that, in conformity with standards listed in the Guidelines, it: (1) Is a bona fide and established company; (2) is subject to actual regulation by an appropriate governmental authority; (3) would not be dependent solely on sales in the United States; (4) would be a vehicle for investment primarily in foreign securities; (5) would subject itself and its management to service of process in the United States; and (6) would provide adequate disclosure to investors in the United States.

Only one foreign investment company has filed an application (which was subsequently withdrawn) for an order allowing it to sell its shares in the United States based on the Guidelines. However, the processing of that application made apparent certain difficulties, discussed below, that foreign investment companies, particularly those organized in civil law countries, may encounter in attempting to register under the Act pursuant to Section 7(d).

Discussion

The structure and operations of foreign investment companies, as well as the legal, regulatory and business environment in which they operate, can present varied and unforeseen problems in light of the mandate of Section 7(d) of the Act. For example, the Guidelines make clear that the foreign investment company and its managers are to consent to United States jurisdiction. However, the business practices and customs of a particular country may make it difficult or impossible for a foreign company to get its managers to accept personal liability by submitting to United States jurisdiction. The inability to submit to the jurisdiction of United States courts makes it difficult for the Commission to find under Section 7(d) that the Act would be legally enforceable against the applicant. Another problem may arise from the applicant's inability to comply with many of the provisions of Rule 7d-1. While that rule addresses Canadian investment companies and strict adherence to the rule therefore is not required, nonetheless, Rule 7d-1 provides guidance as to the types of conditions or arrangements that the Commission may rely on to support a determination to permit foreign investment companies to offer their shares in the United States.

The Commission's experience has also demonstrated that, beyond the Section 7(d) considerations, a foreign investment company may need extensive exemptive relief pursuant to Section 6(c) of the Act in order to function in a manner consistent with its own domestic laws and business practices. For example, exemptions may be necessary to reconcile the Act's

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[1] Investment Company Act Release No. 8959 (September 26, 1975) [40 FR 45424, October 2, 1975], Commission Policy and Guidelines for Filing of Application for Order Permitting Registration under the Act and Sale of Shares in the United States of Foreign Investment Companies.

[2] Rule 7d-1 provides, in general, that a Canadian management investment company may obtain an order pursuant to section 7(d) if it complies with certain specified conditions and arrangements listed in the rule and designed to ensure the enforceability of the Act against such a company. It also states that "conditions and arrangements proposed by investment companies organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case."

[3] Section 6(c) provides that "the Commission * * * may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."

corporate governance provisions, which are based on a concept of disinterested directors, with foreign law, which may not contemplate such a concept.[4]

Finally, a number of practical difficulties may arise in the context of a Section 7(d) application. Among such difficulties are the possible inability to obtain English translations of all applicable foreign laws and the delays inherent in communicating with and obtaining information and documents from foreign entities. In addition, there exists the problem of jurisdictional sensitivity which may be involved in inquiring into the operations and effectiveness of foreign regulatory bodies. Such an inquiry may be necessary so that the Commission can determine whether the applicable foreign system affords United States investors protections substantially equivalent to those provided by the Act, a determination required by the Guidelines.[5]

Resolution of problems of this type normally will involve time delays and significant legal and other expenses. For this reason, the Commission urges any foreign investment company operating in a legal or regulatory environment which differs significantly from the Act and which wants to sell its shares in the United States to consider forming a separate United States company and offering the latter company's shares instead of seeking an order under Section 7(d) of the Act.[6] Formation of a United States "mirror fund", *i.e.*, a United States investment company investing primarily in the securities of foreign issuers in which the foreign investment company invests, would enable a foreign investment adviser to offer its services to United States investors without the need for registration of the foreign investment company under Section 7(d). Organization of such a surrogate fund appears to be the most expeditious and least costly way to accomplish the objectives of a foreign investment adviser wishing to offer shares of a foreign investment company in the United States. It would avoid the need for the extensive exemptions that otherwise would be needed for such a foreign company to directly offer its shares in this country. In this regard, it should be noted that the Commission did not intend, when it issued the Guidelines, that foreign investment companies should rule out the possibility of using alternatives other than applications under Section 7(d).[7]

The Commission also wishes to emphasize that, in suggesting the above procedures, it is not criticizing any foreign regulatory system. The difficulties lie in the specific legal finding the Commission must make under Section 7(d) of the Act. Because the Commission believes that the present standards in Section 7(d) of the Act present unnecessary obstacles to operating foreign investment companies the Commission will recommend that the Congress amend the standards of Section 7(d) to make it easier for such companies to register and sell shares in this country when that is consistent with the purposes of the Act and the protection of investors.

List of Subjects in 17 CFR Part 271

Investment companies, Securities.

Accordingly, 17 CFR Part 271 is hereby amended by adding a reference to this statement of Commission position.

By the Commission.

Dated: December 23, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34852 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

[4] *See e.g.*, Section 10(a) of the Act [15 U.S.C. 80a-10(a)], which requires that at least 40 percent of an investment company's board of directors be persons who are not "interested persons" of the company as that term is defined in Section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)]; and Section 15(c) of the Act [15 U.S.C. 80a-15(c)], which requires that any underwriting or investment advisory agreement entered into by an investment company must be approved by a majority of its directors who are not parties to the agreement or "interested persons" of any party.

[5] *See* pages 3-4. *supra.*

[6] The Commission notes that certain foreign investment advisers in civil law countries have organized United States companies whose portfolios consist of securities traded outside of the United States. *See e.g.*, Mexico Fund, Inc., Investment Company Act Registration No. 811-3170, Securities Act of 1933 Registration No. 2-49027, a Maryland corporation advised by Impulsora del Fondo Mexico, S.A. de C.V., a Mexican corporation; Nomura Index Fund of Japan, Inc., Investment Company Act Registration No. 811-2813, Securities Act of 1933 Registration No. 2-67600, a Maryland Corporation sponsored by Nomura Securities Co., a Japanese securities firm which, through various subsidiaries, acts as investment adviser and principal underwriter to Nomura Index Fund. *Cf.* G.T. Pacific Fund, Inc., Investment Company Act Registration No. 811-3600; Securities Act of 1933 Registration No. 2-57526, a California company investing primarily in securities of issuers of Far Eastern countries and advised by a subsidiary of an English company.

[7] A further potential problem that an applicant under Section 7(d) should anticipate is the filing with the Commission of a request for a hearing by other parties. Even if the Commission ultimately issues a notice of an application, the Act affords "interested persons" the right to make such request. In that event, the Commission may conclude that, because of the matters raised in the hearing petition, the provisions of the Act and considerations of due process and fairness require or make it appropriate that it convene a hearing.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM80-73-004, et al. and RM80-74-004, et al.; Order No. 334-A]

Delivery and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978; Order Denying Rehearing

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 334 (48 FR 44495, September 29, 1983), a final rule that established allowances that may be recovered by "first sellers," as defined by the Natural Gas Policy Act of 1978, for delivering and compressing natural gas. The Commission received six applications to rehear the final rule and requests to stay its effect. For the reasons discussed in this order and in the final rule, the Commission denies the applications for rehearing and the requests to stay the effect of the final rule.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stosser, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033

Louis J. Engel, Federal Energy Regulatory Commission, Office of Producer and Pipeline Regulation, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8667

SUPPLEMENTARY INFORMATION:

In the matter of Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978, Docket Nos. RM80-73-004, RM80-73-005, RM80-73-006, RM80-73-007, RM80-73-008, RM80-73-009; and Gathering Allowances Under Section 110 of the Natural Gas Policy Act of 1978, Docket Nos. RM80-74-004, RM80-74-005, RM80-73-006, RM80-74-007, RM80-74-008, RM80-74-009; Order Denying Application for Rehearing and of Order No. 334 and Denying Requests for Stay of Order No. 334.

Issued: December 27, 1983.

I. Introduction

The Federal Energy Regulatory Commission (Commission) denies six petitions for rehearing of Order No. 334.[1] Order No. 334 is a final rule implementing section 110 of the Natural Gas Policy Act of 1978 (NGPA).[2] It amended 18 CFR 271.1104(d), effective October 31, 1983, to allow a "first seller" [3] of natural gas to recover costs incurred for delivering or compressing that gas. In Order No. 334, the Commission revised, but substantially retained, the interim rule promulgated on January 24, 1983.[4] That rule established the amounts which may be collected for costs incurred for delivering and compressing natural gas.

II. Discussion of Applications for Rehearing and Request for Clarification

The Commission received six applications for rehearing of Order No. 334,[5] which raise several substantive issues. Primarily, these issues relate to the applicability of the delivery allowances in certain situations.

Some issues raised in the applications received by the Commission with respect to Order No. 334 involve the decisions made and policies set forth in Order Nos. 94–A and 94–B, such as the scope of the Commission's discretion to implement NGPA section 110, and allegations that the Commission did not adequately consider the effect of its section 110 regulations on NGPA objectives, consumers of natural gas, and the natural gas market. Such issues were adequately addressed by the Commission in those orders, and this proceeding is therefore not an appropriate forum in which to discuss them once again.

Applicants also argue that the Commission erroneously permitted the operation of area rate clauses to operate as evidence of authorization to qualify for the allowance. The same issue was raised in the comments filed subsequent to the issuance of the interim rule. As the Commission explained in Order No. 334 in response to identical comments made in the interim rule, this issue was considered and decided in the Order No. 94 series of orders.[6]

Therefore, Order No. 334 incorporated the analysis in those orders,[7] and the Commission does so again here.

A. Delivery Allowances

The final rule provides that, if construction of the delivery system commenced before November 9, 1978 (old system), the seller may collect 5 cents per MMBtu for gas delivered, irrespective of the length of the delivery system. If construction of the delivery system commenced on or after November 9, 1978 (recent system), the seller may collect 7 cents per MMBtu for the first mile of haul, or fraction thereof, measured from the wellhead or lease separator, plus 2 cents per MMBtu for each mile of haul or fraction thereof, not to exceed 20 miles. The rule imposes general limitations on when, where, and how both of these allowances may be collected.

The Commission imposed several limitations on collecting the allowance for recent delivery systems. First, the gas delivered must be commingled with other gas; second, the gas delivered must be measured from a specific point; third, the line of measurement must be continuous; and fourth, the overall distance may not exceed 20 miles.

1. *Allowances for old delivery system.* Two applicants address the amount of the allowance established for an old delivery system. One of these applicants, a group of producers, argue that in establishing the allowance the Commission improperly limited the allowance to 5 cents per MMBtu failed to provide reasonable cost recovery. The applicants conclude that the amount established is insufficient and unsupported by the record. The other applicant, a pipeline, also argues that the amount in unsupported by the record, but concludes that the allowance is excessive because it would overcompensate a seller in certain situations.

In Order No. 334, the Commission recited the considerations that were employed to develop the old delivery system allowance. The Commission reemphasizes that the allowance is based not only on adequate cost recovery, but also on other factors.[8] First, the Commission considered that Order Nos. 94 and 94–A removed the requirement that a producer perform substantial off-lease gathering as a qualification for the area-wide gathering allowances under the Natural Gas Act. In addition, it removed the requirements present in some of the area-wide allowances that in order to qualify a seller had to deliver to the buyer at a central point in the field, the tailgate of a processing plant, a point on a buyer's pipeline, or an offshore platform on the buyer's pipeline.[9] These simplified the eligibility criteria for the delivery allowance. Second, it considered the benefits conferred upon first sellers by related NGPA section 110 proceedings. The Commission's rules implementing NGPA section 110 provided for collection of production-related costs other than delivery and compression. These allowances, most of which were not available under the Natural Gas Act, together with allowances for delivery and compression, provide representative compensation to sellers that perform those services. As the Commission explained in Order No. 334, once it had developed a reasonable range from which an allowance could be established, the non-cost factors were weighed as a means of setting an appropriate allowance.

The Commission has reviewed all the available data, comments and

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[1] Order No. 334, "Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule," issued September 29, 1983, Docket No. RM80–73, *et al.*, (48 FR 44495, Sept. 29, 1983).

[2] 15 U.S.C. 3301–3432 (Supp. V 1981).

[3] For a definition of "first sale", see 15 U.S.C. 3301(21) (Supp. V 1981).

[4] Interim Rule, "Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978 and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978," 48 FR 5,180 (Feb. 3, 1983), Docket No. RM80–73–000, *et al.*, issued January 24, 1983 [hereinafter cited as *interim rule*].

[5] Applications were filed by Michigan Wisconsin Pipe Line Company, Docket Nos. RM80–73–004 and RM80–74–004; Indicated Producers, Philips Petroleum *et al.*, Docket Nos. RM80–73–005 and RM80–74–005; Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Docket Nos. RM80–73–006 and RM80–74–006; Associated Gas Distributors, Docket Nos. RM80–73–007 and RM80–74–007; Natural Gas Pipeline Company of America, Docket Nos. RM80–73–008 and RM80–74–008; and United Gas Pipe Line Company, Docket Nos. RM80–73–009 and RM80–74–009. In order to have sufficient time to consider the applications for rehearing, the Commission granted, by order issued November 25, 1983, 48 FR 54000 (Nov. 30, 1983), rehearing of the regulations solely for purposes of further consideration.

[6] Order No. 94–A, "Final Rule and Order on Rehearing: Regulations Implementing section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," 48 FR 5152, 5163–164 (Feb. 3, 1983), Docket No. RM80–47–002, issued January 24, 1983, [hereinafter cited as *Order No. 94–A*], *reh. denied*, Order No. 94–C "Order Denying Rehearing and Denying Petitions for Stay of, or Further Comment on, Final Rule," 48 FR 24039, 24043–044 (May 31, 1983), Docket Nos. RM80–47–002–012, issued May 24, 1983. In this order, the Commission promulgated regulations for the recovery of production-related costs other than delivery and compression. Order No. 94–B, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act; Order Amending Regulations in Subpart B of Part 270 and Subparts E, F, and K of Part 271, and Affirming Certain Final Regulations Issued in Order No. 68," 48 FR 5190, 5194–196 (Feb. 3, 1983), Docket No. RM80–47–003, issued January 24, 1983, *reh. denied*, Order No. 94–D, "Order Denying Rehearing and Denying Stay of Order No. 94–B," 48 FR 24051, 24055–056 (May 31, 1983). In this order, special provisions were made for first sellers of natural gas priced under NGPA sections 105 and 106(b) who incur production-related costs.

[7] 48 FR at 44496–7.

[8] *Id.* at 44497–8.

[9] See 18 CFR 2.56a(d).

applications and again concludes that the allowance is neither excessive nor inadequate. There are no new arguments presented by the applicants and further recapitulation of the Commission's previous discussion on this point is therefore unnecessary.

2. *Limitation on Collecting the Delivery Allowance for a Recent System—the Commingling Requirement.* The final rule requires that, in order to recover the allowance for a recent delivery system, the gas delivered must be commingled with other gas before the location of the final first sale.[10] The Commission imposed this limitation in order to ensure that the seller collecting the recent delivery allowance was performing a delivery function. The rule provides that, in the case of gas from a single gas well, the gas must be delivered to a point of commingling with gas from other wells. In the case of gas produced from an offshore platform, the gas from two or more wells must be commingled before delivery, even if delivery occurs at the platform. In the case of oil wells producing natural gas, delivery of the gas must extend downstream from the lease or field separator to a point of commingling with gas from other wells or other lease or field separators. The commingling requirement is only imposed for collecting the allowances established for recent delivery systems.

One applicant states that the Commission should not presume in all cases that a seller who delivers gas through an old delivery system has incurred significant costs relating to a delivery function and therefore argues that the commingling limitation should also be imposed on old delivery systems to ensure that a delivery function was performed. In Order No. 334, the Commission stated that the commingling requirement was imposed for recent delivery systems in order to ensure that the seller collecting the allowance had in fact provided a delivery service.[11] The Commission required this assurance because it had established a two part allowance for recent delivery systems based on the measurement of the length of the gas haul. It did so based on studies which indicated that small diameter gathering lines, most frequently used in connecting wells, were costlier than large diameter delivery lines. In other words, the greatest costs per MMBtu delivered are incurred at the very initial stages of delivery. As a result, the rule affords the seller 7 cents per MMBtu to compensate for the large investment in small diameter delivery lines in the first mile of line or fraction thereof. For each additional mile, it permits 2 cents per MMBtu to compensate for the smaller investment in larger diameter lines. Because the first part of the allowance for new systems is proportionately large, the Commission was inclined to impose a strict test to help ensure appropriate cost recovery.

The Commission did not impose the commingling limitation for old delivery systems in consideration of its development of the 5 cent allowance. First, there is no correlation between the amount established for the old delivery allowance and the length of the gas haul. In contrast to the allowance for a recent system, the Commission did not base the 5 cent allowance on the size or the length of the pipe used. It therefore concluded that the added safeguard supplied by the commingling limitation, *i.e.,* to ensure that the seller perform a delivery function, was unnecessary. As added support for its conclusion, the Commission recognized that some area-wide allowances, as discussed above, included eligibility requirements which resulted in commingling prior to qualification for the allowance. These are reliable indicators that, at least in those areas, most sellers already performed the requisite delivery function. In light of the fact that some of these area-wide rates contained the eligibility requirements and because the Commission considered simplification of the eligibility requirements in establishing the allowance, it determined that the requirement was unnecessary.

3. *Offshore Delivery.* Order No. 334 provides that a first seller may collect either the old or the recent delivery allowances for costs incurred to deliver gas from offshore, depending on the date construction of the facilities commenced,[12] and clarified how a seller could collect the allowance. Several applicants addressed application of the allowances to offshore delivery.

As a general matter, one applicant states that the Commission erred in establishing any allowance for offshore delivery arguing that when gas is brought to an offshore platform, it is brought to the platform in the process of production.

Past Commission practice guided the Commission's decision on this issue. In the area[13] and nationwide[14] rate proceedings, the Commission established gathering allowances for offshore delivery. A specific amount representing a gathering allowance was established for the "Other Southwest,"[15] the "Southern Louisiana,"[16] and "Texas Gulf Coast"[17] areas where the gas was delivered to a buyer "at a central point in the field, the tailgate of a processing plant, a point on the buyer's pipeline, *or an offshore platform on the buyer's pipeline"* (emphasis added).

As evidenced by the limitations on the points of delivery for gas priced under the area and nationwide rates, the Natural Gas Act did not distinguish between onshore and offshore delivery of gas. Therefore, with respect to interstate sellers of old gas, there was an expectation of collecting an allowance for offshore delivery upon passage of the NGPA. Similarly, because the NGPA does not distinguish between onshore and offshore delivery of gas, the same expectation can be applied to all sellers after the passage of the NGPA. The Commission finds no persuasive reason to depart from its long-standing policy of establishing delivery allowances for offshore delivery gas, and finds no basis upon which it should deny application of NGPA section 110 for offshore delivery of gas.

a. *Amount of the recent delivery allowance as it applies to offshore delivery.* Three of the applicants argue that the allowance for recent delivery systems is excessive as it applies to offshore delivery. As support for its argument, two of the applicants argue that, generally, a seller who delivers gas on an offshore platform is overcompensated because the delivery lines on an offshore platform are usually short. Another applicant cites an example where the seller's line is "no more than fifty feet." Therefore, this applicant proposes that the Commission adopt different allowances for shorter delivery lines. The Commission already addressed these applicants' argument in Order No. 334:

> * * * Admittedly, short delivery lines are common in offshore delivery. However, delivery offshore differs from delivery onshore in one important respect. Offshore delivery generally involves much greater costs in relation to the length of delivery line.[18]

[10] A "final first sale" is the first sale as defined in NGPA section 2(21), at which a volume of gas is transferred for value to a purchaser that will not also be a first seller of that gas.

[11] 48 FR at 44498–9.

[12] *Id.* at 44500.

[13] For a discussion of these proceedings, *see* Order No. 94–A, *supra,* note 6, at 5153–155.

[14] *Id.*

[15] 18 CFR 256a(d)(3).

[16] 18 CFR 256a(d)(6).

[17] 18 CFR 256a(d)(7).

[18] 48 FR at 44498.

To guard against overcompensation for offshore delivery, the Commission imposed the commingling requirement as a limitation on collecting those allowances and addressed the opposite concerns raised by commenters that the commingling requirement, if applied offshore, would prohibit collection of the allowance. The Commission clarified the purpose of the requirement as follows:

> The Commission emphasizes its concern that eligibility to recover the allowance should relate to performance of a service and not necessarily to the length of the seller's delivery line * * *. It is less arbitrary to determine whether sellers have performed the delivery function and thereby deserve the allowance, based on whether such "commingling" has occurred, than to attempt to devise a standard length of delivery line that a seller must build from the wellhead in order to be eligible for the first 7 cents of the allowance. By means of the commingling criterion, the rule is designed to assist sellers who perform gathering services that optimize delivery, so-called "packaging," or who otherwise incur the cost of delivery. This approach should result in savings to consumers by limiting the availability of the allowances and may discourage economic waste.[19]

Most importantly, the Commission also recognized that a seller offshore performs the same function as a seller onshore who delivers gas to a central point in the field. The Commission continues to believe that the allowances for delivery should apply offshore just as onshore. Its review, prior to issuing the rule, of the comments which discussed the costliness of offshore delivery relative to onshore delivery and leads it to the conclusion that such allowances are justified.

b. *Casinghead gas.* In Order No. 334, the Commission explained that the commingling requirement operates to prohibit a first seller of casinghead gas from collecting the recent delivery allowance for offshore delivery through a recent delivery system. Casinghead is gas produced in conjunction with oil. One applicant argues that the Commission should permit an exception to the commingling requirement for offshore casinghead gas deliveries because the delivery lines are used to deliver both gas and oil.

The Commission believes that the principles of cost recovery does not warrant collection of an allowance under NGPA section 110 in this case. As it stated in the final rule:

> The reason for not creating an exception to the commingling requirement in this case is that a delivery line which extends from an oil wellhead is used primarily to deliver oil, not gas. While the Commission agrees that delivery at a platform offshore is equivalent to delivery of gas onshore to a central point in the field, the Commission will only permit a first seller who delivers gas offshore to collect the allowance if the gas from the field separator is commingled with other gas, either from other wells or from other leases or field separators.[20]

The Commission emphasizes that the delivery allowances established under NGPA section 110 were designed to reimburse the seller for costs incurred to deliver gas, not oil. Whether the Commission would permit a seller to collect the delivery allowance for the delivery of casinghead gas depends on whether the lines are used primarily to deliver gas, not oil. The Commission permits a seller of casinghead gas to collect the allowance onshore because usually the gas is delivered through a line leading from the lease separator. That line is for gas fathering and delivery prior to the point of final first sale. In such cases, commingling with other gas may or may not occur and may be collected only if that requirement is met, just as for all kinds of gas. In the case of delivery of casinghead gas offshore, however, the point of final first sale usually occurs immediately after the gas and oil are separated, and there are no lines used primarily to deliver gas. Coincidentally, because no commingling occurs under such circumstances, the rule would almost invariably bar collection of an allowance for offshore casinghead gas delivered through a new system.

The Commission notes, however, that with regard to offshore delivery of casinghead gas through an old delivery system, the Commission will permit the seller to collect the old delivery allowance. As a matter of policy, the Commission believes that a sale of gas subject to the jurisdiction of the Natural Gas Act delivered through an old delivery system is entitled to collect the allowances previously authorized by the Federal Power Commission under that Act. Sellers of casinghead gas were entitled to collect delivery allowances for offshore delivery of casinghead gas under the area and nationwide rates, if contractually authorized to collect the allowance, and, therefore, they ought to be able to collect the contractually-authorized amounts or the allowance established in Order No. 334 for delivery of gas through old delivery systems (5 cents per MMBtu), whichever is less.

4. *Allowance for combination of old or recent systems.* In Order No. 334, the Commission clarified the interim rule and provided that a seller that delivers gas through a delivery system that is both an old system and a recent system may collect the sum of the allowance applicable under the rule to both old and recent systems.

Applicants argue that, in certain instances, the delivery allowance for a recent system that has been connected to an old system may result in an amount greater than that which would be permitted for a recent system of the same length. Specifically, if the old delivery facility is two miles or less in length, and the new line connected is one mile or less in length, the resultant allowance is greater than the allowance for a new system three miles in length. They argue that a seller which is permitted the combination allowance in those instances is overcompensated. Therefore, they request that in those instances, the Commission limit the seller to the allowance for a recent system.

In order No. 334, the Commission responded to a similar comment that posed a hypothetical situation wherein a seller who combines an old system two miles or less in length with a new system would be eligible to receive an allowance greater than that afforded an entirely recent system. Just as the Commission recognized then, it agrees that this might in fact occur. However, the situations presented in that hypothetical and by the applicant for rehearing are aberrations. In Order No. 334, the Commission noted that:

> [R]arely will a seller attach new lines to an old system that will provide delivery of only 1 mile. In light of the uniform 5 cents per MMBtu allowance for all delivery by means of pre-NGPA facilities, the disproportionate allowance for the combined system cited by the commenter would only exist where the old portions of the delivery system is two miles or less in length.[21]

It went on to state that normally a seller uses a length of pre-NGPA line greater than two miles.

As previously discussed, the 5-cent allowance was established without regard to the length of the delivery system involved. If the Commission were to limit the allowance because of the length of the old delivery system, the seller would be required to measure every system that combines an old and a recent system. The Commission does not believe that imposing such a burden is warranted because it does not share the applicants' concerns that the slight anomaly that results from the application of the rule in such cases will result in overcompensation or in the abnormal manipulation of a

[19] *Id.* at 44500.

[20] *Id.*

[21] *Id.* at 44501.

configuration of pipelines designed to take advantage of the provisions.

5. *Replacement of Delivery Systems.* In Order No. 334, the Commission recognized that situations would arise where a seller would need to replace a portion of an old system on or after November 9, 1978. It, therefore, states that a seller who incurs unrepresentative replacement costs for which the 5 cents allowance would work a special hardship, inequity, or unfair distribution of burdens may apply for an adjustment under NGPA section 502(c).

One of the applicants argues that adjustments under NGPA section 502(c) are inappropriate means for dealing with replacement of parts of old delivery systems, particularly if the out-of-pocket test is applied in such a proceeding. Instead, the applicant argues that the recent allowance should apply to any *necessary* replacement of a portion of line of pre-NGPA delivery system. The applicant states that replacement of only a small length of pipe falls into the category of repair, and believes that the Commission should establish criteria for what length of line would constitute replacement.

The Commission addressed this argument in Order No. 334. The Commission did not permit recovery of the recent delivery allowance for replacement of old delivery lines on a generic basis because it did not want to provide sellers with an economic incentive to replace delivery lines unnecessarily. Furthermore, the Commission believed that, in many cases, the replacement will be minor and that the allowance for old delivery systems will be adequate. However, the Commission permitted a seller to apply for the recent delivery allowance for replacement of a portion of an old delivery system. As shown by the applicant, and as recognized by the Commission, such replacement presents unique questions of fact that cannot be determined on a generic basis. Therefore, the Commission decided to permit recovery of the recent delivery allowance only by means of a sufficient showing of a special hardship, inequity, or unfair distribution of burdens in an NGPA section 502(c) adjustment proceeding. The Commission believes that this approach best avoids the possibility of abuse. The questions presented in such an NGPA section 502(c) adjustment proceeding will be whether the replacement of an old delivery system is necessary and whether the allowance for an old delivery system is inadequate. The Commission makes clear its discussion in the final rule reiterating that an applicant that meets both of those tests will be permitted to collect the delivery allowance for a recent delivery system. It will not be restricted to the out-of-pocket test.

B. Compression Allowance

The final rule provides that, if construction of the compression facility commenced before November 9, 1978, no allowance is allowed. If construction of the compression facility commenced on or after November 9, 1978, a qualifying seller may collect an allowance of 6.0 cents per MMBtu for each stage of compression set at a ratio of 3.5 to 1 (representing the overall compression ratio of the outlet pressure of the last stage of compression to the inlet pressure of the first stage of compression), with the overall allowance not to exceed three stages.

1. *Pre-NGPA Compression.* Only one applicant addressed the compression allowances. The applicant, a group of producers, renewed their argument that the area and nationwide rates might have included separate allowances for compression.

In Order No. 334, the Commission stated that it found no instance in which compression allowances were separately provided for under the Natural Gas Act prior to the passage of the NGPA. The applicant has not supplied the Commission with any new evidence. The Commission reiterates its conclusion

> that, prior to the passage of the NGPA, interstate sellers of old gas did not have any expectation of collecting an allowance for production-related compression costs. However, investors in pre-NGPA facilities can reasonably be assumed to have anticipated and provided for other means of recovering the necessary costs of compression. This contrasts with the separate delivery allowances devised under the NGA for the long-term recovery of capital.[22]

C. Procedure for Collecting Delivery and Compression Allowances

In establishing the allowances under NGPA section 110, the Commission sought to develop a self-executing procedure. It provided that only the final first seller may collect the allowance but that the seller had an obligation to make a fair and proportional distribution to any other first seller. The buyer has the obligation of paying that allowance so long as exists contractual obligation for the first seller to collect the allowance.

A pipeline applicant opposes the obligation imposed on the buyer and argues that the Commission should impose the burden of proof on the seller and require the seller to submit to the buyer certain information as verification to the buyer. It therefore proposes that the Commission require the buyer to file with the buyer well-by-well information, schematic flow diagrams, stages of compression, and other information as the Commission deems necessary to verify the charges.

The Commission believes that in order to maintain the self-executing procedure for the collection of production-related costs, it must continue to require that the seller compute the allowance and that the buyer pay the allowance if the seller is expressly authorized to collect it. The success of the self-executing mechanism depends on minimal involvement by the Commission in arbitrating disputes. The Commission suggests that sellers and buyers work out between themselves what information each of them requires in order for the allowances to be paid.

The Commission notes that it has provided buyers, sellers and third parties with a forum for redress if there are over-collections.[23] A person may file a complaint with the Commission alleging that an allowance is being charged, collected, or not paid in violation of § 271.1104(d) of the Commission's regulations.

In conclusion, the applications for rehearing are hereby denied.

III. Requests for Stay

Several of the applicants request that the Commission suspend or stay the effectiveness of the rule to permit further consideration of issues they raise in their applications to rehear the final rule. The requests for further consideration and stay pending rehearing are denied.

The Commission believes that both in this order and in the final rule it has addressed all the issues raised by the applicants in their motions for clarification. There appears to be no demonstrated hardship or inequity that would incline the Commission to believe that justice requires a stay of the rule.[24] Therefore, no purpose would be served by staying the effect of the rule. The request for suspension or stay are hereby denied.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

[22] *Id.* at 44502.

[23] *See* Order No. 333, "Final Rule, Regulations Implementing Refund Procedures Under Subpart K of Part 271 for Production Related Costs," issued September 27, 1983, Docket No. RM83-6, (48 FR 44492, Sept. 29, 1983).

[24] *See* 5 U.S.C. 705 (1976).

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981), Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12,009, 3 CFR Part 142 (1978))

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34619 Filed 12-30-83; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N-0366 and 83C-0128]

Provisional Listing of D&C Yellow No. 10; Postponement of Closing Date and Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Yellow No. 10 for use as a color additive in drugs and cosmetics. The new closing date will be March 5, 1984. FDA is establishing a new closing date for D&C Yellow No. 10 to give the agency time to complete its evaluation of objections received in response to the final regulation approving the petition for the permanent listing of D&C Yellow No. 10. The effective date of the amendments that permanently list D&C Yellow No. 10 and that remove it from the provisional list is stayed pending final agency action.

DATES: Effective January 3, 1984, the new closing date for D&C Yellow No. 10 will be March 5, 1984. The amendments to 21 CFR 74.1710, 74.2710, 81.1, 81.25 (a)(1), (b)(1)(i), and (c)(1), 81.27, and 82.1710 that were published on August 30, 1983 (48 FR 39217) are stayed pending final agency action.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 1983 (48 FR 39217), FDA published a final rule that would "permanently" list D&C Yellow No. 10 for use in drugs and cosmetics, except for use in the area of the eye. The final rule also amended § 81.1(b) (21 CFR 81.1(b)) by removing D&C Yellow No. 10 from the provisional list of color additives; § 81.25 (21 CFR 81.25) by removing the entries for D&C Yellow No. 10 in paragraphs (a)(1), (b)(1)(i), and (c)(1); and § 81.27(d) (21 CFR 81.27(d)) by removing D&C Yellow No. 10 from the conditions of provisional listing. Additionally, the final rule amended § 82.1710 (21 CFR 82.1710) for D&C Yellow No. 10 to reference § 74.1710 (a)(1) and (b) (21 CFR 74.1710 (a)(1) and (b)).

The agency stated that the final rule would become effective on September 30, 1983, unless stayed by the filing of proper objections. At the same time, to provide for the continued use of D&C Yellow No. 10 during the period established for receipt and evaluation of objections, FDA established the closing date of November 1, 1983, for the provisional listing of D&C Yellow No. 10 for use in drugs and cosmetics (48 FR 39220).

FDA received three letters objecting to the listing regulation. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the final rule (48 FR 39217) that permanently lists D&C Yellow No. 10 and that removes this color additive from the provisional list is stayed until the agency can rule on the objections. In the **Federal Register** of November 1, 1983 (48 FR 50311), FDA postponed the closing date for the provisional listing of D&C Yellow No. 10 until January 3, 1984, to provide additional time for the agency to complete its evaluation of the objections that it received.

FDA's review and evaluation of these objections have required more time than anticipated. Therefore, FDA concludes that an additional brief postponement is necessary at this time.

Because of the short time until the January 3, 1984 closing date, FDA concludes that notice and public procedure on this rule is impracticable. Thus, good cause exists for issuing the postponement as a final rule. Moreover, this action is consistent with the protection of the public health because the agency has previously concluded that D&C Yellow No. 10 is safe for its intended uses. This final rule will permit the uninterrupted use of this color additive until March 5, 1984. To prevent any interruption in the provisional listing of D&C Yellow No. 10 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective on January 3, 1984.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

§ 74.1710 [Stayed]

a. By staying § 74.1710 *D&C Yellow No. 10.*

§ 74.2710 [Stayed]

b. By staying § 74.2710 *D&C Yellow No. 10.*

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

2. Part 81 is amended:

a. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "D&C Yellow No. 10" in paragraph (b) to read "March 5, 1984."

§ 81.25 [Partial stay]

b. In § 81.25 *Temporary tolerances* the entries for D&C Yellow No. 10 in paragraphs (a)(1), (b)(1)(i), and (c)(1) are stayed.

§ 81.27 [Amended]

c. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "D&C Yellow No. 10" in paragraph (d) to read "March 5, 1984."

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

§ 82.1710 [Stayed]

3. Part 82 is amended by staying § 82.1710 *D&C Yellow No. 10.*

Effective date. This final rule shall be effective January 3, 1984.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: December 14, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-34763 Filed 12-30-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the regulations to remove those portions reflecting approval of a new animal drug application (NADA) providing for use of a 2-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds used for increased rate of weight gain and improved feed efficiency. The sponsor, Central Soya Co., Inc., requested the withdrawal of approval. In addition, the former sponsor, the O.A. Cooper Co., is being removed from the list of sponsors of approved NADA's.

EFFECTIVE DATE: January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV–218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 96–779 for Central Soya Co.'s Cooper 40% Super–T For Pigs Medicated (2-gram-per-pound tylosin phosphate premix) is withdrawn. This document amends the regulations to remove those portions of 21 CFR 510.600 and 558.625 which reflect approval of the NADA.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, New animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. Part 510 is amended in § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* by removing from paragraph (c)(1) the entry for "The A.O. Cooper Co." and removing from paragraph (c)(2) the entry for "043426." (Note: The entry was incorrectly listed as A.O. Cooper instead of O.A. Cooper.)

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 [Amended]

2. Part 558 is amended in § 558.625 *Tylosin* by removing paragraph (b)(21) and marking it "[Reserved]."

Effective date. January 13, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 22, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-34760 Filed 12-30-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D. 7933]

Temporary Employment Tax Regulations Under the Interest and Dividend Tax Compliance Act of 1983; Backup Withholding

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document supplements the temporary regulations relating to backup withholding. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369). These regulations affect brokers with respect to reportable gross proceeds and provide them with the guidance necessary to comply with the law.

DATE: The temporary regulations are effective for payments made after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Diane Kroupa of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202–566–3590, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1983, the **Federal Register** published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR Part 35a) under sections 3406 and 6676 of the Internal Revenue Code of 1954 (26 CFR Part 35a.9999–1; 48 FR 45362). Additional temporary regulations were published in the **Federal Register** on November 25, 1983 (26 CFR Part 35a.9999–2; 48 FR 53104) and on December 20, 1983 (26 CFR Part 35a.9999–3; 48 FR 56330). Those regulations were published to conform the regulations to the statutory changes enacted by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369). These regulations supplement 26 CFR Part 35a.9999–3 (December 20, 1983), by adding Question (Q) and A–28B.

These temporary regulations, presented in question and answer format, are intended to provide guidelines upon which brokers may rely in order to resolve questions specifically set forth herein. However, no inference should be drawn regarding issues not raised herein or reasons certain questions, and not others, are included in these regulations.

Explanation of Provisions

These regulations provide transition rules applicable to backup withholding on gross proceeds reportable by brokers under section 6045. In summary, the regulations provide that, for purposes of backup withholding on gross proceeds, the written certification requirement for post-1983 accounts may be delayed, at the broker's option, until March 31, 1984. Thus, a customer who opens an account after December 31, 1983, and who consummates a sale prior to April 1, 1984, will not be subject to backup withholding, provided that he furnishes a taxpayer identification number to the broker prior to the sale.

In addition, until March 31, 1984, a broker may give customers with pre-1984 accounts, who have not furnished taxpayer identification numbers, 30 days after a sale to provide their numbers, without being subject to backup withholding. Until such a customer provides a number, however, the customer is not permitted to withdraw the cash proceeds from the account. If no number is furnished within 30 days after the sale, the broker must withhold 20 percent of the reportable gross proceeds on the 31st day.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Diane Kroupa of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department participated, however, in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 35a is amended as follows:

PART 35a—[AMENDED]

Section 35a.9999–3 is amended by adding new Question Q–28B and Answer A–28B immediately after A–28A of that section. These added provisions read as follows:

§ 35a.9999–3 Questions and answers concerning backup withholding.

* * * * *

Q–28B. Will transition rules apply to backup withholding on gross proceeds reportable by brokers under section 6045?

A–28B. Yes. The following transition rules will apply until April 1, 1984. First, for purposes of backup withholding on gross proceeds reportable by brokers, the penalties of perjury certification required by A–12 of § 35a.9999–2 (for post-1983 accounts) may be waived, at the broker's option, until April 1, 1984. A customer who opens an account after December 31, 1983, and who consummates a sale prior to April 1, 1984, will not be subject to backup withholding, provided that the customer furnishes a taxpayer identification number to the broker prior to the sale. The gross proceeds from sales made through post-1983 accounts after March 31, 1984, however, will be subject to backup withholding if the customer does not provide a taxpayer identification number certified under penalties of perjury. See A–28A for special rules applicable when a sale is made pursuant to a telephone instruction.

Second, until April 1, 1984, the gross proceeds from a sale made through a pre-1984 account, by a customer who has not provided a taxpayer identification number, will not be subject to backup withholding, at the broker's option, provided that (1) the customer furnishes his number to the broker within 30 days after the date of the sale, and (2) the customer does not withdraw the proceeds of the sale prior to the time his taxpayer identification number is furnished to the broker (or backup withholding is applied). For purposes of the preceding sentence, an investment of the cash proceeds shall be considered a withdrawal by the customer; however, investment of the proceeds in other property shall be permitted if, at all times during the 30-day period, at least 20 percent of all gross proceeds reportable under section 6045 are held in cash within the customer's account by the broker. If the customer does not furnish his taxpayer identification number within 30 days after the date of sale, the broker must withhold 20 percent of all reportable gross proceeds on the 31st day after the date of the sale.

If, with respect to forward contracts, regulated futures contracts, security short sales, or issuer payment of debt securities, the broker applies backup withholding on a date other than the sale date (see A–23 through A–25 and A–27), the rules of this A–28B shall apply as if any date on which the broker determines whether backup withholding applies were a sale date.

* * * * *

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

This Treasury decision is issued under the authority contained in section 3406 (a), (b), (c), (e), (g), (h), and (i) and section 6045 of the Internal Revenue Code of 1954 (97 Stat. 371, 372, 373, 376, 377, 378, 379, 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i); 96 Stat. 600, 26 U.S.C. 6045) and in section 104 of the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369, 371).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved:

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

December 29, 1983.

[FR Doc. 83-34234 Filed 12-29-83; 4:48 pm]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Payment of Premiums and Employer Liability for Single Employer Plan Terminations; Rules Pertaining to Withdrawals From and Terminations of Plans to Which More Than One Employer Contributes Other Than Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public that the rate at which interest will be imposed on late premium payments and unpaid employer liability remains at 11% for the 6-month period beginning January 1, 1984. The interest rate, which is established by the Internal Revenue Service in accordance with the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 and the Internal Revenue Code, must be reviewed semiannually. The Internal Revenue Service has determined that the rate in effect for the period from July 1, 1983 through December 31, 1983 should remain in effect for the 6-month period beginning January 1, 1984. This amendment is needed to notify pension plan administrators of the specific interest rate.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Legal Department, Code 250, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, (202) 254–6476. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title IV of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. 1001 *et seq.*, (the "Act") provides for a comprehensive, bifurcated pension plan insurance program administered by the Pension Benefit Guaranty Corporation ("PBGC"). The insurance program

covers two types of pension plans, *i.e.*, single-employer plans and multiemployer plans, and has two basic sources from which funds are obtained to pay guaranteed benefits.

For single-employer plans, funds are obtained from premiums paid by on-going plans, together with amounts collected as employer liability. Employer liability, which is imposed under section 4062 of the Act on sponsors of terminating single-employer plans, is the amount by which the value of the terminated plan's guaranteed benefits exceeds plan assets at the date of plan termination, but not more than 30% of the employer's net worth. Thus, guaranteed benefits in terminating plans that are single-employer plans are funded from premiums in the single-employer fund if the assets of the plan plus amounts collectible as employer liability are insufficient to fund benefits guaranteed.

For multiemployer plans, funds to provide for the payment of guaranteed benefits, should a multiemployer plan terminate with assets insufficient to fund those benefits, are obtained solely from premiums paid by on-going multiemployer plans. The employer liability provisions in section 4062 do not apply to multiemployer plans.

Section 2610.3(a)(4) of 29 CFR provides that premiums for both single-employer plans and multiemployer plans are, in general, due on the last day of the seventh month following the close of the prior plan year. Section 2622.7 of 29 CFR provides that the liability imposed by section 4062 on an employer who terminates a single-employer plan is due on the date of plan termination.

Under section 4007 of the Act and 29 CFR Parts 2610 and 2622, the PBGC charges interest on late premium payments and delinquent employer liability payments at the rate established under sections 6601(a) and 6621 of the Internal Revenue Code ("Code"). Section 6601(a) provides for interest at the rate established under section 6621. Section 6621 sets forth the method of computing the interest rate and the time period for which the established rate applies.

Code section 6621, as amended by the Tax Equity and Fiscal Responsibility Act of 1982, 96 Stat. 324, Pub. L. 97 248, ("TEFRA") provides that the interest rate is to be set by the Internal Revenue Service ("IRS") semiannually by October 15 and April 15 of each year and is to be based on the average prime interest rate for the 6-month period ending on March 31 and September 30, respectively. In compliance with TEFRA, the IRS, on October 14, 1983 (IR–83–126), announced that the current interest rate of 11% will remain in effect through June 30, 1984.

Although continuance of the 11% interest rate presently in these regulations normally would not require an amendment, the Appendices to 29 CFR Part 2610 and 29 CFR Part 2622 were written to cover finite time periods on the assumption that regular changes in the interest rate would continue as in previous years. As presently in effect, the Appendices would lead to the conclusion that the 11% rate is effective only through December 31, 1983 and could result in considerable confusion. The tables in the two Appendices, therefore, are being revised to provide that an established interest rate will remain in effect until an amendment setting forth a new rate is published.

Normally, the interest rate imposed on late payment of premiums and employer liability payments will be in effect for no less than a six-month period since TEFRA requires the IRS to review the interest rate semiannually. Therefore, the current rate of 11% will continue in effect for both overdue premiums and employer liability that is not paid when due at least through June 30, 1984. If the IRS determines that the interest rate should be raised or lowered for the 6-month period beginning July 1, 1984, the Appendices will be revised accordingly. If, however, the IRS again determines that no change in interest rate is necessary, the rates in the Appendices, as herein amended, will continue in effect with no amendment necessary.

Because this amendment simply clarifies the interest rate for the current period of time and alleviates the need for semiannual amendments to the regulation, general notice of proposed rulemaking is not required. See 5 U.S.C. 553(b). Moreover, the PBGC has determined that it would be impractical and contrary to the public interest to delay the effective date of the regulation because the interest rate is effective by law on January 1, 1984. Accordingly, the PBGC finds that good cause exists for issuing this regulation in final form without notice and opportunity for public comment and for making it effective before the 30-day period set forth in 5 U.S.C. 553.

The PBGC has also determined that this rule is not a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, Parts 2610 and 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—[AMENDED]

1. The authority citation for Part 2610 reads as follows:

Authority: Secs. 4002(b)(3), 4006, and 4007, Pub. L. 93–406, 88 Stat. 829, 1004, 1010, and 1013, as amended by Secs. 403(1), 105, 402(a)(3), and 403(b), Pub. L. 96–364, 94 Stat. 1208, 1302, 1264, 1298, and 1300 (29 U.S.C. 1302(b)(3), 1306, and 1307).

2. Appendix A to Part 2610 is revised to read as follows:

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
Sept. 2, 1974	June 30, 1975	6
July 1, 1975	Jan. 31, 1976	9
Feb. 1, 1976	Jan. 31, 1978	7
Feb. 1, 1978	Jan. 31, 1980	6
Feb. 1, 1980	Jan. 31, 1982	12
Feb. 1, 1982	Dec. 31, 1982	20
Jan. 1, 1983	June 30, 1983	16
July 1, 1983		11

PART 2622—[AMENDED]

3. The Authority citation for Part 2622 reads as follows:

Authority: Secs. 4402(b)(3), 4062, 4063, 4064, 4067, and 4068, Pub. L. 93–406, 88 Stat. 829, 1004, 1029, 1030, 1031, 1032, and amended by Secs. 403(1), 403(g), 403(h), and 403(i), Pub. L. 96–364, 94 Stat. 1208, 1302, 1301 (29 U.S.C. 1302(b)(3), 1362, 1363, 1364, 1367, and 1368).

4. Appendix A to Part 2622 is revised to read as follows:

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From—	Through—	Interest rate (percent)
Apr. 1, 1981	Jan. 31, 1982	12
Feb. 1, 1982	Dec. 31, 1982	20
Jan. 1, 1983	June 30, 1983	16
July 1, 1983		11

Effective date: This regulation is effective on January 1, 1984.

Charles C. Tharp,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 83-34752 Filed 12-30-83; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Kentucky Permanent Regulatory Program Amendments

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

ACTION: Final rule.

SUMMARY: The Director, OSM, is announcing the approval of certain amendments to the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments pertain to changes in Kentucky's regulations for surface coal mining and reclamation operations on steep slopes that have been previously mined.

By letter dated September 20, 1983, Kentucky submitted to OSM pursuant to 30 CFR 732.17, certain revisions to its regulations for steep slope mining practices.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the modifications to the Kentucky program meet the requirements of SMCRA and the Federal permanent program regulations. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky permanent regulatory program are being amended to implement these actions.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

II. Submission of Program Amendment

By a letter dated September 20, 1983, Kentucky submitted to OSM pursuant to 30 CFR 732.17, certain revisions to its regulations for steep slope mining practices.

In the amendment, Kentucky proposed to renumber the paragraphs contained in Section 3 of KAR 405 20:060E. Additionally, Kentucky proposed to add new language pertaining to variances in certain cases from the approximate original contour and highwall elimination requirements. These modifications provide criteria for eliminating a highwall in cases where steep slope contour mining operation affects a previously mined area. Kentucky indicated that these modifications are being made to conform with the revised Federal regulations published in the **Federal Register** dated November 12, 1982 (47 FR 51316).

OSM announced procedures for the public comment period and for a public hearing in the **Federal Register** dated October 18, 1983 (48 FR 48255–48257). The public comment period closed November 17, 1983. Public comments are discussed under the heading "public comment." A public hearing was not requested; therefore, no public hearing was held.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kentucky on September 20, 1983, pertaining to steep slope remining practices meet the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

Finding 1

The Director finds that 405 KAR 20:060E, § 3, paragraph 2 (a), (b), (d), (e), (f) and (g) provide standards for highwall elimination in areas where steep slope contour mining operations affect previously mined areas. These standards are essentially the same as the Federal standards contained in 30 CFR Part 816 pertaining to backfilling and grading for previously mined areas and therefore, the Director finds Kentucky's regulation to be no less effective than the Federal standard.

Finding 2

The Director finds that 405 KAR 20:060E, § 3, paragraph (c), which provides that all spoil be retained on the solid portion of existing or new benches, is no less effective than 30 CFR 816.106, which provides that spoil shall be included in the permit area.

Public Comments

1. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, the United States Department of Agriculture, the U.S. Fish and Wildlife Service and the Environmental Protection Agency comment that no problems were found during their review of the amendment. The U.S. Forest Service comments on the hydrologic control criteria in 405 KAR 20.060, Section 3, paragraph (b). The content of this paragraph was not modified from that previously approved, and is therefore not subject to this rulemaking. The paragraph was however, renumbered from (3) to (b).

2. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) prepared comments that are also endorsed by the Sierra Club. ARDFK comments that SMCRA contains no provision for a variance from the approximate original contour requirements in the elimination of a highwall for a remined area. ARDFK further contends that since SMCRA does not provide for this type of a variance, that the Secretary cannot expand the Federal regulations as published on November 12, 1982, or approve a similar provision in a State program.

OSM modified its regulations pertaining to steep slope remining by promulgating an interim final rule published in the **Federal Register** on November 12, 1982 (47 FR 51516–51321). The rule was revised in order to resolve

the conflict that had arisen in applying the existing rule to situations where insufficient spoil was available to completely backfill the highwalls of mining operations that affect previously mined lands. The revised rule still requires that highwalls be eliminated to the extent technically practical, using all reasonably available spoil and provides certain requirements that must be met to ensure safety, stability and erosion control necessary to achieve the approved postmining land use and maximize the recovery of coal. For a discussion of the Federal rule, see the preamble at 47 FR 51316–51321.

The State has revised its regulations in a manner consistent with the current Federal rule and, therefore, provides a standard for highwall elimination in steep slope mining areas that have been previously mined that is no less effective than the Federal standard.

Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Imact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 917 of Title 30 is amended as set forth herein.

Dated: December 16, 1983.

J. Roy Spradley,

Acting Director, Office of Surface Mining.

Authority: (Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)).

PART 917—KENTUCKY

1. 30 CFR 917.15 is amended by reviewing paragraph (f).

§ 917.15 Approval of amendments to State regulatory program.

* * * * *

(f) The following amendment is approved effective on January 3, 1984. Revised 405 KAR 20:060E adopted by emergency regulation signed on September 19, 1983.

[FR Doc. 83-34787 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 926

Approval of Amendments to the Montana Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 926 to approve amendments to the Montana permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

The amendments submitted by Montana for the Director's approval on September 13, 1983, include modifications to statutory provisions concerning the following: (1) Submission of annual reports by permittees, (2) issuance of permits to operators with a history of violations, (3) assessment of civil penalties for all violations.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Field Office Director, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 328–5830.

ADDRESSES: Copies of the amendments to the Montana program are available for review at the OSM Headquarters Office, the Wyoming Field Office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 "L" Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644

Montana Department of State Lands, Reclamation Division, Capitol Station, Helena, Montana 59620

SUPPLEMENTARY INFORMATION: The Montana program was conditionally approved by the Secretary on April 1, 1980. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560) and February 11, 1982 **Federal Register** (47 FR 6266).

Pursuant to OSM's regulations at 30 CFR 732.17(b)(3), Montana notified OSM by letter dated September 13, 1983, that the Montana Legislature had adopted three changes in the Montana Strip and Underground Mine Reclamation Act.

On November 8, 1983, OSM announced a 30-day public comment period on the statutory changes adopted by the State (48 FR 51334). A public hearing on the amendments scheduled for November 14, 1983, was cancelled as no one expressed an interest in presenting testimony.

Director's Findings

Following is a description of the changes adopted by the State and the Director's findings on each of these:

(1) Chapter 68, Law of 1983, amends section 82–4–237 of the Montana Strip and Underground Mine Reclamation Act (MCA) to allow an operator who has more than one permit to file with the regulatory authority one annual report for all permits rather than an annual report for each permit.

The Federal law and regulations do not include a provision stipulating that operators file annual reports with the regulatory authority as required under the approved Montana program.

Thus, the statutory change adopted by Montana which allows operators to file one annual report for all permits does not conflict with the Federal law and regulations. Therefore, the Director approves this program modification.

(2) Chapter 162, Laws of 1983, amends section 82–4–251(4) by eliminating the following language: "The Department may not issue any additional permits to an operator who has repeatedly been in non-compliance or violation of this part."

The Director finds that the language eliminated by the State was superfluous as sections 82–4–227 (11) and (12) of the State statute prohibit issuance of a

permit to an applicant with outstanding violations not in the process of being corrected or to an applicant who controls or has controlled operations with a demonstrated pattern of willful violations of SMCRA or any State law required by Pub. L. 95–87 consistent with section 510(c) of the Federal Act. Therefore, the Director approves this program modification.

(3) Chapter 499, Laws of 1983, amends section 82–4–254 of Montana's statute to allow the Department of State Lands (DSL) to waive civil penalties on minor violations if the Department determines that the violation is not of potential harm to public health, safety or the environment or does not impair administration of the Act. The Department cannot implement this provision until it establishes rules to prescribe specific criteria to be used in determining whether or not a violation poses potential harm to the public health, public safety or the environment or threatens to impair administration of the Strip and Underground Mine Reclamation Act. The rules must also establish a procedure for the issuance of waivers which must include a requirement that the Department of State Lands give notice of the violation and waiver to the permittee and place such notice in the permittee's file kept by the Department.

The Director finds that the amendment to section 82–4–254 provides DSL the authority to adopt regulations to allow the Department to waive civil penalties for minor violations.

The modified statutory provision has no practical effect until DSL promulgates implementing regulations. DSL would be required to submit such implementing regulations to OSM for review and approval. Upon receipt of proposed regulations to implement the statutory provision, OSM would review them for consistency with section 518(a) of SMCRA and the penalty waiver requirements under 30 CFR 845. The Director finds that the State's modified statutory provision, as far as it goes, does not conflict with section 518(a) of the Federal Act, and, therefore, approves the amendment.

Public Comment

OSM did not receive any comments on the proposed statutory amendments.

Approval of Amendments

Accordingly, the Montana permanent program is hereby amended to reflect the Director's approval of the statutory amendments submitted to OMS by the State on September 13, 1983.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OBM) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1983.

J. Roy Spradley,

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

PART 926—MONTANA

1. 30 CFR Part 926 is amended by adding a new § 926.15 as set forth below:

§ 926.15 Approval of amendments to State regulatory program.

Statutory changes adopted during the 1983 Montana legislative session as listed below are approved effective January 3, 1984.

(a) Section 82–4–237, MCA, amended.

(b) Section 82–4–251(4), MCA, language deleted.

(c) Section 82–4–254, MCA, amended.

[FR Doc. 83-34788 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10 FRL 2501–4]

Revision to Alaska State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice EPA approves the Alaska State Implementation Plan (SIP) revision for lead. This revision was adopted to satisfy section 110 of the Clean Air Act, as amended in 1977 (hereinafter referred to as the Act).

EFFECTIVE DATE: March 5, 1984, unless notice is received or postmarked on or before February 2, 1984, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, DC 20460;

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

Copy of the State's Submittal may be examined at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

Comments Should be Addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, M/S 532, Seattle, Washington 98101; Telephone: (206) 442–4016, FTS: 399–4016.

SUPPLEMENTARY INFORMATION: On July 19, and August 22, 1983, the State of Alaska, Department of Environmental Conservation (ADEC) submitted drafts of lead SIPs for EPA's review prior to public hearing and adoption. EPA's review comments are contained in a technical evaluation document, which is available at the addresses shown above.

The SIP was adopted with all requested corrections on September 30, 1983 and submitted to EPA on November 15, 1983.

Technical Evaluation

Lead SIP

The requirements for an approvable lead SIP are contained in 40 CFR Part 51 Subpart E. As described in the technical evaluation document, the Alaska SIP satisfies all requirements for standard attainment demonstration, emission data and projections and air quality data and analysis. In addition, the SIP provides for statewide review of all new (greater than 5 tons per year) and modified (greater than 0.6 tons per year) lead sources under its Rules for Permitting New Sources (18 ACC 50.300) previously approved by EPA (48 FR 30623). These rules will ensure that no new violations of the standard will occur and that maintenance of the standard will continue.

Alaska has no significant point sources of lead (i.e., those sources that emit from discrete points rather than from wide areas). Automobiles are the major contributors to lead emission in the State. Federal regulations that limit the lead content of gasoline have resulted, and will continue to result, in a gradual decrease in lead emissions. Depending on the lead air concentration in the base (historic) year, it is possible for such areas to attain the lead standard solely due to Federal regulations. Based on those Federal regulations and information about past and projected gasoline sales assuming that lead concentrations decrease proportionally with automotive lead emission, EPA has calculated critical lead concentrations for several base and attainment years. These were published in a July 1983 draft report entitled Updated Information on Approval and Promulgation of Lead Implementation Plans prepared for EPA Office of Air Quality Planning and Standards, Control Programs Development Division, Research Triangle Park, N.C. If the highest lead concentration for a given base year/attainment year combination is less than the critical value for that combination, EPA assumes that the standard will be attained by the attainment year. In 1980 Anchorage had a worst-case quarterly concentration of 2.07 $\mu g/m^3$. Anchorage's worst-case concentration is less than the critical concentration of 2.40 $\mu g/m^3$, calculated by EPA for an attainment year of 1983; therefore, EPA concludes that the standard is being and will continue to be attained in Anchorage and the remainder to the State. The national ambient air quality standard is 1.5$\mu g/m^3$

Air Quality Monitoring

The SIP also contains a description of the current statewide lead monitoring network. ADEC is conducting special purpose monitoring to determine if modifications of the lead network are necessary to meet the requirements of 40 CFR Part 58 (Ambient Air Quality Surveillance). Because the special purpose monitoring will not be completed until March 1985, EPA will approve the lead monitoring network with the understanding that it will be modified by July 1985, if appropriate, based on the results of the special purpose monitoring study.

Final EPA Action

Based on evaluation of ADEC's submittal, the Administrator has determined that the Alaska lead SIP revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Alaska SIP.

In addition, the Statewide lead monitoring network is approved as meeting the requirements of 40 CFR Part 58, with the understanding that modifications, based on special purpose monitoring, will be made, if necessary, by July 1985.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant impact on a substantial number of small entities (46 FR 8709, January 27, 1981). This action constitutes a SIP approval under section 110 within the terms of the January 27, 1981 certification.

Under Executive Order 12291, EPA must judge whether or not a regulation is "major" and therefore subject to the requirements of regulatory impact analysis. This regulation is not judged to be major, since it merely approves actions taken by the State and does not establish any new requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: December 16, 1983.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register in July 1, 1982.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 Code of Federal Regulations is revised to read as follows:

Subpart C—Alaska

Section 52.70, paragraph (c) is amended by adding (10) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(10) On November 15, 1983 the State of Alaska Department of Environmental Conservation submitted a revision to add a lead strategy to the Alaska Implementation Plan.

[FR Doc. 83-34800 Filed 12-30-83; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL 2480-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Amendment to the Regulations Governing the Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In January and September, 1980, EPA established, via Subpart K of 40 CFR Part 86, an updated Selective Enforcement Auditing (SEA) program for 1984 and later model year heavy-duty engines (HDEs) and light-duty trucks (LDTs). At that time, EPA inadvertently failed to amend Subpart G of 40 CFR Part 86, which also outlined SEA procedures for LDTs, so that it would no longer apply to LDTs. Because Subparts G and K contain slightly different rules governing the procedures for an SEA, confusion could occur as to which rules would apply to the conduct of audits for LDTs. This rule makes it clear that LDTs are eligible solely for the provisions of Subpart K as of the 1984 model year.

EFFECTIVE DATE: These regulations are effective as of February 2, 1984.

ADDRESSES: Material relevant to this Final Rule is contained in Public Docket EN–83–07, Central Docket Section. The docket is located in West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery, Manufacturers Operations Division (EN–340), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Phone: (202) 382–4104.

SUPPLEMENTARY INFORMATION: In January and September, 1980, EPA established, via Subpart K of 40 CFR Part 86, an updated SEA program for 1984 and later model year heavy-duty engines (HDEs) and LDTs. At that time, EPA inadvertently failed to amend Subpart G of 40 CFR Part 86, which also outlined SEA procedures for LDTs, so that it would no longer apply to LDTs. Because Subparts G and K contain slightly different rules governing the procedures for an SEA, confusion could occur as to which rules would apply to the conduct of audits for LDTs. This rule makes it clear that LDTs are eligible solely for the provisions of Subpart K as of the 1984 model year.

Legal Authority: Sections 206(b), 208(a), 301(a), Clean Air Act as amended (42 U.S.C. 7525(b), 7542(a), 7601(a)).

Public Participation: The Agency finds that good cause exists for omitting as unnecessary, impracticable, and contrary to the public interest a notice of proposed rulemaking. This finding is based on the fact that this rule merely corrects an omission in existing regulations. This rule is being promulgated via a Final Rulemaking so that manufacturers will be alerted to the correct sets of rules which govern the SEA of LDTs during the 1984 model year.

Administrative Designation: Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. This regulation is not "major" because it will not have an annual effect on the economy of more than $100 million and it will have no significant adverse effects on competition, productivity, investment, employment, or innovation. Therefore, a Regulatory Impact Analysis will not be prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited above. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000–0225.

Effect on Small Entities: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis of any final rule unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. This final rule clarifies an existing regulation and does not impose any new requirement on light-duty vehicle and light-duty truck manufacturers.

Therefore, I hereby certify, pursuant to 5 U.S.C. 605(b), that this rule will not have significant adverse economic impact on a substantial number of small entities. Accordingly, the Agency has not prepared a regulatory flexibility analysis to accompany this rule.

Judicial Review: This regulation is a nationally applicable regulation promulgated under the Clean Air Act. Accordingly, under section 307(b)(1) of the Clean Air Act, any judicial review must be sought in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed March 5, 1984. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 27, 1983.

Alvin L. Alm,

Deputy Administrator.

PART 86—[AMENDED]

For the reasons set forth in this preamble, Part 86, Subpart G, Chapter I of Title 40, Code of Federal Regulations is revised to read as follows:

1. The Title of Subpart G is revised to read as follows:

Subpart G—Selective Enforcement Auditing of New Light-Duty Vehicles

2. Section 86.601 is revised to read as follows:

§ 86.601 Applicability.

For 1984 and later model year light-duty vehicles, all provisions of this subpart are applicable. The provisions of this subpart are not applicable to 1984 and later model year light-duty trucks.

(Secs. 206, 208(a) and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7525, 7542(a) and 7601(a))

[FR Doc. 83–34797 Filed 12–30–83; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 49, No. 1
Tuesday, January 3, 1984

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 201, 270 and 271

[Docket Nos. RM83-72-000 and RM82-16-000]

First Sales of Pipeline Production Under the Natural Gas Policy Act of 1978

December 28, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations relating to first sales of pipeline production under the Natural Gas Policy Act of 1978 (NGPA). The Commission proposes to designate the intracorporate transfer of natural gas from an interstate pipeline-owned production system to the interstate pipeline's transmission system as the first sale defined in section 2(21) of the NGPA. The Commission proposes to define this transfer as one that occurs as the wellhead and to require interstate pipelines with their own production to adopt an operating agreement reflecting the terms of this transfer.

The Commission also proposes to amend its regulations to permit pipeline production to qualify for incentive prices under section 107(c)(5) of the NGPA. In addition, the Commission proposes to repeal an interim rule for first sales by affiliates and propose a similar rule in this notice.

These proposals are intended to implement the recent Supreme Court decision in *Public Service Commission of the State of New York v. Mid-Lousiana Gas Co.* in a manner that is both reasonable and administratively feasible for the Commission and natural gas pipelines owning their own production.

DATE: Written comments must be received on or before March 5, 1984. Any requests for a public hearing must be received by January 18, 1984.

ADDRESS: Comments and requests for hearing must be sent to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments and requests for hearing must contain reference to Docket Nos. RM83-72-000 and RM82-16-000.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rizzo, Division of Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: .

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations relating to first sales of natural gas produced by a pipeline under section 2(21) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981). In so doing, the Commission is implementing the Supreme Court's decision in *Public Service Commission of the State of New York v. Mid-Louisiana Gas Co. (Mid-Louisiana).*[1]

The Commission proposes to designate the intracorporate transfer of natural gas from an interstate pipeline-owned production system to the interstate pipeline's transmission system as the first sale defined in section 2(21) of the NGPA. Since such gas is not physically transferred from one entity to another in this intracorporate first sale, the Commission proposes to define the transfer of gas from the wellhead to the interstate pipeline's transmission system as the point at which the intracorporate transfer occurs. The Commission also proposes to require interstate pipelines with their own production to adopt an operating agreement reflecting this transfer between their production division and their transmission division. This will enable the Commission to administratively review these transactions in the Purchased Gas Adjustment (PGA) proceedings conducted under the Natural Gas Act (NGA).

[1] 103 S. Ct. 3024 (1983).

The Commission also proposes to amend current regulations that implement section 107 of the NGPA. These regulations require the parties to negotiate a contract price before receiving the maximum lawful price permitted by the NGPA. Since an interstate pipeline cannot negotiate an arm's-length contract with itself, the Commission proposes to use the factors present in the affiliated entities test, developed pursuant to section 601(b)(1)(E) of the NGPA, to determine if the interstate pipeline is entitled to the NGPA maximum lawful price under section 107.

The Commission also proposes to repeal an interim rule for first sales by affiliates[2] made unnecessary by this proposed rule implementing the *Mid-Louisiana* decision.

II. Background

A. Pre-NGPA Regulation of the Natural Gas Industry

Before enactment of the NGPA, section 1(b) of the Natural Gas Act (NGA) granted jurisdiction to the Commission to establish rates for sales for resale of natural gas in interstate commerce. Natural gas companies whose sales were subject to Commission rate regulation under the NGA included both (1) independent and pipeline affiliated producers, which sell natural gas to interstate pipeline purchasers, and (2) interstate pipelines, which transport natural gas acquired from independent or affiliated producers as well as natural gas produced by the pipeline itself. Jurisdiction to determine rates for producer and pipeline sales in intrastate commerce was reserved to state and local authorities.

Prior to the NGPA, the Commission in 1969 sought to provide "parity" of pricing treatment among independent and interstate pipeline producers by permitting a pipeline to value its own production (for section 4 rate case purposes) by reference to the area or nationwide rate that would have been applicable to the gas if it had been produced by an independent producer.[3]

[2] First Sales by Affiliates, 47 FR 11812 (March 18, 1982) (Issued Mar. 2, 1982, Docket No. RM82-16-000.)

[3] CFR 2.66 (1983). *See* Pipeline Production Area Rate Proceeding (Phase I), 42 F.P.C. 738 (1969) (Opinion No. 568), *reh'g denied*, 42 F.P.C. 1089 (1969), *aff'd sub nom.* City of Chicago v. FPC, 458

Continued

Area or nationwide rates were applicable to "new production"—that is, pipeline production from wells drilled on or after January 1, 1973, on leases acquired before October 8, 1969, and from all wells drilled on leases acquired after October 7, 1969.[4] "Old production"—from other, older wells drilled prior to January 1, 1973, on leases acquired before October 8, 1969—continued to be valued on a cost-of-service basis.[5]

B. Advent of the NGPA

By 1978, a disparity existed between prices for producer sales in the interstate and the intrastate markets, which tended to discourage dedication of new production to interstate commerce. This disparity compelled Congress in the NGPA to eliminate jurisdictional barriers to a nationwide market. The NGPA replaced the Commission's jurisdiction to set rates for producer sales of natural gas in interstate commerce with a system of maximum lawful prices for all domestically produced natural gas. This pricing scheme in the NGPA ostensibly embodies the incentives that Congress found necessary to induce investment in exploration for and development of new reserves.

Maximum lawful prices under the NGPA are uniformly applied to "first sales" of natural gas in the nationwide market comprised of interstate and intrastate pipelines, local distribution companies (distributors), and direct sale customers. To ensure that natural gas would be delivered to the market at the NGPA prices, section 2(21) of the NGPA makes first sale pricing applicable to sales preceding sales to pipelines, distributors, and direct sale customers.[6]

The NGPA contemplates that pipelines and distributors, in addition to purchasing and transporting gas for sale, also engage in production activities. This is reflected in section 2(21)(B) of the NGPA, which provides that the term first sale:

> shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, *unless the sale is attributable to volumes of natural gas produced by such interstate pipeline,* intrastate pipeline, or local distribution company, or any affiliate thereof. (Emphasis added).

Section 2(21)(B) became the focal point for the Commission's efforts to price pipeline and distributor production following passage of the NGPA.

C. Commission Order Nos. 58, 98, and 102

In Order No. 58,[7] the Commission promulgated § 270.203(a) of its regulations, which restricted NGPA first sale pricing treatment only to pipeline and distributor sales comprised *exclusively* of production volumes of natural gas from wells owned by the pipeline or distributor. This interpretation reflected the Commission's view that the purpose of section 2(21)(B) is to distinguish between gas sold by a pipeline directly from the wellhead (and therefore clearly "attributable" to the pipeline's own production), and gas sold by a pipeline from its general system supply (consisting of commingled volumes of gas purchased from independent producers and gas produced by the pipeline).

The Commission in Order No. 58 also addressed sales of gas produced by a pipeline affiliate that was not itself a pipeline or distributor. The Commission recognized that an affiliate could circumvent the first sale rules by selling mixed volumes of gas (*i.e.*, volumes composed of gas produced by the affiliate and gas purchased by the affiliate) to a pipeline because such sales by affiliates would be excluded from first sale treatment under section 2(21)(B) of the NGPA. Thus, the Commission promulgated § 270.203(c), which treated all sales by affiliates as first sales. [8]

As a result of Order No. 58, most pipeline production did not qualify for first sale treatment and production by interstate pipelines thus remained subject to the Commission's NGA jurisdiction. The Commission reexamined its parity pricing policy under the NGA and, in Order No. 98,[9] found that the NGPA incentive prices should be used to encourage interstate pipelines to develop additional supplies of natural gas. The Commission permitted gas reserves that were previously subject to area or nationwide rate treatment to be valued by reference to the NGPA price that would have been applicable to the gas if it had been sold in a first sale.[10] Such incentive prices were not, however, available for production from leases previously subject to cost-of-service treatment.[11]

The Commission considered these issues one last time in Order No. 102,[12]

F.2d 731 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972); Just and Reasonable National Rates for Sales of Natural Gas, 52 F.P.C. 1604 (1974) (Opinion No. 699–H).

[4] Although the interstate pipeline production was not acquired in a sale and no certificates were issued for the pipeline's acquisition of its own production, the Commission allowed the value for such gas, determined by reference to area or nationwide rates, to be reflected in the pipeline's PGA filings and passed through to purchasers on the same basis as natural gas purchased from producers. 18 CFR 154.38(d)(4), note 1.

[5] Two special categories of new production were also allowed cost-of-service treatment. An interstate pipeline that could demonstrate special circumstances justifying an exemption from area or nationwide rate treatment was permitted to value new production on a cost-of-service basis. In addition, the Commission approved rate settlements providing some form of cost-of-service treatment for certain pipelines which had demonstrated that cost-of-service treatment was necessary to encourage their expanded production programs.

[6] Section 2(21) defines "first sale" in the following manner:

(21) FIRST SALE.—

(A) General Rule.—The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) Certain Sales Not Included.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

15 U.S.C. 3301(21) (Supp. V 1981).

[7] Final Rule Governing the Maximum Lawful Price for Pipeline, Distributor or Affiliate Production, 44 FR 66577 (November 20, 1979) (Docket No. RM80–7).

[8] Section 270.203(c) provides:

(c) *Sales by certain affiliates.* Any sale by an affiliate of a pipeline or distributor is a first sale if such affiliate is not itself a pipeline or distributor, unless the Commission, on application, has determined not to treat such sale as a first sale. For purposes of this paragraph, the term "sale" does not include any transaction between an interstate pipeline and an affiliate thereof if such transaction would not have been treated as a sale for purposes of the Natural Gas Act.

This rule included sales by nonproducing affiliates such as gatherers or other middlemen that are not themselves pipelines or distributors. Although sales by unaffiliated middlemen are first sales under section 2(21)(A), sales by middlemen affiliated with pipelines or distributors are excluded from first sale treatment under section 2(21)(B). Because historically these sales largely are unregulated, the Commission, by use of its authority under section 2 (21) (A) (v), denominated these sales as first sales to avoid circumvention of the NGPA maximum lawful prices.

[9] Final Rule Governing Pricing of Pipeline Production Under the Natural Gas Act, 45 FR 53091 (August 11, 1980) (Docket No. RM80–6).

[10] 18 CFR 154.42 (1983).

[11] This was because the Commission found out that such pipelines would have already enjoyed the benefits of a certain recovery of and return on the costs of production, and that their customers, who bore the risks of this investment in the early years of exploration and development, should have an opportunity to receive the price benefits of cost-of-service treatment for gas produced as a result of the expenditures.

[12] Order Denying Rehearing of Order No. 58 and Order No. 98 and Clarifying Order No. 98, 45 FR 67083 (October 9, 1980) (Docket Nos. RM80–6 and RM80–7).

the rehearing of Order Nos. 58 and 98. In Order No. 102, the Commission reaffirmed its belief that NGPA first sale treatment for pipeline production is allowable only when the gas volumes sold by the pipeline were attributable exclusively to the pipeline's own production. The Commission declined to accept the rehearing petitioners' contention that the purpose of section 2 (21) (B) is simply to distinguish between independent and pipeline producers.[13]

Concerning the affiliate sales rule in § 270.203(c), the Commission in Order No. 102 reaffirmed its belief that such sales had to be treated as first sales to avoid circumvention of the NGPA maximum lawful prices. The Commission also determined to retain the parity pricing policy in § 154.42, which established that a pipeline's new production could be valued by reference to NGPA maximum lawful prices. The Commission reiterated its decision that NGPA rate treatment would be extended only to natural gas produced from leases that had never been subject to cost-of-service treatment.

D. Court Review of Order Nos. 58 and 98

(1) *Court of Appeals Decision.* On review, the United States Circuit Court of Appeals for the former Fifth Circuit (Fifth Circuit) invalidated Order Nos. 58 and 98.[14] The court held that the NGPA was intended to provide the same incentives to pipeline production as to independent production. The Fifth Circuit decided that the Commission misread section 2(21) (A) and (B) of the NGPA when viewed in light of the Congressional intent behind the NGPA. The court also found no practical obstacles to treating as a first sale the transfer of gas from a pipeline's production division to its transmission division.

As a result, the Fifth Circuit held that the NGPA requires the Commission to treat all pipeline production as subject to first sale treatment, and that the first sale occurs at the intracorporate transfer point. The court struck down Order Nos. 58 and 98 in their entirety.[15]

(2) *Supreme Court Decision.* The Supreme Court agreed with the Fifth Circuit on the general proposition that the NGPA accords first sale treatment to all pipeline production, thereby holding that the Commission's fundamental premise for Order Nos. 58 and 98 was incorrect.[16] The Court found clear Congressional intent to include all gas produced and sold by a pipeline in the definition of "first sale." However, the Court disagreed with the Circuit Court's opinion that the first sale occurred at the intracorporate transfer point. The Court found that the Commission has discretion under the NGPA to find the first sale at the intracorporate transfer point or at some other point further downstram.[17] For this reason, the Court vacated the lower court decision, with instructions to remand the case for further proceedings consistent with the Court's opinion.[18]

III. First Sale Rule

The Commission in proposed § 270.203(a) defines the sale of gas produced by an interstate pipeline, an intrastate pipeline or a local distribution company as a first sale. The Commission also proposes to retain the affiliate first sale rule in proposed § 270.203(c). In addition, the Commission proposes several regulations which implement this first sale rule for interstate pipelines only. *See* proposed § 270.203(b). The Commission believes these regulations are necessary for the regulation of interstate pipelines under the NGA.

A. Intracorporate Transfer

The Commission proposes to designate the transfer of volumes from the production division to the transmission division of an interstate pipeline company as the first sale of pipeline production.[19] Since this intracorporate transfer is usually only a paper transaction between two corporate divisions, the Commission proposes to define this transaction as one that occurs at the wellhead. This is being done for three reasons. First this approach would continue the current Commission policy of reviewing the cost of interstate pipeline production priced by reference to the NGPA or to area or nationwide rates in Purchased Gas Adjustment (PGA) and section 4 rate proceedings.[20] Under this policy, the transfer of gas produced by an interstate pipeline is presumed to occur at the wellhead. This presumption was adopted because of the administrative ease in determining the appropriate pass-through costs when the gas is deemed "sold" at the wellhead. For example, this eliminates the need to develop an allocation of costs associated with the production of the gas versus costs associated with the transportation of gas that would otherwise be needed to discern the proper scope of a section 4 rate proceeding.

Second, the review of production-related costs incurred by an interstate pipeline is simplified. Under section 110 of the NGPA, a first seller is entitled to increase the maximum lawful price for gas sold in a first sale to recover production-related costs incurred by the first seller.[21] Generally, these production-related costs are associated with activities performed after the gas

[13] The Commission stated:

The interpretation of section 2 (21) (B) advocated by these commenters would result in the uniform application of first sale maximum lawful prices to all mixed volume retail sales made by pipelines and distributors * * *.

Furthermore, the interpretation espoused by these commenters assumes that the NGPA contemplates a substantial reworking of the Commission's traditional methods for determining an interstate pipeline's cost-of-service.

45 FR 67063, at 67066. Nonetheless, in response to arguments made by four petitioners, the Commission acknowledged discretionary authority under section 501 of the NGPA to impute a first sale at the wellhead and thereby to accord first sale treatment to all pipeline production. The Commission did not find, however, any Congressional mandate to do so. Practical and administrative problems militating against this approach were also cited: the absence of contracts or NGA certificates regarding the intracorporate transfer; the absence of NGA just and reasonable rates applicable to that transfer; and the need for a contract to implement section 315 (governing the duration of contracts, bona fide offers, and right of first refusal) to evidence a sale that otherwise would be recorded solely in the books and records of the pipeline.

[14] Mid-Louisiana Gas Co. v. FERC, 664 F.2d 530 (5th Cir. 1981), *Aff'd sub nom.* Public Service Commission of the State of New York v. Mid-Louisiana Gas Co., 103 S. Ct. 3024 (1983).

[15] Order No. 58 also included the first sale rule for sales by affiliates found at § 270.203(c). The Commission concluded that the court did not intend to strike down this portion of that rule, since the court's decision was directed at pipeline production *not* accorded first sale treatment. The Commission issued an interim rule (*see supra* note 2) reestablishing the affiliate first sale regulations in § 270.203(g). This issue is discussed in more detail in section VI A., *infra*.

[16] The Court did not review Order No. 98 because Order No. 98 was premised on the idea expressed in Order No. 58 that not all pipeline production was subject to the NGPA. Order No. 98, prescribing the pricing treatment for interstate pipeline production excluded from NGPA first sale treatment, was grounded on the Commission's NGA authority. The Court's holding on Order No. 58 was that the Commission lacked authority to set prices for any interstate pipeline production under the NGA.

[17] ——— U.S. ———, 103 S. Ct. 3024, 3037 (1983).

[18] The impact of vacating the Fifth Circuit's opinion is somewhat unclear regarding the affiliated sales rule, which was adopted as part of Order No. 58 and which was vacated in the Fifth Circuit opinion. As noted earlier, the Commission has an interim rule outstanding that reestablished the affiliate first sale rule, and thus now technically has two affiliate first sale rules in place (§ 270.203 (c) and (g)).

[19] For ease in terminology, the reference to "pipeline production" will hereinafter include only gas produced by an interstate pipeline.

[20] An interstate pipeline is entitled to increase the rate it charges its customers above the rate approved by the Commission in a section 4 rate case if the increase is approved in a PGA proceeding. In a PGA proceeding, the Commission reviews only the increased costs incurred by the pipeline as a result of its gas purchases to determine if these extra costs should be passed through to the pipeline's customers.

[21] *See* 18 CFR 271.1100 through § 271.1106.

leaves the wellhead (as opposed to production costs which are associated with exploration and drilling activities). Since the Commission proposes to define the first sale of pipeline production as a transfer that occurs at the wellhead, the production division of the interstate pipeline cannot incur production-related costs before the first sale of its production. Thus only the transmission division of the interstate pipeline will incur these costs, and no cost allocation need be made for the pipeline's section 4 rate proceeding.[22]

Third, the accounting requirements established by the Commission in the Uniform Systems of Accounts for all interstate pipelines subject to the Commission's jurisdiction will, with minimum revisions, accommodate a wellhead transfer for all pipeline production priced at the NGPA ceiling rates.

B. NGPA Jurisdiction

In order to receive the maximum lawful prices prescribed under the NGPA for sections 102, 103, 107, and 108, a pipeline must comply with the requirements in 18 CFR Part 274 of the Commission's regulations which require a first seller to file certain information with the jurisdictional agency to receive a well category determination. Under Part 273 of the Commission's regulations, a first seller of natural gas may make interim collections of the NGPA price for gas requiring a well category determination, beginning on the date the application for the well determination is filed with the applicable jurisdictional agency. Further, once a determination has become final, the first seller may generally make retroactive collections only back to the date on which the application was filed.

The Commission recognizes that a pipeline or distributor may not have filed well category determination applications for gas produced from their wells prior to the *Mid-Louisiana* decision and thus may be precluded by Part 273 from receiving NGPA maximum lawful prices for past periods. A pipeline or distributor must comply with the well category determination filing requirements under Part 274, but the Commission proposes to consider waiver of the Part 273 regulations and other relevant provisions on a case-by-case basis. *See* proposed § 154.42(d).

C. NGA Jurisdiction

Under the NGA, the Commission generally allowed gas produced by an interstate pipeline to be priced under two methods: the cost-of-service method and the independent producer parity method. Gas produced from wells drilled on or after January 1, 1973, on leases acquired before October 8, 1969, and gas produced from all wells drilled on leases acquired after October 7, 1969, was priced on the independent producer parity method. Production from older wells drilled prior to January 1, 1973, on leases acquired before October 8, 1969, was priced on the cost-of-service method.

The costs of interstate pipeline production subject to the cost-of-service method, along with the pipeline's other costs, are reflected in the pipeline's rate filings under section 4 of the NGA. Costs for gas production priced on an independent producer parity method are reflected in the gas cost component of an interstate pipeline's base tariff rate, and increases in those costs are reported in a pipeline's PGA filings. These costs are then passed through to customers on the same basis as natural gas purchased from an independent producer.[23]

The price paid for gas sold in a first sale, up to the NGPA ceiling rate, is deemed to be just and reasonable for purposes of the NGA.[24] An interestate pipeline is permitted automatically to pass through to its customers any just and reasonable amount paid for any first sale purchase of natural gas.[25] Since the interstate pipeline is entitled to this automatic pass-through, absent any fraud or abuse under section 601(c) of the NGPA, the Commission proposes to review costs for first sale pipeline production in an interstate pipeline's PGA filing. *See* proposed § 154.42(b). This would continue the Commission's current policy of reviewing a pipeline's increased purchased gas costs, including those arising from intracorporate transfers, in the pipeline's PGA filings.

For the few pipelines that retain cost-of-service pricing for certain old and new production in their section 4 rate proceedings, the Commission proposes to allow those interstate pipelines to continue to price such production on a cost-of-service basis, up to the NGPA ceiling rates. In this case, the pipeline would have to establish the NGPA ceiling rate applicable to its production. *See* proposed § 154.42(c).

This proposal will continue the Commission's parity pricing policy by establishing the same ceiling prices for pipeline production, independent producer production, and pipeline affiliate production. In addition, since the Supreme Court determined that the transfer of pipeline production is a first sale, the NGPA maximum lawful prices established for first sales necessarily apply.

The Commission emphasizes that the interstate pipelines must still comply with the regulations in § 2.66. Under this section, interstate pipelines must maintain separate subdivisions of their plant and expense accounts for production properties and production activities, and reflect these costs in their general section 4 rate filing. This information is necessary to insure that general costs are properly allocated.

IV. Affiliated Entities Rule

Since an intracorporate transfer is a transaction that occurs between two divisions within a company, the Commission does not expect that there will be a written record of the terms of this transaction. However, when reviewing an interstate pipeline's pass-through of NGPA rates for its own production, the Commission must be assured that the pipeline is not giving preferential treatment to gas it produces. Therefore, the Commission proposes to (1) determine this issue of preferential treatment by applying the affiliated entities test to the intracorporate transfer, and (2) require the interstate pipeline to execute or memorialize an intracorporate operating agreement to evidence the terms of this transfer.[26]

[22] Currently, an interstate pipeline must reflect all of its production-related costs in its section 4 rate proceedings. If a section 110 add-on were permitted for gas "sold" in a first sale at a point downstream from the intracorporate transfer, the pipeline would have to reflect some or all section 110 costs in the price paid for the gas. These costs are reviewed by the Commission in the pipeline's PGA proceeding. Thus, the pipeline would have to shift some or all production-related costs associated with specific volumes of gas it produced from its section 4 rate case to its PGA filing. The Commission believes this reallocation is unnecessary and burdensome.

[23] 18 CFR 154.38(d)(4), note 1 (1983).

[24] Section 601(b)(1)(A) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3431(b)(1)(A) (Supp. V 1981).

[25] Section 601(c)(2)(A) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3431(c)(2)(A) (Supp. V 1981).

[26] The affiliated entities rule in section 601(b)(1)(E) of the NGPA provides that the sale price in a first sale between an interstate pipeline and its affiliate will be deemed just and reasonable for purposes of the NGA (and therefore entitled to an automatic pass-through) provided that the price paid by the pipeline does not exceed a price paid by the pipeline in a comparable sale to a non-affiliate or between two persons not affiliated with a pipeline. The Commission applies this test to first sales by an affiliate to an interstate pipeline in reviewing the pipeline's PGA filings. In addition, in Docket No. RM80-6, the Commission applied the affiliated entities test to pipeline production priced on NGPA parity, even though it took the view that the gas was not sold in a first sale. When the Supreme Court in *Mid-Louisiana* determined that the definition of "first sale" in the NGPA included the sale of gas produced by a pipeline, it emphasized that the policy underlying the affiliated entities rule should be applied to pipeline

Continued

These amendments are reflected in proposed §§ 154.42(b) and 270.203(b).

A. Affiliated Entities Test

The Commission believes that it is appropriate to apply the affiliated entities test to all pipeline production receiving first sale treatment for two reasons. First, it is axiomatic that the production division of an interstate pipeline is "affiliated" with the remainder of the pipeline company. Second, as in the case of affiliated subsidiaries, comparable sales transactions must be used to best determine what rate is just and reasonable.

The Commission has interpreted this affiliated entities test in several PGA proceedings involving pipeline production receiving NGPA parity prices. The Commission has determined that to apply the "comparability" standard involved in the test, it must be able to review non-price terms in the interstate pipeline's contracts. These terms include take-or-pay provisions as well as market-out clauses.[27] Additionally, the Commission has decided that it can refer to the price terms in contracts between the interstate pipeline and non-affiliates and between other pipelines and non-affiliate producers to determine a comparable price to be used for judging the reasonableness of the price paid by the pipeline for its own production.[28] These same parameters will be used in reviewing pipeline production.

B. Intracorporate Operating Agreement

As noted above, the Commission recognizes that the intracorporate transfer that occurs between the production and transmission divisions of an interstate pipeline company is probably not governed by any written agreement. The Commission also realizes that in order to apply the affiliated entities test to assess the reasonableness of an intracorporate transfer, there must be some written evidence of the terms of the transfer. Therefore, the Commission proposes to require an interstate pipeline to draft an intracorporate operating agreement which evidences the price and terms and conditions for the transfer of the gas from the production division to the transmission division of the company. *See* proposed § 270.102(b)(15). This agreement must be sufficiently definite to enable the Commission to determine that the intracorporate transfer satisfies the affiliated entities test. The Commission proposes to require this intracorporate operating agreement to be filed with the interstate pipeline's next PGA filing after the date the final rule in this docket becomes effective. *See* proposed § 154.38(d)(4)(v).[29] The interstate pipeline may file one agreement covering the first sales from all its wells. The Commission will presume this agreement governs all first sales transactions until the pipeline files a new agreement in its PGA proceedings.

C. Incentive Gas Pricing for Pipeline Production

The Commission also proposes to apply the affiliated entities comparability test to pipeline production qualifying for a section 107(c)(5) incentive price to determine the level of price which the interstate pipeline is entitled to pass through for its section 107 high-cost gas.

Under NGPA section 107(b), the Commission has the authority to prescribe higher incentive prices for any first sale of high-cost gas to the extent the price is necessary to produce that gas. The Commission has adopted regulations for high-cost tight formation gas [30] and high-cost production enhancement gas,[31] requiring in each rule evidence in the form of a contractual provision that the incentive price is necessary.[32] The Commission in its two incentive price rules presumed that the parties negotiate a contract for high-cost gas in an arm's-length transaction, and from this presumption came the negotiated contract price requirement.

The Commission realizes that the parties involved in an intracorporate transfer are essentially the same and cannot therefore meet the negotiated contract requirement in the tight formation and production enhancement rules which is necessary to allow a pipeline to pass through the incentive price. However, the Commission believes that pipeline production should be allowed the opportunity to qualify and receive these incentive prices even if the production is deemed transferred and sold within the same company. This will serve the public interest in developing these high-cost gas resources.

Therefore, the Commission proposes to amend the tight formation and production enhancement regulations to enable gas produced by an interstate pipeline to qualify and receive incentive pricing. The proposed amendments to §§ 271.702(a), 271.703(a) and 271.704(a) and (b) require the interstate pipeline to evidence a price paid for its production in its intracorporate operating agreement. The Commission will then apply the affiliated entities test to this price to determine if the statutory standard of necessity has been satisfied and to determine the applicable pass-through rate for this production.[33]

V. Accounting Rules

The Commission's Uniform Systems of Accounts for interstate pipelines do not now reflect the necessary accounting regulations for intracorporate transfers for gas produced by the pipeline. The Commission proposes to amend the Uniform Systems of Accounts to establish new accounts for this intracorporate transfer similar to those provided for interdepartmental sales (Account No. 484).[34]

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production. It stated that "Congress undoubtedly intended pipeline producers to be treated in the same manner as pipeline affiliate producers." (—— U.S. ——, 103 S. Ct. 3024, 3036 (1983)). 15 U.S.C. 3431(c)(2)(A) (Supp. V 1981).

[27] Tennessee Gas Pipeline Company, 21 FERC ¶ 61,004 (1982) (Docket Nos. TA82-2-9-000, RP81-54-000, RP82-12-001, and TA82-1-9-001).

[28] El Paso Natural Gas Company, 23 FERC ¶ 61,216 (May 12, 1983) (Docket Nos. TA82-1-33-006 and TA82-2-33-016).

[29] This proposed regulation may be amended in the final rule in this docket to conform with the amendments recently adopted by the Commission as a final rule in Docket No. RM83-73-000. Standard Form for Purchased Gas Adjustment Filings Submitted by Natural Gas Pipeline Companies: FERC Form No. 542-PGA, 48 FR 53091 (November 25, 1983).

[30] Regulations Covering High-Cost Natural Gas Produced from Tight Formations, 45 FR 56034 (August 22, 1980) (Order No. 99, Docket No. RM79-76).

[31] High-Cost Natural Gas: Production Enhancement Procedures, 45 FR 77421 (November 24, 1980) (Order No. 107, Docket No. RM80-50); Order Granting Rehearing in Part and Denying in Part, High-Cost Natural Gas; Production Enhancement Procedures, 48 FR 45097 (October 3, 1983).

[32] The Commission's regulations require a "renegotiated contract price" for the first sale of qualified production enhancement gas (18 CFR 271.704(a) (1983)) and a "negotiated contract price" for the first sale of tight formation gas (18 CFR 271.703(a) (1983)).

[33] If gas produced from a well qualifies for the tight formation or production enhancement incentive price, § 273.204(a)(1) permits a seller to retroactively collect the tight formation price beginning on July 16, 1979, and the production enhancement price beginning on the date the production enhancement work was completed. The issue of whether a pipeline will be entitled to recover these rates retroactively for their own production is discussed in section VI B., *infra*.

[34] The Commission also proposes to amend FERC Form No. 2 to reflect the new accounts discussed in this notice. 18 CFR 260.2 (1983). These conforming changes are purely technical in nature. FERC Form No. 2 with the proposed revisions is not being printed in the **Federal Register**, it is filed as a part of the original document, but is available for public inspection and comment through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426; telephone (202) 357-8118. Refer to Docket No. RM83-72-000 when making inquiries. In addition, technical and conforming changes may have to be made to FERC Form No. 11. 18 CFR 260.3 (1983).

Specifically, the Commission proposes to add two accounts: Account No. 800.1, "Natural Gas Wellhead Purchases, Intracorporate Transfers," and Account No. 485, "Intracorporate Transfers." These additions are reflected in the proposed amendments to Part 201.

Account Nos. 800.1 and 485 will reflect the amount recorded for gas supplied by the production division when the transfer price is not determined through a cost-of-service rate proceeding. For Account No. 800.1, the interstate pipeline will be required to maintain records for each wellhead purchase, reflecting the quantity of gas purchased and the intracorporate charges for this gas including the basis for these charges. For Account No. 485, the interstate pipeline must maintain records reflecting the quantity of gas transferred.

The Commission also proposes to revise General Instruction No. 16 (18 CFR Part 201) to clarify that § 2.66 of the Commission's regulations applies to all pipeline production not priced on a cost-of-service basis.

VI. Other Issues Under NGPA Regulations

A. First Sales by Affiliates

When the Commission adopted the first sale rules for gas produced by pipelines, distributors, and affiliates in Order No. 58, it defined any sale by an affiliate as a first sale if the affiliate was not itself a pipeline or a distributor. This rule was adopted because the Commission was concerned that an affiliate could circumvent the NGPA ceiling price since sales by affiliates who are not pipelines or distributors are largely unregulated and excluded from the first sale definition by section 2(21)(B) of the NGPA. This could have encouraged pipelines or distributors to establish affiliates solely to circumvent the NGPA price levels. To remedy this, the Commission adopted §270.203(c) classifying all sales by affiliates as first sales.

The Fifth Circuit *Mid-Louisiana* decision vacated Order No. 58 including this affiliate first sales rule. However, after close examination of that decision, the Commission believed that the Fifth Circuit did not intend to vacate the regulations governing first sales by affiliates since the Commission had granted first sale treatment to these transactions. Consequently, the Commission issued an interim rule establishing that any sale of gas not produced by the affiliate is a first sale (§ 270.203(g)).[25] The Commission did not issue any interim regulations for the sale of gas produced by an affiliate (the original rule being codified at § 270.203(c)) because the Fifth Circuit decision was appealed. Since the Supreme Court *Mid-Louisiana* decision vacated the Fifth Circuit decision, the Commission technically has two affiliate first sale rules in place (§ 270.203(c) and (g)).

Because an affiliate's production is a type of pipeline production and the *Mid-Louisiana* decision directs the Commission to grant first sale treatment to all gas produced by a pipeline, the Commission proposes to include sales by affiliates of gas it produces and purchases in the first sale definition. *See* proposed § 270.203(a) and (d). Thus, the Commission proposes to repeal the regulations promulgated as interim rules in RM82–16–000. These reguations would be duplicative of the Commission's proposals in this docket.

B. Retroactive Effect

The *Mid-Louisiana* decision held that the Commission did not properly interpret the NGPA which became effective on December 1, 1978. As a result, the Commission is proposing regulations to replace those invalidated by the Court, which must necessarily be effective as of December 1, 1978. This raises the issue of whether an interstate pipeline can pass through to its customers the costs stemming from a retroactive rate increase reflecting the difference between the NGPA ceiling rates and the costs actually recovered for a pipeline's production since December 1, 1978.

The Commission has already addressed this issue in several PGA proceedings initiated at the Commission after the Fifth Circuit decision. The Commission held in those cases that if the interstate pipeline specifically reserved the issue of NGPA rate treatment for its own production, then the interstate pipeline would be entitled to retroactive collection for this production. The Commission also determined that a failure to specifically reserve the issue would preclude a pipeline from recovering those costs retroactively.[26] The Commission reiterates here that these determinations govern any question of retroactive rate increases (including increases for section 107 high-cost gas) under the this rule.

C. Intrastate Sales

This Notice of Proposed Rulemaking proposes to define the point of first sale for gas subject to section 2(21) of the NGPA. This section includes production by interstate and intrastate pipelines, distributors and their affiliates. While the proposed definition in § 271.203(a) mentions intrastate and interstate pipelines, distributors, and their affiliates due to the scope of section 2(21) of the NGPA, all other proposals implement regulations only for *interstate* pipelines. Even though the Commission might be viewed as having some authority to extend certain elements in these regulations (such as determining the intracorporate transfer as the point of first sale) to intrastate entities, the Commission does not have jurisdiction over the rates an intrastate pipeline or distributor charges its customers. Thus, the Commission regards the issue of how an intrastate entity should be allowed to price the gas it resells (at the NGPA ceiling rates or otherwise) as one that remains within the province of state regulatory agencies.[27] The Commission specifically requests comments on this issue.

VII. Paperwork Reduction Act Statement

The information collection provisions proposed in this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. V 1981), and OMB's regulations, 48 FR 13666, 13694 (March 31, 1983) (to be codified at 5 CFR Part 1320). These provisions include §§ 154.42(d), Part 201, 270.203(b)(2), 271.702(a)(4), and 271.704(b)(5) as well as any conforming changes to FERC Form Nos. 2 and 11. Interested persons can obtain information on these proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capital St., NE., Washington, D.C., 20426 (Attention: Nancy M. Rizzo (202) 357–8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

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[25] First Sales by Affiliates, 47 FR 11812 (March 18, 1982) (Issued March 2, 1982, Docket No. RM82–16–000).

[26] *See, e.g.*, Consolidated Gas Supply Corporation, 20 FERC ¶61,243 (August 31, 1982) (Docket No. TA82–2–22–000), *appeal docketed*, Consolidated Gas Supply Corp. v. FERC, No. 83–1499 (4th Cir. June 2, 1983).

[27] Section 602 of the NGPA permits a state to establish lower maximum lawful prices. 15 U.S.C. 3432 (Supp. V 1981).

VIII. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA)[38] requires certain statements, descriptions, and analyses of proposed rules that will have "a significant economic impact on a substantial number of small entities."[39] The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities."[40]

Approximately 120 interstate natural gas companies are subject to the Commission's accounting and reporting requirements. Approximately 50 have production facilities. This proposed rule will only affect those 18 interstate pipelines that are large corporations and that price their gas on a cost-of-service basis. These corporations would not be classified as small entities for purposes of the RFA.[41] This rule will not have a significant impact upon any intrastate entities since state regulatory agencies can determine whether to adopt a similar regulatory regime for intrastate pipeline production. The only direct impact on intrastate pipelines is the requirement for filing jurisdictional agency determinations for their own production. This impact stems directly from the NGPA itself, as interpreted by the Supreme Court in *Mid-Louisiana*, and not from any proposal made in this proposed rule.

Accordingly, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

IX. Comment Procedures

The Commission invites interested persons to submit written comments, data, views and other information concerning the matters set out in this notice. An original and 14 copies of such comments must be received by the Commission on or before March 5, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM83–72–000.

All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., 20426, during regular business hours.

In addition, an opportunity for a public hearing to receive oral comments will be afforded, if requested, in accordance with section 502(b) of the NGPA. Any person requesting an opportunity to appear to give oral comments must file with the Secretary a request to do so by January 18, 1984.

List of Subjects

18 CFR Part 2

Administrative procedure and practice, Electric power, Environmental impact statements, Natural gas, Pipelines.

18 CFR Part 154

Natural gas.

18 CFR Part 201

Natural gas, Uniform systems of accounts.

18 CFR Part 260

Natural gas, Reporting requirements.

18 CFR Part 270

Natural gas, Wage and price controls.

18 CFR Part 271

Continental shelf, Natural gas, Wage and price controls.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. In Part 2, § 2.66(e) is revised to read as follows:

§ 2.66 Pricing of certain new gas produced by pipelines and pipeline affiliates.

* * * * *

(e) *Inapplicability to certain gas produced on or after December 1, 1978.* Except for paragraph (b), this section does not apply to natural gas produced on or after December 1, 1978, and sold in a first sale as determined under § 270.203 of this chapter.

2. The authority citation for § 2.66 is revised to read as follows:

(Natural Gas Act, sections 4, 5, and 8, 15 U.S.C. 717c, 717d, 717g (1976 & Supp. V 1981))

PART 154—[AMENDED]

3. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, sections 4, 16, 15 U.S.C. 717c, 717o (1976 & Supp. V 1981), unless otherwise noted.

4. In Part 154, the reference to "§ 154.42(b)(1)" in § 154.38(d)(4) footnote 1, is revised to read "§ 154.42(b)".

5. Section § 154.38(d)(4)(v) is amended by adding a new sentence after the third sentence to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(4) * * *

(v) * * * In addition, the pipeline shall furnish the Commission, jurisdictional customers, and interested state commissioners and intracorporate operating agreement for all gas produced by the pipeline, as that term is defined in Part 270 of Subchapter H.

* * *

* * * * *

6. The authority citation for § 154.38 is revised to read as follows:

(Federal Power Act, 16 U.S.C. 791a–828c (1976 & Supp. V 1981); Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. V 1981); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981); Public Utility Regulatory Policies Act, Pub. L. 95–617, 92 Stat. 3117 (1978); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Executive Order 12009, 3 CFR Part 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1976))

7. Section 154.42 is revised to read as follows:

§ 154.42 Pricing of gas produced on or after December 1, 1978 by pipelines and pipeline affiliates.

(a) *Applicability.* This section applies to natural gas that is produced by an interstate pipeline or an affiliate thereof and that is delivered to such pipeline or affiliate in a first sale on or after December 1, 1978.

(b) *General rule.* Except as provided in paragraph (c) of this section, natural gas to which this section applies shall be priced for ratemaking purposes in any pipeline rate proceeding at the lower of:

(1) if approved by the Commission, the rate contained in the pipeline's intracorporate operating agreement or the affiliate's contract so long as that rate does not exceed the applicable rate under Part 271 or Part 272 of Subchapter H; or

(2) the amount paid in comparable sales between persons not affiliated with such interstate pipeline, affiliate, or each other.

(c) *Cost-of-service treatment.* In any pipeline rate proceeding in which the pipeline has been permitted to price its

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[38] 5 U.S.C. 601–612 (Supp. V. 1981).

[39] *Id.* at section 603(a).

[40] *Id.* at section 605(b).

[41] *Id.* at section 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

production on a cost-of-service basis, natural gas to which this section applies may be priced for ratemaking purposes on a cost-of-service basis if the pipeline establishes that such price does not exceed the maximum lawful price under Part 271 or Part 272 of Subchapter H.

(d) *Subchapter H requirements.* A pipeline or affiliate that produces natural gas for which the maximum lawful price under Part 271 or Part 272 of Subchapter H is available under paragraph (b) of this section shall be subject to all the requirements of Subchapter H other than the requirement of § 270.101(d)(1) regarding applicable filing requirements under § 154.92 and § 154.94. Such pipeline or affiliate may apply for a waiver of any time-of-filing requirement in Subchapter H based on a showing that a timely filing was not made because such pipeline or affiliate had no notice that it was subject to such requirement.

(e) *Definitions.* For purposes of this section:

(1) *NGPA definitions.* The terms "interstate pipeline", "affiliate", "first sale", and "intracorporate operating agreement" have the same meaning as they have for purposes of Subchapter H.

(2) *Pipeline rate proceeding.* The term "pipeline rate proceeding" includes a proceeding under § 154.38(d)(4).

8. The authority citation for § 154.42 is revised to read as follows:

(Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. V 1981); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12009, 3 CFR Part 142 (1978).

9. The authority citation for Part 201 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. V 1981); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12009, 3 CFR 142 (1978).

10. In Part 201, following the heading "General Instructions", Instruction No. 16 is amended as follows:

a. The title is revised to read:

16. *Accounting for Costs of Gas Production by Pipelines and Pipeline Affiliates.*—A. * * *

b. Paragraph B. is redesignated paragraph C., and a new paragraph B. is added to read as follows:

B. When the transfer price of gas is not determined in a cost-of-service rate proceeding, pricing of gas produced by a pipeline or pipeline affiliate shall be in accordance with § 2.66 or § 154.42 of this chapter.

* * * * *

11. Part 201 is amended as follows:

a. The Operating Revenue Chart of Accounts is amended by adding a new account number 485, immediately following account number 484, to read "485 Intracorporate Transfers";

b. The Operating Revenue Accounts are amended by adding new account 485 to read as follows:

485 Intracorporate transfers.

A. This account shall include the amount recorded for gas supplied by the production division when the transfer price is not determined by a cost-of-service rate proceeding.

B. Records shall be maintained so that the quantity of gas transferred shall be readily available.

c. The Operating and Maintenance Expense Chart of Accounts is amended by adding a new account number 800.1, immediately following account number 800, to read "800.1 Natural Gas Wellhead Purchases, Intracorporate Transfers"; and

d. The Operating and Maintenance Expense Accounts are amended by adding new account 800.1 to read as follows:

800.1 Natural Gas Wellhead Purchases; Intracorporate Transfers.

A. This account shall include the amount recorded for gas supplied by the production division when the transfer price is not determined by a cost-of-service rate proceeding.

B. The records supporting this account shall be so maintained that there will be readily available for each wellhead, the quantity of gas, the basis of intracorporate charges, and the amount of intracorporate charges for gas.

PART 270—[AMENDED]

12. The authority citation for Part 270 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981), unless otherwise noted.

13. In Part 270, § 270.102(b) is amended by adding a new subparagraph (15) to read as follows:

§ 270.102 Definitions.

* * * * *

(b) * * *

(15) "Intracorporate operating agreement" means an agreement evidencing a first sale transfer of gas from the production division to the transmission division of an interstate pipeline company.

14. The authority citation for § 270.102 is revised to read as follows:

(Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. V 1981); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12009, 3 CFR Part 142 (1978); Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*)

15. Section 270.203 is revised to read as follows:

§ 270.203 Pipeline, distributor, and affiliate production.

(a) *General rule.* For purposes of section 2(21) of the NGPA, the sale of gas produced by an interstate pipeline, intrastate pipeline, local distribution company, or affiliate thereof, is a first sale to the extent that such sale is comprised in whole or in part of natural gas that has been produced by that same interstate pipeline, intrastate pipeline, local distribution company, or affiliate thereof.

(b) *First sales pipelines*—(1) *Intracorporate transfer.* The first sale of gas produced by an interstate pipeline shall occur when the gas is transferred from the production division to the transmission division of the interstate pipeline. This transfer is deemed to occur at the wellhead.

(2) *Intracorporate operating agreement for interstate pipelines.* Any interstate pipeline shall execute an intracorporate operating agreement evidencing the terms and conditions of the intracorporate transfer of gas sold in a first sale.

(c) *Circumvention rule for certain sales by affiliates.* Any sale by an affiliate of an interstate pipeline, intrastate pipeline, or local distribution company, that is not itself such a pipeline or local distribution company, is a first sale even if the natural gas sold is not produced by that affiliate, unless the Commission, on application, has determined not to treat such sale as a first sale.

16. The authority citation for § 270.203 is revised to read as follows:

(Natural Gas Act, 15 U.S.C. 717–717w (1976) & Supp. V 1981); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12009, 3 CFR Part 142 (1978).

PART 271—[AMENDED]

17. The authority citation for Part 271 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432 (Supp. V 1981).

18. In Part 271, S271.702(a) is amended by adding a new subparagraph (4) to read as follows:

§ 271.702 General rules.

(a) * * *

(4) "Interstate pipeline production price" means any price which is paid by an interstate pipeline in a first sale of gas produced by that pipeline and which is comparable to the price paid by such pipeline in a first sale to a person not affiliated with such pipeline. Such price shall be stated in the intracorporate operating agreement as defined in § 271.102(b)(15).

* * * * *

19. The authority citation for § 271.702 is revised to read as follows:

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432 (Supp. V 1981).)

20. In Part 271, § 271.703(a) and subparagraph (a)(1) are revised to read as follows:

§ 271.703 Tight Formations.

(a) *Maximum lawful price for tight formation gas.* The maximum lawful price, per MMBtu, for the first sale of tight formation gas for which there is a negotiated contract price or a pipeline production price shall be the lesser of:

(1) The negotiated contract price or the interstate pipeline production price, as applicable; or

* * * * *

21. The authority citation for § 271.703 is revised to read as follows:

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12,009, 3 CFR Part 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1976).)

22. In Part 271, § 271.704(a)(1)(i) is revised and paragraph (b)(5) is added to read as follows:

§ 271.704 Qualified production enhancement gas.

(a) * * *

(1) * * *

(i) The renegotiated price or the interstate pipeline production price, as applicable, as stated in the application; or

* * * * *

(b) * * *

(5) "Interstate pipeline production" means any price which is paid by an interstate pipeline in a first sale of gas produced by that pipeline and which is comparable to a price paid by such pipeline in a first sale to a person not affiliated with such pipeline. Such price shall be stated in the intracorporate operating agreement as defined in § 270.102(b)(15).

* * * * *

23. The authority citation in § 27.704 is revised to read as follows:

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432 (Supp. V 1981).)

[FR Doc. 83-34820 Filed 12-30-83; 8:45 am]
BILLING CODE 6717-01-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2500-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan (SIP) Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On June 30, 1982, EPA approved revisions to the California State Implementation Plan (SIP) for Lead, except for outstanding portions including the control strategy for the Los Angeles Area. At this time, the State Lead Phase Down program is reducing Lead emissions throughout California. This program, according to preliminary modeling data, will assure attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for Lead by 1985 in the Los Angeles area. Today's notice proposes under the Clean Air Act to approve a draft of this control strategy for Lead for the Los Angeles area.

DATES: Comments may be submitted up to February 2, 1984.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 454–7640.

SUPPLEMENTARY INFORMATION:

Background

As required by Section 110 of the Clean Air Act and the October 5, 1978 promulgation of a National Ambient Air Quality Standard for Lead (43 FR 46246), on November 19, 1979 California submitted a Lead SIP.

On June 30, 1982 (47 FR 28374) EPA approved the Lead SIP except for the following portions:

(1) New Source Review (NSR) requirements; and

(2) Control strategies for the Los Angeles and Fresno areas.

On April 8, 1983, the State submitted ambient Lead data for the Fresno area which was subsequently approved as a SIP revision demonstrating attainment for the area (48 FR 53558) (Nov. 28, 1983).

Demonstration of Attainment

The South Coast Air Quality Management District has certified that the Los Angeles area has no significant point sources of Lead (i.e., those sources that emit greater than five tons per day from discrete points). Automobiles are the major contributors to Lead emissions in the Los Angeles area. State and Federal regulations that limit the Lead content of gasoline have resulted, and will continue to result, in a gradual decrease in Lead emissions.

Based on the Federal regulations and information about past and projected national gasoline sales and assuming that Lead concentrations decrease proportionally with automotive Lead emissions, EPA has calculated critical Lead concentrations for several base and attainment years. These were published in a July 1983 draft report entitled *Updated Information on Approval and Promulgation of Lead Implementation Plans* prepared for the EPA Office of Air Quality Planning and Standards, Control Programs Development Division, Research Triangle Park, N.C. If the highest Lead concentration for a given base year/attainment year combination is less than the critical value of that combination, EPA assumes that the standard will be attained by the attainment date. Since 1978, Los Angeles had a worst-case quarterly concentration of 3.44 micrograms per cubic meter (ug/m^3), which occurred in 1980. The primary and secondary National Ambient Air Quality Standard for Lead is 1.5 ug/m^3 maximum arithmatic mean averaged over a calendar quarter. EPA has determined that the "highest lead concentration" of 3.44 ug/m^3 is slightly above the critical concentration calculated for an attainment date of 1985. However, use of the "critical lead concentrations" in the July 1983 draft report is of questionable value for Los Angeles, since California had different lead phasedown requirements from the Federal Program in the 1980 base year, and will have different requirements again after September 30, 1984.

During the 1980 base year, California's lead phasedown standard for large refiners was 0.4 grams per total gallon of gasoline (gptg) and 1.4 gptg for small refiners. After September 30, 1984, the California Lead content in fuel requirement is reduced from the current 1.1 grams per gallon of leaded gasoline (gplg) to 0.8 (gplg); compared the Federal Standard of 1.10 gplg.

Based on information available to the Agency (which has been placed in the docket) on past and projected lead

usage in California under its lead phasedown program EPA believes that a greater proportional reduction in lead usage will occur in California than nationally during the 1980–1985 period, and that the State will be able to demonstrate attainment of the lead ambient standard in Los Angeles by 1985.

EPA Actions

The State of California has completed a more sophisticated analysis of attainment in the Los Angeles area and has agreed to submit that analysis and the final State Lead Phase Down program. This action proposes to approve that draft submittal contingent on the State's submission of a final SIP revision that contains the revised demonstration of attainment and the final State Lead Phase Down Program.

Today's **Federal Register** action is being processed concurrently with State action to submit the Lead material as a SIP revision. In order to expedite the rulemaking process EPA is proposing action prior to State submittal of final State regulations. While final revisions to the SIP may have been submitted to EPA by the time of publication of this notice, none were received in time to be reviewed and discussed in today's notice.

Following the State's adoption and submittal of the SIP revisions, EPA will consider public comments received and proceed directly to a notice of final rulemaking on the revisions discussed in today's notice.

The Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: December 16, 1983.

Charles W. Murray,

Acting Regional Administrator.

[FR Doc. 83-34607 Filed 12-30-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AW 403PA; A-3-2500-3]

Proposed Approval of Revisions to the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted draft revisions, including draft Consent Agreements for each of the three lead smelters, to its State Implementation Plan (SIP) for lead (Pb) and has requested that EPA concurrently process these revisions.

The revisions consist of a narrative portion, draft Consent Agreements, and technical/modeling analyses for each smelter operation. The three smelters are General Battery Corporation (GBC), Laureldale, Berks County; Tonolli Corporation, Nesquehoning, Carbon County; and, East Penn Manufacturing Corporation, Lyons, Berks County.

EFFECTIVE DATE: Comments must be submitted on or before March 5, 1984.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch (3AW11), Curtis Bldg., Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: Ms. Eileen M. Glen.

Pennsylvania Dept. of Environmental Resources, Bureau of Air Quality, 18th Floor, Fulton Bank Building, 200 N. 3rd Street, Harrisburg, PA 17120, Attn: Mr. James Salvaggio.

All comments on the proposed revisions submitted within thirty days of publication of this notice will be considered and should be addressed to Mr. H. Glenn Hanson, Chief of the Pennsylvania-West Virginia Section at the EPA, Region III address listed above. Please reference the EPA Docket Number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen M. Glen at the EPA, Region III address or telephone 215/597–8187.

SUPPLEMENTARY INFORMATION: .

Background

Pursuant to section 109 of the Clean Air Act, 42 U.S.C. 7409, EPA promulgated primary and secondary national ambient air quality standards for lead on October 5, 1978 (43 FR 46246). Under section 110(a)(1), 42 U.S.C. 7410(a)(1), within 9 months of this promulgation each state was required to submit a State Implementation Plan ("SIP") to provide for attainment and maintenance of the lead standards.

Under section 110(a)(2), 42 U.S.C. 7410(a)(2), each SIP must provide for attainment of a primary standard "as expeditiously as practicable, but in no case later than three years from the date of approval of such plan." Under section 110(e), 42 U.S.C. 7410(e) a state may request a two-year extension of this three-year deadline if it demonstrates that necessary technology will not be available soon enough to provide for attainment within three years.

EPA promulgated regulations establishing specific requirements for lead SIPs on October 5, 1978 (43 FR 46264). These regulations were codified as CFR 51.80–51.87. They supplement more general SIP requirements codified in 40 CFR Part 51, Subpart 3, and include a requirement that the attainment demonstration as it relates to significant point sources of lead be based on dispersion modeling. 40 CFR 51.84 (1983).

On September 30, 1982, the Commonwealth submitted a lead SIP demonstrating attainment in eight of the eleven state air quality control areas. EPA approved this submittal on October 12, 1983 at 48 FR 46309. The remaining areas are the areas in which three of Pennsylvania's lead smelters are located.

SIP Submittal

The proposed revisions were submitted on December 2, 1983. By letter dated November 21, 1983, Mr. Nicholas DeBenedictis, Secretary, Pennsylvania Dept. of Environmental Resources, requested that EPA process the proposed revisions concurrently with the Commonwealth.

At the Commonwealth's request, EPA issued a contract to Radian Corporation in June 1983 to study the proposed controls at these three smelters and to develop the modeling analysis and control strategy demonstrations. The Radian reports are included in the SIP appendices.

The Radian reports do not demonstrate attainment of the Pb NAAQS even after the proposed controls are installed. This conclusion has been caveated by Radian for several reasons. First, at GBC and Tonolli, on-site meteorological data is not available so Radian used one year of Reading airport data for GBC and one year of Allentown airport data for Tonolli. EPA modeling policy requires the use of five years of meteorological data when off-site data is being used. Furthermore,

these plants are located in complex terrain and the airport data may not adequately describe the local terrain induced meteorological conditions that occur at the plant sites. This could substantially affect the location and magnitude of the predicted maximum concentrations reported by Radian.

For the East Penn report, Radian used one year of on-site data but it was not quality assured.

1. East Penn Manufacturing Corp., Lyons, Berks County—the Company is required to install and maintain an on-site ambient monitoring network. This data, pre-installation of controls, will be used as background data in the revised modeling analysis. The draft Consent Agreement requires the maintenance of existing controls as well as the installation of the following control measures:

a. Battery breaking and agglomerator furnace buildings ventilated through baghouses.

b. Slag storage area enclosed and ventilated through a baghouse.

c. In the battery breaking, agglomerator furnace and slag storage buildings, all building openings closed, materials transferred through loading chutes and traffic restricted to entrances equipped with solid doors.

d. The undercarriages of all "in plant" vehicles routinely washed to remove dust.

e. All inplant roads paved and routinely cleaned with either brush or regenerative type road sweepers.

f. Dust suppressant routinely applied to all road shoulders and exposed yard areas.

g. Low speed limits imposed and strictly enforced on all "in plant" roadways.

The installation of these control measures by May 31, 1986, in combination with the existing control measures, will result in a level of control at the plant that is at least RACT for secondary lead smelters.

In addition, the draft Consent Agreement requires that all horizontal and downward discharge vents on significant sources be changed to vertical vents or stacks, and stack heights on all significant sources be increased to "Good Engineering Practice." EPA notes that as a result of a recent Court of Appeals decision remanding EPA's stack height regulations (*Sierra Club, et al.* v. *EPA, et al.*, No. 82–1384 (D.C. Cir. Oct. 11, 1983)), it is unclear how much credit may be taken in developing a control strategy or in demonstrating attainment for stack height increases at this smelter.

Because the Radian report indicates that this area may not attain the Pb NAAQS even after controls, the Commonwealth has committed to: (a) Obtain the data necessary to refine the attainment demonstration; (b) re-evaluate the adequacy of the control strategy approximately one year after implementation of the control measures specified above; (c) require emission reductions beyond RACT, if necessary, to achieve the NAAQS; and (d) submit to EPA by December 31, 1987 a SIP supplement (i) documenting the re-evaluation of the control strategy and (ii) specifying, if necessary, the emission control measures beyond RACT that the East Penn Manufacturing Corporation will implement to achieve the NAAQS.

To support this commitment the draft Consent Order and Agreement requires the East Penn Manufacturing Corporation:

1. To Implement all RACT for a secondary lead smelter,

2. To operate and maintain a meteorological measurement network at the plant,

3. To operate and maintain an ambient lead measurement network surrounding the plant,

4. To submit qualtiy assurance plans to the Department of Environmental Resources for the meteorological and ambient lead measurement networks,

5. To develop a list of additional control measures that could be implemented to further reduce ambient lead concentrations, and

6. To implement sufficient additional emission control measures, if necessary, to achieve the lead NAAQS.

The data obtained from the ambient lead and meteorological measurement networks will be used to re-evaluate the adequacy of the SIP after implementation of RACT. This re-evaluation will include a comparison of dispersion model predicted concentrations with ambient lead measurement. This comparison is critical because of the uncertainty associated with: (a) Quantifying the residual emissions from the enclosure buildings; (b) quantifying fugitive lead emissions from other sources at the plant; and (c) performing dispersion modeling.

Pennsylvania also will attempt to improve the quantification of all residual emissions at the plant and will investigate dispersion and rollback modeling and other techniques to determine the most accurate basis for the evaluating the adequacy of the control strategy. If additional emission reductions are determined to be necessary, the East Penn Manufacturing Corporation will be required to install the appropriate controls as expeditiously as practical but not later than the two-year attainment extension permitted under section 110(e) of the Clean Air Act (The basis for this extension is discussed below).

2. General Battery Corp. Laureldale, Berks County—PaDER has proposed a Consent Order and Agreement with GBC, as part of the SIP, which requires the maintenance of existing controls and the installation of the following control measures:

a. Enclosure of the slag storage and charge storage areas with ventilation through a fabric dust collector.

b. Ventilation of the smelter building through a high-efficiency fabric filter.

c. Ventilation of the reverberatory furnace through the charge material fabric filter system.

d. Enclosure of the slag cooling and storage building with ventilation through a fabric dust collector

e. Enclosure of the battery breaking area with ventilation through a baghouse.

f. In all ventilated buildings, all building openings closed, materials transferred through loading chutes and traffic restricted to entrances equipped with solid doors.

g. All inplant roads paved and cleaned with either brush or regenerative type road sweepers.

h. Dust suppressant applied to all road shoulders and exposed yard areas on a routine basis.

i. Low speed limits imposes and strictly enforced on all inplant roadways.

The installation of these control measures by April 1, 1986, in combination with the existing control measures result in a level of control at the plant that is at least RACT for secondary lead smelters.

In addition, the draft Consent Agreement requires that all horizontal and downward discharge vents on significant sources be changed to vertical vents or stacks, and stack heights on all significant sources be increased to "Good Engineering Practice." EPA notes that as a result of a recent Court of Appeals decision remanding EPA's stack height regulations *Sierra Club, et al.*v. *EPA, et al.*, No. 82–1384 (D.C. Cir. Oct. 11, 1983)), it is unclear how much credit may be taken in developing a control strategy or in demonstrating attainment for stack height increases at this smelter.

An analysis was performed by the Radian Corporation of the residual emissions that would be present at the plant after the implementation of control measures similar to Items a through e above. A copy of the Radian analysis is attached as Appendix B to the SIP. The

Radian analysis indicates that the control measures specified in Items a through e may not be sufficient to achieve the lead NAAQS. This conclusion is based on Radian's best judgments on fugitive emission rates, building design, lead-in-air concentrations, air exchange rates and meteorological data.

Although Radian used the best available information, there are four noteworthy points associated with the adequacy of the analysis. First, on-site meteorological data is not available. Therefore, Radian used one year of "off-site" meteorological data from the Reading Airport in the dispersion modeling analysis. The General Battery Corporation plant, however, is located in complex terrain and the application of the Reading Airport data may not adequately describe the local terrain induced meteorological conditions that occur at the plant site. This could substantially affect the location and magnitude of the predicted maximum lead concentration reported in the Radian report.

The second point concerns the estimated lead emission rates, controlled and uncontrolled, from the General Battery plant. Fugitive emissions are a major contributor to plant lead emissions. However, *all* fugitive lead emission rates are rough estimates and may be inaccurate by an order of magnitude or greater. Likewise the amount of residual emissions after the implementation of the control measures is very difficult to quantify. Although the control measures analyzed will substantially reduce lead emissions from the plant, insufficient data is available prior to implementation of the control measures to precisely estimate the residual emissions. Major problem areas are estimates of the lead-in-air concentration that will occur inside the buildings and the air exchange rate with the ambient air outside the buildings. These estimates are critical in determining the residual lead emissions and the resultant ambient concentrations.

A third point is that the General Battery Corporation believes that the Radian analysis substantially overestimates the point source emissions. General Battery states that improvements in the point source controls have been made over the past several years and these improvements substantially reduce the amount of lead the plant emits through point sources. Stack tests were not performed to confirm the new emission rates and Radian was not made aware of the improvements.

The fourth point concerns measures f through i and the measures related to stack and vent configuration. These are control measures that Radian identified as additional controls that could possibly be applied to the General Battery plant. These types of controls were suggested by Radian because they have been used successfully on other sources at the General Battery plant and at other facilities. The emission reductions that would result from implementation of these control measures were not considered in the Radian analysis.

In recognition of these points, Pennsylvania commits: (a) To obtain the data necessary to refine the attainment demonstration; (b) to re-evaluate the adequacy of the control strategy approximately one year after implementation of the control measures identified in Items a through i above the measures related to stack and vent configuration; (c) to require emission reductions beyond RACT, if necessary, to achieve the NAAQS; and (d) to submit to EPA by December 31, 1987 a SIP supplement (i) documenting the re-evaluation of the control strategy and (ii) specifying, if necessary, the emission control measures beyond RACT the General Battery Corporation will implement to achieve NAAQS. To support this commitment the draft Consent Order and Agreement requires the General Battery Corporation:

1. To implement all RACT for its secondary lead smelter,
2. To operate and maintain a meteorological measurement network at the plant,
3. To operate and maintain an ambient lead measurement network surrounding the plant,
4. To perform DER approved stack tests on all appropriate point sources,
5. To develop a list of additional control measures that could be implemented to further reduce lead emissions, and
6. To implement sufficient additional emission control measures, if necessary, to achieve the lead NAAQS.

The data obtained from the ambient lead and meteorological measurement networks will be used to reevaluate the adequacy of the SIP after implementation of RACT. This reevaluation will include a comparison of dispersion model predicted concentrations with ambient lead measurements. This comparison is critical because of the uncertainty associated with: (a) Quantifying the residual emissions from the enclosure buildings; (b) quantifying fugitive lead emissions from other sources at the plant; and (c) performing dispersion modeling in complex terrain.

Pennsylvania also will attempt to improve the quantification of all residual emissions at the plant and will investigate disperson and rollback modeling and other techniques to determine the most accurate basis for evaluating the adequacy of the control strategy. If additional emission controls are determined to be necessary, the General Battery Corporation will be required to install the appropriate controls as expeditiously as practical but not later than the two-year attainment extension permitted under section 110(e) of the Clean Air Act. (The basis for this extension is discussed below.)

3. Tonolli Corp., Nesquehoning, Carbon County—DER has negotiated a Consent Order and Agreement, Appendix A to the SIP, which requires the maintenance of existing controls and the installation of the following control measures:

a. Enclosure of the used battery storage, battery breaking, crushed battery storage, and slag storage areas; and

b. Removal of the plastic storage pile.

The installation of these control measures by May 31, 1986, in combination with the existing control measures results in a level of control at the plant that is at least Reasonably Available Control Technology (RACT) for secondary lead smelters.

An analysis of the residual emissions that would occur at the plant after the implementation of the additional control measures was performed by the Radian Corporation. A copy of the Radian analysis is attached as Appendix B to the SIP. The Radian analysis indicates that implementation of the type of controls proposed may result in attainment of the National Ambient Air Quality Standards. This conclusion is based on Radian's "best available judgments" on fugitive emission rates, building design, lead-in-air concentrations, air exchange rates and meteorological data.

Although Radian used the best available information, there are two noteworthy points associated with the adequacy of the analysis. First, on-site meteorological data is not available. Therefore, Radian used one year of "off-site" meteorological data from the Allentown Airport in the dispersion modeling analysis. The Tonolli Corporation plant, however, is located in complex terrain and the application of the Allentown data may not adequately describe the meteorological conditions that occur at the plant site.

This could substantially affect the location and magnitude of the predicted maximum lead concentration reported in the Radian report.

The second point concerns the estimated lead emission rates, controlled and uncontrolled, from the Tonolli plant. Fugitive emissions are by far the major contributor to plant lead emissions. However, all fugitive lead emission rates are rough estimates and may be inaccurate by an order of magnitude. Likewise the amount of residual emissions after the implementation of the control measures is very difficult to quantify. Although the enclosure building will substantially reduce lead emissions from the plant, insufficient data is available prior to construction of the building to precisely estimate the residual emissions. Major problem areas are estimates of the lead-in-air concentration that will occur inside the building and the air exchange rate with the ambient air outside the building. These estimates are critical in determining the residual lead emissions and the resultant ambient concentrations.

In recognition of these points, Pennsylvania commits: (a) To obtain the data necessary to refine the attainment demonstration; (b) to reevaluate the adequacy of the control strategy approximately one year after implementation of the additional control measures; (c) to require emission reductions beyond RACT, if necessary, to achieve, and maintain the NAAQS; and (d) to submit to EPA by December 31, 1987 a SIP supplement (i) documenting the reevaluation of the control strategy and (ii) specifying, if necessary, the emission control measures beyond RACT that the Tonolli Corporation will implement to achieve the NAAQS.

To support this commitment the Consent Order and Agreement requires the Tonolli Corporation to operate and maintain ambient lead and meteorological measurement networks at the plant. The data obtained from these networks will be used to reevaluate the adequacy of the SIP after the construction of the enclosure building and the removal of the plastic storage pile. This reevaluation will include a comparison of dispersion model predicted concentrations with ambient lead measurements. This comparison is critical because of the uncertainty associated with: (a) Quantifying the residual emissions from the enclosure building; (b) quantifying fugitive lead emissions from other sources at the plant; and (d) performing dispersion modeling in complex terrain.

In general, Pennsylvania will investigate dispersion and rollback modeling and other techniques to determine the most accurate basis for evaluating the adequacy of the control strategy. If additional emission reductions are determined to be necessary, the Tonolli Corporation will be required to install the appropriate controls as expeditiously as practical but not later than the two-year attainment extension permitted under section 110(e) of the Clean Air Act. (The basis for this extension is discussed below.)

Further, should a measured violation of the ambient lead NAAQS occur after the construction of the enclosure building and removal of the plastic storage pile, the Consent Order and Agreement requires the company to install air pollution control equipment on the enclosure building or institute equivalent control measures.

EPA Evaluation

EPA has reviewed the Commonwealth's preliminary submittal including the Radian reports and draft Consent Orders. We believe if the proposed control measures are installed in accordance with the schedules specified and if the additional studies are performed, that the proposed SIP revisions are approvable.

The State indicated in its draft SIP that a two-year extension may be needed to attain the NAAQS for lead for each of the three-smelter areas. EPA is proposing to approve an extension of up to two years. The draft plan relies on measures that constitute reasonably available control technology (RACT), but the plan does not actually demonstrate attainment, and the State may need to develop and implement measures that are beyond RACT. Neither EPA nor the State will be able to identify such measures without further study. Therefore, an extension appears to meet the requirements of section 110(e) of the Clean Air Act (42 U.S.C. 7410(e)) and EPA's regulations (40 CFR 51.30 (1983)). The basis for granting this extension is discussed in a technical support document in the SIP docket. EPA notes that the Governor must officially request an extension of up to two years for these areas when the State submits its final SIP to EPA.

The reader should be aware that the material submitted by the Commonwealth is "draft" and the Consent Orders and Agreements have not yet been signed by the companies involved. After these Agreements have been signed by the Commonwealth and the companies, DER will hold public hearings on the SIP. The final SIP revisions, including the signed Consent Orders, must be submitted to EPA before we can make a final decision on the acceptability of the SIP and publish a final rulemaking. Should any portion of the draft SIP be substantially changed prior to the final submittal, EPA will issue an additional public notice fully describing these changes. EPA must take final action on this SIP by August 1, 1984 (*See* **Federal Register** of August 10, 1983, 48 FR 36250).

Administrative Procedures

The public is invited to submit to the address stated above, comments on the proposed submittal as discussed above. The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air Pollution Control, Ozone, Sulfur Oxides, Nitrogen Dioxide, Lead, Particulate Matter, Carbon Monoxide, Hydrocarbons.

Authority: Sections 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: December 8, 1983.

Stephen R. Wassersug,

Acting Regional Administrator.

[FR Doc. 83-34853 Filed 12-30-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50508 FRL; 2432-5]

Dicarboxylic Acid Monoester; Proposed Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), which

would require persons to notify EPA at least 90 days before manufacturing, importing, or processing a substance for a "signifcant new use." EPA is proposing that the following be designated as significant new uses of dicarboxylic acid monoester (generic name): (1) Manufacture in the United States; (2) processing without certain personal protective equipment; and (3) distribution without certain label statements. This substance was the subject of premanufacture notice (PMN) P83–255 and a TSCA section 5(e) Consent Order issued by EPA. The Agency is concerned that this chemical substance may present unreasonable risks to human health if the defined new uses occur. These new uses were not allowed under the section 5(e) Consent Order.

DATE: Written comments should be submitted by March 5, 1984.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, D.C. 20460

Comments should include the docket control number OPTS–50508. Non-confidential comments and sanitized versions of confidential comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, toll free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section (5)(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same statutory requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 (48 FR 21722, May 13, 1983). In particular, these include the information submission requirements of section 5(d)(1) and section 5(b), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f) of TSCA. If EPA does not take regulatory action under sections 5, 6, or 7 to control a substance on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain its reasons for not taking action in the **Federal Register.** Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs would be covered by TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127, and 127.8 (amended). EPA regulations discussing section 13 and TSCA's import requirements appear at 40 CFR Part 707.

II. Background

The chemical substance covered by this proposed rule was the subject of a PMN submission which the Agency received on November 23, 1982. Notice of receipt of this submission by EPA was published in the **Federal Register** of December 3, 1982 (47 FR 54537). The PMN was designated as P83–255. The generic name of the substance is dicarboxylic acid monoester. For simplicity, this substance will be referred to by its PMN number throughout this preamble.

In the PMN submission, the following data were provided which aided in the assessment of the health effects of this substance: acute oral and dermal toxicity studies in the rat, primary skin and eye irritation studies in the rabbit, and delayed dermal sensitization study in the guinea pig. In addition, EPA obtained data on a probable metabolite of P83–255. EPA used this information to assess the potential health effects posed by P83–255.

From its review of available data and the structure of P83–255, EPA believes that P83–255 may be absorbed by all routes of exposure and may cause reproductive and teratogenic effects.

In the PMN submission, the notice submitter claimed the following as confidential business information (CBI): chemical identity, proposed import volume, processing methods, and use. The submitter stated that generically, the substance will be used "in a controlled contained use by industrial chemical workers." During the development of the section 5(e) Consent Order, the notice submitter provided information which indicated that divulging the identity of the probable metabolite for which the Agency has reproductive and teratogenic data, or divulging information regarding the conduct or specific results of these studies, would provide sufficient information to ascertain the specific chemical identity of P83–255, which the PMN submitter claimed confidential. The Agency further consulted with the PMN submitter to determine if additional information could be discussed in connection with this proposal without damaging the competitive position of the submitter. The PMN submitter believes that release of any additional information could endanger its competitive position. Therefore, EPA is unable to discuss in detail its basis for reproductive and teratogenic concerns for P83–255.

While under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding, "disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA does not believe that this rulemaking will be so impaired as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI, or other information that could cause disclosure of CBI at this time. An alternative approach would be to publish the CBI and/or information that would cause the disclosure of CBI in the final rule. The Agency specifically requests comments on options for SNUR rulemakings involving CBI.

III. Reasons for Proposing This Rule

The Agency evaluated available data and information which indicate that P83–255 may present unreasonable risks to human health. During processing and use of P83–255, there is potential for workers to be exposed to the substance via dermal and inhalational routes. EPA further believes that once absorbed, P83–255 will metabolize to a substance for which the Agency has obtained data on reproductive and teratogenic effects. These data indicate that the effects of concern may result from chronic exposures to P83–255. Using the no observed effect level (NOEL) reported in these tests and applying a safety factor of 100, the Agency determined a dose level of the metabolite below which it believes reproductive and/or teratogenic effects will not occur.

Because data used to assess the health effects were not on the substance itself but, instead, on a probable metabolite of the substance, EPA concluded that there is insufficient

information to perform a reasoned evaluation of the health effects of this substance. The Agency has determined that the substance may pose unreasonable risks to human health if manufactured, processed, used, or distributed in commerce without restriction. The Agency believes, however, that with certain protective equipment and restrictions on manufacture, processing, use, and distribution in commerce, exposure can be reduced sufficiently to mitigate health concerns. Based on these findings, EPA did not ban P83–255 but instead, chose to restrict its manufacture, processing, use, and distribution in commerce, thereby encouraging innovation and benefits to society while continuing to protect human health.

The Agency and the PMN submitter negotiated a section 5(e) Consent Order which prohibits manufacture in the United States, requires the use of specific personal protective equipment during processing of P83–255, and requires that any container of any formulation containing P83–255 be labelled with specific wording as to the possible effects of exposure to this substance until appropriate data are developed to allow a reasoned evaluation of the substance. The Order became effective on April 12, 1983.

The section 5(e) Order, by its terms, applies only to the PMN submitter. Because the section 5(e) Order does not prohibit import, P83–255 was added to the TSCA Chemical Substance Inventory when EPA received a notice of commencement of import from the submitter (April 25, 1983). As a result, other persons can begin to manufacture, import, or process P83–255 without notice to EPA and without the restrictions imposed by the section 5(e) Order. This manufacturing, importing, or processing could allow the exposures of concern to occur. Therefore, EPA is proposing to designate the following as significant new uses of P83–255 so that the Agency can review those uses before they occur: (1) Manufacture in the United States; (2) processing without certain personal protective equipment; and (3) distribution in commerce without certain label statements.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors of P83–255 are subject to similar reporting requirements and that EPA has an opportunity to review exposure and toxicity information on the substance so that, if necessary, action can be taken to ensure that persons will not be exposed to levels of the substance that are potentially hazardous. To assist EPA in making a reasoned evaluation of the potential of P83–255 to elicit reproductive and teratogenic effects in humans, the notices submitted under the SNUR should contain appropriate test data. Studies that would produce the data necessary to evaluate the potential effects of this substance are discussed below in more detail. In addition, the Agency would want to see exposure information and any available data to aid in assessing whether exposure can be adequately controlled by means other than those stated in the proposed significant new uses for P83–255.

IV. Alternatives

EPA considered other possible approaches to ensuring protection of human health. One alternative would be to promulgate a section 8(a) reporting rule for P83–255. Under such a rule, EPA could reuire any person to report to EPA before manufacturing, importing, or processing the substance. Because this substance is subject to a section 5(e) Order, the small business exemption of section 8(a) would not apply. However, the use of section 8(a) rather than SNUR authority has one major drawback. If EPA received a report under section 8(a) indicating that a person intended to manufacture, process, use, or distribute P83–255 without adhering to the restrictions, the Agency could not take action under section 5(e) as it can under a SNUR and thus would not be able to regulate the substance pending development of information. Rather, EPA would have to obtain test data after rulemaking under section 4 or, if necessary, regulate the substance under section 6. This approach would allow unnecessary risks to human health during the time needed for data development. In addition, the original PMN submitter would be at a competitive disadvantage because the section 5(e) Consent Order applies only to that company. The Agency believes that, when possible, actions taken under section 5 of TSCA should minimize unfair market effects.

The Agency has the authority to regulate substances under section 6 of TSCA. However, section 6(a) specifies that the Agency may regulate only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk to health or the environment. As stated previously, there is insufficient information to perform a reasoned evaluation of the health effects of P83–255. Therefore, the Agency cannot state at this time that P83–255 "presents or will present" an unreasonable risk of injury to health. Therefore, the Agency cannot presently use section 6 to regulate P83–255.

V. Proposed Significant New Uses

To determine what would constitute a significant new use of P83–225, EPA considered relevant information about the toxicity of the substance, likely exposures associated with processing, use, and distribution of the substance, and possible new uses. EPA considered the four factors listed in section 5(a)(2) of TSCA, particularly the extent to which a use increases the magnitude and duration of exposure of human beings to the substance. In framing the significant new uses, EPA drew directly from the restrictions outlined in the section 5(e) Order. Based on these considerations, EPA proposes to define three activities as significant new uses of P83–255:

1. Failure to require the use of gloves determined to be impervious to the substance, and/or failure to require the use of clothing to prevent dermal contact for any person involved in any processing or use operation where dermal contact may occur.

Data on a probable metabolite of P83–255 indicate that chronic exposures to P83–255 may result in reproductive and teratogenic effects. Using the reported NOEL for these effects for the metabolite and applying a safety factor of 100, the Agency calculated a dose level of the metabolite, below which reproductive and teratogenic effects are not expected to occur.

The Agency calculated worst-case inhalational exposure (saturated conditions, no or poor ventilation, and no personal protective equipment) and dermal exposure (the palm of one hand covered by P83–255 one time per day) to P83–255 during processing and use. During processing, workers could receive inhalational doses of up to .12 mg/kg/day and dermal doses of up to 78.00 mg/kg/day of P83–255, or a total daily dose of 78.12 mg/kg/day. During use, workers could receive inhalational doses of up to .046 mg/kg/day and dermal doses of up to 1.10 mg/kg/day of P83–255, or a total daily dose of 1.146 mg/kg/day.

When metabolized, the total daily dose calculated by EPA for processors is expected to result in a level of the metabolite of concern, approximately 2 orders of magnitude greater than the level at which the Agency believes reproductive and teratogenic effects will not occur. The total daily dose calculated by EPA for users is expected to result in a level of the metabolite of

concern less than 1 order of magnitude greater than the level at which the Agency believes reproductive and teratogenic effects will not occur. The use of impervious gloves and clothing is expected to reduce to negligible levels, the availability of P83–255 for dermal absorption leading to systemic effects. Therefore, with the use of impervious gloves and clothing, worst-case, total daily doses of P83–255 are calculated at .12 mg/kg/day for processors and .046 mg/kg/day for users. These levels, when metabolized will result in doses of the metabolite of concern that fall below the level at which the Agency has concern for reproductive and teratogenic effects. Therefore, EPA believes that without the use of the personal protective equipment proposed, persons would be exposed to levels of P83–255 that could potentially cause reproductive and teratogenic effects.

Since dermal contact is expected to occur only accidentally and incidentally, the Agency is not requiring any specific methods of determining whether gloves are impervious to P83–255. Instead, persons who plan to process or use P83–255 and who are required to provide impervious gloves for workers can choose to test the gloves using methods such as the ASTM standard method or its equivalent or can choose to rely on manufacturer's specifications for the type of glove they choose to use.

2. Any manufacture in the United States.

Because P83–255 was proposed only for import, the PMN submitter was not required to provide information on exposures and releases from manufacture which occur outside the United States. As a result, the Agency cannot judge the risks associated with potential manufacture of this substance in the United States. The Agency is concerned about potential exposures associated with manufacture in the United States that have not been examined. EPA has an obligation under TSCA to review thoroughly such exposure scenarios before they occur. EPA has no reason to conclude that if P83–255 were manufactured in the United States, exposure during manufacture would be lower than during processing. Therefore, allowing this use to occur may result in increased risk to a greater number of people.

3. Distribution in commerce, by any person including importers, processors, and distributors, without affixing to each container of any formulation containing P83–255, a label that includes, in letters no smaller than 10 point type, the following statements:

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WARNING! HARMFUL IF INHALED OR ABSORBED THROUGH THE SKIN.
MAY CAUSE REPRODUCTIVE EFFECTS.
- Do not get in eye, on skin, on clothing.
- Do not breathe (vapor, mist, spray, dust).
- Use with adequate ventilation.
- Wear impervious gloves and protective equipment to prevent
  contact or exposure.
- Promptly remove contaminated non-impervious clothing, wash
  before reuse.
- Discard contaminated leather shoes.
- Wash thoroughly after handling, and before eating,
  drinking, or smoking.
- Keep container closed.
FIRST AID: In case of contact
EYES: Immediately flush with water for at least 15 minutes.
SKIN: Promptly wash thoroughly with mild soap and water.
INHALATION: Remove to fresh air. If breathing is difficult,
  give oxygen.
INGESTION: If conscious, give water and induce vomiting.
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The Agency believes that labeling such as this will reinforce required precautionary measures, thereby increasing compliance. In addition, these label statements will instruct workers on proper procedures to limit risk should exposure occur. Therefore, the Agency believes that without these label statements, a greater number of people may be exposed to P83–255 for a greater duration.

VI. Recordkeeping Requirements

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing that the following records be maintained for 5 years after the date of their creation, by persons who import or process this substance subject to this proposed rule.

1. The names of persons required to wear protective clothing.

2. The name and address of each person to whom the subject substance is sold or transferred and the date of such sale or transfer.

This proposed requirement is expected to encourage compliance with this proposed rule when promulgated and to support EPA's enforcement efforts. The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult.

Section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in paragraph (h) of this proposed rule. However, as discussed above, EPA believes that such recordkeeping is necessary to implement and enforce the requirements of the SNUR effectively. EPA believes that two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 of TSCA to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements (see 40 CFR 720.78). Clearly, there is no way to determine whether a manufacturer or processor is undertaking a new use of the type in this proposed rule unless the manufacturer or processor is required to keep records of its activities to show that the new use has not occurred.

Otherwise, EPA would not be able to determine whether a violation has occurred unless the importer or processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers and processors, but in this case a section 5(e) Order is in effect for the chemical substance in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small manufacturers and processors as well. However, by its own terms, the section 5(e) Order will automatically be revoked when the SNUR goes into effect. EPA chose to write this and other section 5(e) Orders in this fashion to ensure that the original PMN submitter would be treated in the same manner as other manufacturers and processors once the SNUR is in effect.

EPA believes that revocation of the section 5(e) Order after the SNUR and its accompanying section 8(a) recordkeeping requirements go into effect would not invalidate the recordkeeping requirement for small manufacturers and processors. Congress clearly believed that small businesses should be subject to section 8(a) when the particular chemical substance in question was the subject of specific regulatory actions and findings. In this case the "may present an unreasonable risk" finding in the section 5(e) Order would remain valid even though the Agency has revoked the Order for administrative reasons.

As an alternative to the recordkeeping requirements in paragraph (h) of this proposed rule, EPA is considering making failure to keep certain records a significant new use. Thus, 90 days before any manufacturer or processor could cease keeping the specified records, it would be required to submit a notice to EPA. Any person who failed to keep the records without having notified EPA would be in violation of section 5 of TSCA and of the rule.

Another alternative being considered by the Agency would require recordkeeping by all persons importing, manufacturing, or processing a chemical substance subject to a 5(e) Order, in any fashion which does not constitute a significant new use.

VII. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) requires persons to submit a SNUR notice to EPA before they manufacture, import, or process a substance subject to a SNUR for a significant new use. The language of this proposal makes clear that manufacturers, importers, and processors are subject to SNUR notice requirements. In some past proposed SNURs, the Agency has determined that requiring both manufacturers and processors to submit SNUR notices may result in duplicative information and cause an unnecessary burden on industry. Therefore, the Agency proposed to allow manufacturers and processors to decide which party should submit what information to EPA so long as all appropriate information was submitted. The significant new uses defined in this proposed rule do not lend themselves to this type of approach. Because the proposed significant new uses put restrictions on manufacture, processing, use, and distribution, information submitted by one of the parties would most likely be dissimilar from that submitted by a different party. Therefore, in order to assess the effects resulting from these significant new uses, the Agency proposes to require any person who manufactures, imports, or processes P83–255 for a defined significant new use to submit SNUR notices.

When a manufacturer/importer sells or transfers a substance to a processor and that person processes the substance for a significant new use, both the manufacturer/importer and the processor are responsible for submitting a SNUR notice. However, EPA is proposing that only one be required to submit a notice. In this situation, that person would be the processor because he is the one most familiar with the exposures resulting from the new use. In situations where the manufacturer/importer has information important to EPA's risk assessment the Agency would encourage the two persons to make a joint submission to provide complete information. If one person did not have complete information about the substance or the use and the other person did not sumbit that information, EPA could take action under section 5(e) to regulate the new use pending submission of the information. In situations where it is not clear who should submit a SNUR notice, the Agency encourages potential SNUR notice submitters to consult EPA prior to submitting their notice.

VIII. Exemptions to Reporting Requirements

Persons who manufacture, import, process, use, or distribute in commerce, dicarboxylic acid monoester, would not be subject to the reporting requirements of this proposed rule if:

1. The substance is manufactured, imported, or processed only in small quantities solely for research and development, and the substance is manufactured, imported, or processed in accordance with the provisions of § 720.36 of the Premanufacture Notification Rule.

2. The substance is manufactured or processed only as an impurity or byproduct.

3. The substance is imported, processed, used, or distributed in commerce as part of an article.

IX. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA recognizes that since P83–255 has been added to the Inventory it may be manufactured or processed for significant new uses as defined in this proposal before promulgation of the rule. EPA has decided that the intent of section 5(a)(1)(B) can best be served by determining whether a use is "new" or "existing" as of the proposal date of the SNUR. If EPA considered uses begun during the proposal period to be "existing" rather than "new" uses, it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if P83–255 is manufactured or processed between proposal and promulgation for a proposed significant new use, the agency will still consider such uses to be "new" if they are retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who began manufacture or processing for a significant new use during the proposal period. However, this proposal puts them on notice of that potential disruption, and they proceed at their own risk. The Agency specifically requests comments on ways to minimize this disruption.

X. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The final rule will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA also intends to publish information concerning final SNURs in the TSCA Chemicals-in-Progress

Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical substance Inventory to inform persons of the existence of final SNURs through footnotes to the chemical identities of substances subject to SNURs. The footnotes would refer to an Inventory Appendix which would give a Federal Register or CFR citation of the SNUR. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNURs as an Inventory Appendix.

Any person who intends to manufacture, import, or process a substance for the first time would check the Inventory to determine if the substance is listed. If the person found that the substance is on the Inventory, but subject to a SNUR, he could determine whether he would be subject to reporting by contacting EPA or reviewing the rule. Because an updated Inventory is published only periodically, manufacturers, importers, and processors should also rely on the **Federal Register** and the TSCA Chemicals-in-Progress Bulletin. Since EPA maintains a current copy of the Inventory, any questions could be resolved by consulting EPA.

Determining whether a chemical substance is subject to a SNUR is more difficult when the identity of the chemical substance involved is confidential. In this case, the chemical identity of P83–255 was claimed confidential in the PMN. EPA is proposing to keep the specific identity of the substance confidential in the final rule. The substance would be referred to by its generic chemical name. In printed versions of the Inventory, there would be a footnote indicating that a chemical substance masked by the generic name is subject to a SNUR.

EPA is proposing that any person who intends to manufacture, import, or process a chemical substance within this generic name would be able to ask EPA whether its chemical substance is subject to the SNUR. To make such a request, the person would have to show EPA that the person has a *bona fide* intent to manufacture, import, or process the substance in question. The proces proposed for doing so is very similar to that for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(g)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules (48 FR 21722, May 13, 1983). EPA would evaluate the SNUR inquiry under the same criteria and would answer the inquiry by either informing the requester that the substance is or is not subject to the SNUR or informing the requester that it has not furnished enough information to show a *bona fide* intent to manufacture, import, or process the substance in question. (If a manufacturer or importer makes an inquiry under either § 710.7(g) of the Inventory Reporting Rules or § 720.25(b) of the Premanufacture Notification Rules and EPA informs the requester that the substance is on the Inventory, EPA will also inform the manufacturer or importer whether the substance is subject to a SNUR.)

This procedure would allow manufacturers, importers, and processors to determine whether they are subject to the rule while protecting CBI from unnecessary disclosure. An alternative approach would be to publish the specific chemical identity of the substance in the final rule. EPA is particularly interested in comments on these approaches and any further alternatives.

EPA believes that all manufacturers and importers, and most processors will know the identities of the substances they manufacture, import, or process and therefore can follow the above procedures. EPA recognizes, however, that some processors may not know the identity of substances they process and, as a result, may not know they are required to submit a SNUR notice. At the same time, manufacturers do not always know what their processors/customers do with substances supplied to them. Therefore, EPA has identified several alternative approaches to address liability of manufacturers and processors of substances subject to a SNUR.

First, EPA could hold manufacturers and importers liable if any of their customers process P83–255 for a significant new use and if a required SNUR notice has not been submitted, even if the manufacturer or importer did not know that the customer intended to process the substance for a significant new use. Manufacturers and importers could avoid liability in this situation by informing each of their customers in writing that P83–255 is subject to this SNUR and by maintaining records that verify each such customer notification. However, if a manufacturer or importer had reason to believe that a customer was processing P83–255 for a significant new use before submitting a SNUR notice, the manufacturer or importer would be required immediately to cease sales of the substance to the customer and notify EPA enforcement authorities to avoid liability. The manufacturer or importer could not resume sales of the substance to that customer until a SNUR notice had been submitted by the manufacturer, importer, or processor and the notice review had run without regulatory action by EPA.

Second, EPA could hold processors liable if they process P83–255 for a significant new use without submitting a SNUR notice, even if they did not know the identity of the substance or that the substance was subject to a SNUR. However, processors could avoid liability in this situation by asking each of their suppliers to certify in writing whether the substance is subject to a SNUR, receiving a negative response, and maintaining records of each negative response. EPA believes that many processors ask suppliers to certify that chemical substances they purchase of unknown identity are on the Inventory. Therefore, the Agency believes that processors can similarly ask suppliers whether substances are subject to SNUR notice requirements. This alternative is consistent with the reporting alternative above in which EPA proposes to require submission of SNUR notices by processors, for their significant new uses.

Third, EPA could require manufacturers and processors of this substance to notify, through a label or otherwise, any person to whom they distribute the substance that the substance is subject to this SNUR. EPA could accomplish this in one of two ways. EPA believes that, where necessary, there is inherent authority in section 5(a)(2) of TSCA to require such notification since lack of notification would impair compliance with the rule. In addition, EPA could define distribution of this substance without a notification as a significant new use; before anyone could distribute the substance without providing notification, they would have to submit a SNUR notice to EPA.

The Agency specifically requests comments on these approaches as well as on other approaches to ensure that SNUR notice requirements are followed.

XI. Required Information

A. General

The Agency proposes that SNUR notice submitters use the premanufacture notice form and follow the premanufacture notice rules which were published in the **Federal Register** of May 13, 1983 (48 FR 21722), except as otherwise specified in this SNUR. EPA urges SNUR notice submitters to provide

detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance including information on risks posed by the substance compared to risks posed by its substitutes.

B. Test Data

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in his possession or control and to describe any other data known to or reasonably ascertainable by him. However, in view of the potential health risks that may be posed by a significant new use of P83–255, EPA encourages possible SNUR notice submitters to conduct tests that would allow a more reasoned evaluation of the substance's potential to elicit reproductive and teratogenic effects in humans. A more reasoned evaluation of these effects could be made using data generated in rodent teratology and 2-generation reproduction studies with P83–255. Depending on EPA's calculations of the risks involved, if a SNUR notice is submitted for any of the defined significant new uses for P83–255 without such test data or other information to demonstrate that exposure is adequately controlled by means other than those specified in these proposed significant new uses, EPA could take action under section 5(e) similar to that already taken for the PMN submitter.

Any testing should be conducted according to good laboratory practices and through the use of methodologies acceptable to the Agency. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of this substance. As part of an optional prenotice consultation, EPA will discuss the test data or other information it believes necessary to evaluate a significant new use of P83–255. EPA encourages persons to consult with the Agency before selecting a protocol for testing P83–255.

XII. EPA Review of Notice

EPA proposes to review SNUR notices the same way it reviews PMNs and to subject such notices to the procedures in the final premanufacture notice rules. Under section 5(d)(2) of TSCA, EPA will publish a summary of each notice in the Federal Register. The review period for the notice will run 90 days from EPA's receipt of the notice. Under TSCA section 5(c), this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for the significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for the chemical substance without information sufficient to judge the toxicity and exposure potential of the substance, EPA may issue a section 5(e) Order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit the significant new use if it presents or will present an unreasonable risk to health or the environment. EPA may also refer information in SNUR notice to other EPA offices and other Federal agencies. If EPA does not take action under sections 5, 6, or 7 of TSCA to control the new use of the substance, section 5(g) requires the Agency to explain in the Federal Register its reasons for not taking action.

XIII. Modification of Reporting Requirements

The Agency believes that there may be circumstances that will lead to modification of the new use descriptions. When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is nesessary. If, after review, EPA allows the use to occur uncontrolled, the use arguably should not be subject to further reporting. EPA will consider amending the SNUR to modify or eliminate the new use description if the Agency decides that a change is warranted or that further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to eliminate other use descriptions if it determines, based on available data, that the substance no longer presents health or environmental concerns for those uses.

XIV. Proposed Rule Language

This proposed rule is structured as follows. The chemical substance and defined significant new uses are described in paragraph (a) of this proposal. In paragraph (b) EPA proposes definitions applicable to this section. Paragraph (c) sets forth the procedures for determining whether a substance is subject to the rule. Paragraph (d) describes the persons who must report. The notice requirements and procedures for reporting under this proposal are stated in paragraph (e). Paragraph (f) clarifies which exemptions of TSCA section 5(h) apply in this SNUR. In paragraph (g) the Agency has described enforcement provisions applicable to this proposal. In paragraph (h) EPA describes recordkeeping requirements.

EPA invites comments on all aspects of this proposed rule language.

XV. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 or of any rule promulgated under section 5. Manufacture or processing of a chemical substance for a significant new use without prior submission of a SNUR notice, would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

(1) Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of a SNUR.

(2) Fail or refuse to permit entry or inspection as required by section 11.

(3) Fail or refuse to permit access to or copying of records, as required by TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of a SNUR may be subject to penalties calculated as if they never filed their notices. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of a SNUR could lead to the imposition of criminal penalities of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

XVI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for P83–255. A summary of

the economic analysis of the possible outcomes as a result of promulgation of this proposed SNUR is presented below. The Agency's complete economic analysis is available from the public file.

Subsequent to proposal of the SNUR, the Agency believes there are five possible outcomes for companies that would manufacture or process P83–255: (1) Use protective equipment when processing or using P83–255 and label containers as required if and when the substance is distributed in commerce, therefore, not triggering the SNUR; (2) choose not to manufacture in the United States, therefore not triggering the SNUR; (3) submit a SNUR notice proposing domestic manufacture; (4) submit a SNUR notice with information showing other methods of controlling exposure that will mitigate EPA's concerns; and (5) submit a SNUR notice with the results of the recommended testing completed or be prepared to respond to a section 5(a) Order requiring the testing. The costs of these possible outcomes are summarized below.

If a company decides to process and use P83–255 under the terms of the proposed SNUR it will not incur the cost of submitting a SNUR notice. The only cost to the company will be the cost of the protective equipment and recordkeeping. The present value of the cost of providing protective equipment (imprevious gloves and clothing to prevent dermal contact) over a 10-year period for 5 workers is estimated to range between $1,180 (assuming workers wear imprevious gloves and regular long sleeve and long pants workclothing) to $1,398 (assuming workers wear the required impervious gloves and choose also to use impervious apron and armcovers). The present value of the cost of maintaining the records required in this proposed rule for 10 years is $1,460.

Given the low cost of the required protective equipment and recordkeeping, it is unlikely that a company would file a SNUR notice proposing alternative methods of controlling exposure. The cost of providing the required protective equipment (impervious gloves for five workers over a ten-year period and maintaining the required records ($2,640) is within the estimated range of the cost of filing a SNUR notice ($1,375 to $7,950).

It is theoretically possible that a company could file a SNUR notice which would include the results of the recommended testing (teratogenic effects and reproductive/fertility effects). A company would incure the cost of filing a notice ($1,375 to $7,950), performing the tests ($166,000 to $256,000), the cost of delay (probably a delay in profits of 0.5 to 1.5 years), and the cost of regulatory follow-up. Given these costs, the Agency does not expect that this option will be chosen.

If domestic manufacture of P83–255 becomes a viable business strategy, a SNUR notice would be required from the company proposing domestic manufacture. A company would incur the cost of filing a notice ($1,375 to $7,950), the cost of delay (which may or may not impact profit since import could continue), and the cost of regulatory follow-up, if any.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, EPA believes that the cost will be low. Even if EPA received 50 SNUR notices, the direct cost of the proposed rule would be under one million dollars. Further, while the expense of a notice and the uncertainty of possbile EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation which has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small businesses. EPA is unable to predict realistically whether parties affected by this proposed rule will be small businesses. However, the Agency believes that few manufacturers or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this proposed rule might be significant for some small businesses, the number of such businesses affected would not be substantial.

C. Paperwork Reduction Act

Information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 350 *et seq.*) and have been assigned OMB control number 2070–0012.

XVIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS—50508). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The PMN for this substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) Consent Order.
4. The toxicity support document for the section 5(e) Order.
5. The proposed SNUR for this substance.
6. The toxicity support document for the SNUR.
7. The economic support document for the SNUR.

A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E–107, 401 M St., SW., Washington, D.C.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

XIX. Confidential Business Information

Any person who submits comments which the person claims as confidential business information must mark the comments as "confidential." Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous Materials, Recordkeeping

and reporting requirements, Significant new uses.

Dated: December 21, 1983.

William D. Ruckelshaus,
Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that proposed Part 721 of Chapter I of Title 40 be amended by adding § 721.110 to read as follows:

§ 721.110 Dicarboxylic acid monoester.

This section identifies activities with respect to a certain chemical substance which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies procedures for reporting on that substance.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The following chemical substance, referred to by its premanufacture notice number and generic name, is subject to reporting under this section for the significant new uses listed in paragraph (a)(2) of this section: P83–255, dicarboxylic acid monoester.

(2) The following are significant new uses subject to reporting:

(i) Any manufacture in the United States.

(ii) Failure to require the use of gloves determined to be impervious to the substance, and/or failure to require the use of clothing to prevent dermal contact for any person involved in any processing or use operation where dermal contact may occur. (Gloves may be determined to be impervious to P83–255 either by testing the gloves under the conditions of use or by relying on manufacturer's specifications.)

(iii) Distribution in commerce, by any person including importers, processors, and distributors, without affixing to each container of any formulation containing P83–255, a label that includes, in letters no smaller than 10 point type, the following statements:

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WARNING!  HARMFUL IF INHALED OR ABSORBED THROUGH THE SKIN.
MAY CAUSE REPRODUCTIVE EFFECTS.
- Do not get in eye, on skin, on clothing.
- Do not breathe (vapor, mist, spray, dust).
- Use with adequate ventilation.
- Wear impervious gloves and protective equipment to prevent
  contact or exposure.
- Promptly remove contaminated non-impervious clothing, wash
  before reuse.
- Discard contaminated leather shoes.
- Wash thoroughly after handling, and before eating,
  drinking, or smoking.
- Keep container closed.
FIRST AID:  In case of contact
EYES:  Immediately flush with water for at least 15 minutes.
SKIN:  Promptly wash thoroughly with mild soap and water.
INHALATION:  Remove to fresh air.  If breathing is difficult,
  give oxygen.
INGESTION:  If conscious, give water and induce vomiting.
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(b) *Definitions.* Definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section unless otherwise specified in this section. Definitions in § 720.3 of this Chapter apply to this section unless otherwise specified in this section. In addition, the following definitions apply:

(1) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(2) [Reserved]

(c) *Determining whether a chemical substance is subject to this section.*

(1) A person who intends to manufacture, import, or process a chemical substance which is described by the generic name in paragraph (a) of this section may ask EPA whether the substance is subject to this section. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance for commercial purposes.

(2) To establish a *bona fide* intent to manufacture, import, or process a chemical substance, the person who proposes to manufacture, import, or process the chemical substance must submit to EPA:

(i) The specific chemical identity of the chemical substance that the person intends to manufacture, import, or process.

(ii) A signed statement that the person intends to manufacture, import, or process that chemical substance for commercial purposes.

(iii) A description of the research and development activities conducted to date, and the purpose for which the person will manufacture, import, or process the chemical substance.

(iv) An elemental analysis.

(v) Either an X-ray diffraction pattern (for inorganic substances), a mass spectrum (for most other substances), or an infrared spectrum of the particular chemical substance, or if such data do not resolve uncertainties with respect to the identity of the chemical substance, additional or alternative spectra or other data to identify the substance.

(3) If an importer or processor cannot provide all the information required in paragraph (c)(2) of this section because it is claimed as confidential business information by the importer's or

processor's manufacturer or supplier, the manufacturer or supplier may supply the information directly to EPA.

(4) EPA will review the information submitted by the proposed manufacturer, importer, or processor under this paragraph to determine whether it has a *bona fide* intent to manufacture, import, or process the chemical substance. If necessary, EPA will compare this information either to the information requested for the confidential chemical substance under § 710.7(e)(2)(v) of this Chapter or the information requested under § 720.85(b)(3)(iii) of this Chapter.

(5) If the proposed manufacturer, importer, or processor has shown a *bona fide* intent to manufacture, import, or process the substance and has provided sufficient unambiguous chemical identity information so EPA can make a conclusive determination as to the identity of the substance, EPA will inform the proposed manufacturer, importer, or processor whether the chemical substance is subject to this section.

(6) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance that the substance is subject to this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(7) EPA will answer an inquiry on whether a particular chemical substance is subject to this section within 30 days after receipt of a complete submission under paragraph (c)(2) of this section.

(d) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process for commercial purposes, the substance identified in paragraph (a) of this section for a significant new use defined in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this Chapter, and this section. Any notice of import must be submitted by the principal importer.

(e) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing the significant new use. The submitter must comply with any applicable rquirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1) of the Act. The notice must be submitted on the notice form in Appendix A to Part 720 of this Chapter and must comply with the requirements of Part 720 of this Chapter, except to the extent that they are inconsistent with this section. EPA will process the notice in accordance with the procedures in Part 720 of this Chapter, except to the extent that they are inconsistent with this section.

(f) *Exemptions and exclusions.* The chemical substance identified in paragraph (a) of this section is not subject to the notification requirements of this section if:

(1) The substance is manufactured, imported, or processed only in small quantities solely for research and development, and the substance is manufactured, imported, or processed in accordance with the provisions of § 720.36 of this Chapter.

(2) The substance is manufactured, imported, or processed only as an impurity or byproduct.

(3) The substance is imported, processed, used, or distributed in commerce as part of an article.

(g) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit access to or copying of records, as required under section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection, as required under section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirement of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

(h) *Recordkeeping.* Manufacturers and processors who manufacture or process the substance listed in paragraph (a) of this section, must maintain the following records for five years from the date of their creation:

(1) The names of persons required to wear protective clothing.

(2) The name and address of each person to whom the substance is sold or transferred and the date of such sale or transfer.

[FR Doc. 83-34803 Filed 12-30-83; 8:45 am]
BILLING CODE 6560-60-M

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40 CFR Part 721

[OPTS-50507; FRL 2429-1]

Toxic Substances; Derivative of Tetrachloroethylene; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a Significant New Use Rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), which would require persons to notify EPA at least 90 days before manufacturing, importing, or processing a substance for a "significant new use." EPA is proposing that certain uses of a substance known generically as a derivative of tetrachloroethylene be designated as significant new uses. The substance was the subject of premanufacture notice (PMN) P-82-684 and a TSCA section 5(e) Consent Order issued by EPA. The Agency is concerned that this substance may present an unreasonable risk of injury to human health if the defined new uses occur. These new uses were not allowed under the section 5(e) Consent Order.

DATES: Written comments should be submitted by March 5, 1984.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50507. Non-confidential comments and sanitized versions of confidential comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St.,

SW., Washington, DC 20460, toll free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) which are interpreted at 40 CFR Part 720 (48 FR 21722, May 13, 1983). In particular, these include the information submission requirements of section 5(d)(1) and section 5(b), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f). If EPA does not take regulatory action under sections 5, 6, or 7 to control a substance on which it has received a SNUR notice, section 5(g) requires the Agency to explain its reasons for not taking action in the **Federal Register**. Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs would be covered by TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127, and 127.8 (amended). EPA regulations discussing section 13 and TSCA's import requirements appear at 40 CFR Part 707.

II. Substance Subject to Proposed SNUR

The substance subject to this proposed rule was the subject of a PMN. The generic name is derivative of tetrachloroethylene. This substance will be referred to by its PMN number, P–82–684, throughout this preamble.

III. Background

On September 21, 1982, EPA received a PMN which the Agency designated as P–82–684. EPA issued a notice of receipt of the PMN in the **Federal Register** of September 30, 1982 (47 FR 43161). The notice submitter claimed its identity, the chemical identity, proposed use, and proposed production volume of the substance as confidential business information (CBI). The notice submitter stated in the PMN that the substance, known generically as a derivative of tetrachloroethylene, will be used as an ingredient for a a composite product. In the PMN submission, the notice submitter included test data which indicate that the substance is a moderate eye irritant, exhibits very low oral toxicity, and is not irritating to the skin. In addition, the submission included a negative Ames test for the substance.

During PMN review, the Agency identified structural analogs of the substance (the chemical identities of which are confidential), which have been tested in lifetime rodent bioassays. Most of these analogs were found to be carcinogenic in one or more species, even though the analogs, like P–82–684, were found negative in the Ames test. Further, based upon known properties of the analogs, the Agency believes that P–82–684 is likely to be readily absorded by the skin and the gastrointestinal tracts.

IV. Reasons for Proposing This Rule

EPA found that P–82–684 may present a carcinogenic risk to unprotected workers who may be exposed to the substance during manfacture and processing. The Agency, therefore, found that uncontrolled manufacture, processing, and distribution in commerce of the substance may present an unreasonable risk of injury to human health. However, because the Agency had to rely heavily on analog data, it concluded that there is insufficient information to perform a reasoned evaluation of the health effects of this substance. EPA found that a more reasoned evaluation of the carcinogenic risk posed by the substance would require data from a two-year bioassay.

However, EPA believes that use of appropriate protective equipment will protect workers from any unreasonble risk. The Agency negotiated a section 5(e) Consent Order with the notice submitter to require protective equipment until data are available to determine the risks from the substance more accurately. The Order became effective January 18, 1982 and will remain in effect until the effective date of a SNUR for that substance. The Consent Order requires the use of impervious gloves and respirators during the manufacture and processing of P–82–684.

The Agency believes that a section 5(e) Consent Order, which allows controlled commercial production of the substance, pending the development of further data, is appreciably less burdensome than a section 5(e) Order which prohibits manufacture of the substance until adequate data are submitted to EPA. In addition, such an approach protects human health by requiring adequate exposure controls pending the development of data.

However, the Order, by its terms, applies only to the notice submitter. The notice submitter has begun commercial manufacture of the substance and has submitted a Notice of Commencement of Manufacture to EPA. The Agency has added the substance to the TSCA Chemical Substance Inventory. Because the substance is on the Inventory, another person may manufacture or process the substance without any particular controls. Therefore, EPA is proposing to designate manufacture or processing of the substance without controls a significant new use that the Agency can review that use before it occurs.

Because of the CBI claims by the PMN submitter, EPA is unable to discuss in greater detail its reasons for proposing this SNUR. The Agency worked with the PMN submitter to see if additional information could be disclosed in connection with this proposed rule without damaging the competitive position of the submitter. The PMN submitter agreed to the use of a more specific form of the generic chemical identity; however, the submitter believed that release of any additional information could endanger its competitive position.

EPA has decided not to disclose any of the CBI at this time. While under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding, "disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." At present, EPA is not convinced that this proposed rule will be so impaired as to justify disclosure of CBI. However, the Agency specifically requests comments on this point and other options for SNUR rulemakings involving CBI.

V. Alternatives

EPA considered other possible approaches. One alternative would be to promulgate a section 8(a) reporting rule for the substance. Under such a rule, EPA could require any person to report to EPA before manufacturing or processing the substance. Because the substance is subject to a section 5(e) Order, the normal small business exemption of section 8(a) would not apply. However, the use of section 8(a) rather than SNUR authority has one major drawback. If EPA received a report under section 8(a) indicating that a person intended to manufacture or

process the substance without appropriate controls, the Agency could not take action under section 5(e) as it can under a SNUR and thus would not be able to regulate the substance pending development of information. Rather, EPA would have to obtain test data under section 4 and then, if necessary, regulate the substance under section 6. This approach would allow unnecessary risks to human health during the time needed for data development. In addition, the PMN submitter would be at a competitive disadvantage because the section 5(e) Consent Order applies only to that company.

The Agency has the authority to regulate substances under section 6 of TSCA. However, section 6(a) specifies that the Agency may regulate only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture "presents or will present" an unreasonable risk to health or the environment. As stated previously, there is insufficient information to perform a reasoned evaluation of the health effects of this substance. Therefore, the Agency cannot state at this time that this substance "presents or will present" an unreasonable risk, but only that it "may present" an unreasonable risk of injury to health. Therefore, the Agency cannot presently use section 6 to regulate this substance.

VI. Proposed Significant New Uses

To determine what would constitute a significant new use of this chemical substance, EPA considered relevant information about the toxicity of the substance and likely exposures associated with the manufacture and processing of the substance, and possible new uses, including the four factors listed in section 5(a)(2) of TSCA. EPA considered particularly the extent to which potential new uses may change the exposure to humans. In framing the significant new uses, EPA drew from the restrictions outlined in the section 5(e) Order. Based on these considerations, EPA proposes to define the following as a significant new use of P–82–684:

Manufacture or processing without requiring use of the following personal protective equipment, for persons involved in, and in the immediate area of, any operation where dermal contact and/or inhalation of the substance may occur:

(1) a respirator approved by the Department of Interior's Bureau of Mines (BOM), or by the National Institute for Occupational Safety and Health (NIOSH) to provide protection against dusts having an air contamination level not less than 0.05 mg per cubic meter of air and fitted according to procedures set forth by the Occupational Safety and Health Administration at 29 CFR 1910.134, and

(2) Gloves which are determined to be impervious to the substance in the conditions of potential exposure (gloves may be determined to be impervious to the substance through standard testing methods or by relying on the manufacturer's specifications);

Manufacture or processing without requiring that any container of the substance or formulation containing the substance be:

(1) Packaged to prevent any leakage of the substance to the environment, and

(2) Labeled to indicate that the substance should be handled only while using a BOM or NIOSH approved respirator and impervious gloves.

Manufacture or processing without use of impervious gloves and respirators is expected to greatly increase the exposure to P–82–684. Exposure during manufacture or processing may occur dermally or by inhalation. The Agency estimates that an unprotected worker may receive a yearly dose during manufacture or processing of the substance that would be significant. Since manufacture and processing under the section 5(e) Order requires use of impervious gloves and respirators, unrestricted manufacture or processing would greatly increase the level and magnitude of worker exposure.

In addition, EPA has already determined in the section 5(e) Consent Order that unrestricted manufacture or processing of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the new use of the substance would be significant.

VII. Recordkeeping Requirements

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing that the following records be maintained for 5 years after the date of their creation, by persons who manufacture or process the substance subject to this proposed rule. First, the Agency is proposing that records be kept listing the names of persons required to wear protective clothing and/or respirators. Second, the Agency is proposing that manufacturers and processors keep a record of the name and address of each person to whom they sell this substance. Additionally, the Agency proposes that records be kept of the results of respirator fit tests conducted for persons required to wear respirators. Finally, EPA proposes that records be maintained of any determinations of imperviousness for gloves described in paragraph (a) of the proposed rule.

These requirements are proposed under the authorities of TSCA sections 5 and 8 and will meet several goals. This proposed requirement is expected to encourage compliance with this proposed rule when promulgated and to support EPA's enforcement efforts. The Agency considered omitting recordkeeping requirements, but believed compliance monitoring for this proposed SNUR would be made more difficult.

Section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in paragraph (g) of this proposed rule. However, as discussed above, EPA believes that such recordkeeping is necessary to effectively implement and enforce the requirements of the SNUR. EPA believes that two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 of TSCA to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements (see 40 CFR 720.78). Clearly, there is no way to determine whether a manufacturer or processor is undertaking a new use of the type in this proposed rule unless the manufacturer or processor is required to keep records of its activities to show that the new use has not occurred. Otherwise, EPA would not be able to determine whether a violation has occurred unless the manufacturer or processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers and processors, but in this case a section 5(e) Order is in effect for the chemical substance in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small manufacturers and processors as well. However, by its own terms, the section 5(e) Order will automatically be revoked when the SNUR goes into effect. EPA chose to write this and other section 5(e) Orders in this fashion to ensure that the original PMN submitter would be treated in the same manner as other manufacturers and processors once the SNUR is in effect.

EPA believes that revocation of the section 5(e) Order after the SNUR and its accompanying section 8(a)

recordkeeping requirments go into effect would not invalidate the recordkeeping requirement for small manufacturers and processors. Congress clearly believed that small businesses should be subject to section 8(a) when the particular chemical substances in question were the subject of specific regulatory actions and findings. In this case the "may present an unreasonable risk" finding in the section 5(e) Order would remain valid even though the Agency had revoked the Order for administrative reasons.

As an alternative to the recordkeeping requirements in paragraph (h) of this proposed rule, EPA is considering making failure to keep certain records a significant new use. Thus, 90 days before any manufacturer or processor could cease keeping the specified records, it would be required to submit a notice to EPA. Any person who failed to keep the records without having notified EPA would be in violation of section 5 of TSCA and of the rule.

Another alternative being considered by the Agency would require recordkeeping by all persons importing, manufacturing, or processing a chemical substance subject to a 5(e) Order, in any fashion which does not constitute a significant new use.

VIII. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) requires persons to submit a SNUR notice to EPA before they manufacture or process a substance subject to a SNUR for a significant new use. The language of this proposal makes clear that manufacturers, importers, and processors who do not employ specific controls are subject to SNUR notice requirements. Since both manufacturers and processors are legally subject to SNUR notice requirements, EPA may require both manufacturers and processors to submit complete SNUR notices. EPA has considered allowing manufacturers and processors to decide which party should submit what information to EPA as long as all appropriate information is submitted. This approach would certainly be appropriate when the significant new use would occur "downstream" from the manufacture, importing, or processing operations. However, for this substance, the exposure and hazard concerns involve workers in the manufacturing and processing operations and the proposed new use is the actual manufacturing and processing operations. Therefore, the points and levels of exposure and the number of persons exposed will be unique to each manufacturer and processor. To assesss the effects resulting from these significant new uses, the Agency proposes to require any person who intends to manufacture, import, or process the substance for a defined significant new use to submit a SNUR notice.

Using this approach, if a person plans to manufacture this substance without the designated protective equipment, that person would be required to submit a SNUR notice. If a person used the designated protective equipment in manufacturing this substance, or imported the substance, but then planned to process the substance without using the designated protective equipment, that person would be legally responsible for submitting a SNUR notice. If a person used the designated protective gear in manufacturing the substance, or imported the substance, and then sold the substance to a person who planned to process the substance without using the designated protective equipment, both persons would be legally responsible for submitting a SNUR notice. However, EPA is proposing that only one be required to submit a notice and that person would be the one most familiar with the exposures resulting from the new use, the processor in this situation. In situations where the manufacturer/importer also has information important to EPA's risk assessment, the Agency would encourage the persons to make a joint submission to provide complete information. In this situation, if the notice submitter did not have complete information about the significant new use and another person did not submit that information in a joint submission, EPA could take action under section 5(e) to regulate the new use pending submission of the information. In situations where it is not clear who should submit a notice, the Agency encourages potential SNUR notice submitters to consult EPA prior to submitting a notice.

IX. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA recognizes that when chemical substances proposed to be subject to a SNUR are added to the Inventory they may be manufactured or processed for "significant new uses" as defined in the proposal before promulgation of the rule. EPA has decided that the intent of section 5(a)(1)(B) can be best served by determining whether a use is "new" or "existing" as of the proposal date of the SNUR. If EPA considered uses begun during the proposal period to be "existing" rather than "new" uses, it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if substances are manufactured or processed between proposal and promulgation for proposed significant new uses, the Agency will still consider such uses to be "new" if those particular significant new uses are included in the final rule. EPA recognizes that this interpretation may disrupt commercial acitivities of persons who began manufacture or processing for a "significant new use" during the proposal period. However, this proposal puts those persons on notice of that potential disruption, and they proceed at their own risk. The Agency specifically requests comments on ways to minimize this disruption.

X. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The final rule will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA is exploring additional ways of informing potential SNUR notice submitters of the existence of the rule.

EPA intends to publish information concerning final SNURs in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of final SNURs through footnotes to the chemical identities of substances subject to SNURs. The footnotes would refer to an Inventory Appendix which would give a **Federal Register** or CFR citation for the SNUR. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNURs as an Inventory Appendix.

Any person who intends to manufacture or process a substance for the first time should check the Inventory to determine if the substance is listed. If the person found that the substance is on the Inventory, but subject to a SNUR, he could determine whether he would be subject to reporting by contacting EPA or reviewing the rule. Because an updated Inventory is only published periodically, manufacturers and processors would also rely on the **Federal Register** and the TSCA Chemicals-in-Progress Bulletin. Since EPA maintains a current copy of the

Inventory, any questions could be resolved by consulting EPA.

Determining whether a chemical substance is subject to a SNUR is more difficult when the identity of the chemical substance involved is confidential. In this case, the chemical identity of the substance was claimed confidential in the PMN. EPA is proposing to keep the specific identity of the substance confidential in the final rule. The substance would be referred to by a generic chemical name. In printed versions of the Inventory, there would be a footnote indicating that a chemical substance masked by the generic name is subject to a SNUR.

EPA is proposing that any person proposing to manufacture, import, or process a chemical substance within the generic name would be able to ask EPA whether its chemical substance is subject to the SNUR. To make such a request, the person would have to show EPA that the person has a *bona fide* intent to manufacture, import, or process the substance in question. The process proposed for doing so is very similar to that for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(g)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules which were published in the **Federal Register** of May 13, 1983 (48 FR 21722). EPA would evaluate the SNUR inquiry under the same criteria and would answer the inquiry by either informing the requester that the substance is or is not subject to the SNUR or informing the requester that sufficient information has not been furnished to show a *bona fide* intent to manufacture, import, or process the substance in question. (If a manufacturer or importer makes an inquiry under either § 710.7(g) of the Inventory Reporting Rules or § 720.25(b) of the Premanufacture Notification Rules and EPA informs the requester that the substance is on the Inventory, EPA will also inform the manufacturer or importer whether the substance is subject to a SNUR.)

This procedure would allow manufacturers, importers, and processors to determine whether they are subject to the rule while protecting CBI from unnecessary disclosure. An alternative approach would be to publish the specific chemical identity of the substance in the final rule. EPA is particularly interested in comments on these approaches and any further alternatives.

EPA believes that all manufacturers and most processors will know the identities of the substances they manufacture or process and therefore can follow the above procedures. EPA recognizes, however, that some processors may not know the identity of substances they process and, as a result, may not know they are subject to a SNUR. At the same time, manufacturers do not always know what their processor/customers do with substances supplied to them. Therefore, EPA has identified several alternative approaches to address liability of manufacturers, importers, and processors of substances subject to a SNUR.

First, if a required SNUR notice had not been submitted, EPA could hold manufacturers, importers, and processors who sell P–82–684 liable if any of their customers process the substance subject to this proposed rule for a significant new use without submitting a SNUR notice even if the manufacturer, importer, or processor did not know that the customer intended to process the substance for a significant new use. However, manufacturers, importers, and processors who sell P–82–684 could avoid liability by informing each of their customers in writing that the substance is subject to this SNUR and by maintaining records that verify each such customer notification. However, if the manufacturer, importer, or processor had reason to believe that a customer was processing the substance for a significant new use before submitting a SNUR notice, the manufacturer, importer, or processor would be required to cease immediately sales of P–82–684 to the customer and to notify EPA enforcement authorities to avoid liability. The manufacturer, importer, or processor could not resume sales of the substance to that customer until a SNUR notice had been submitted by the manufacturer, importer, or processor and the notice review period had run without regulatory action by EPA.

Second, EPA could hold buyers who process the substance liable if they process the substance for a significant new use without submitting a SNUR notice, even if they did not know the identity of the substance or that the substance was subject to a SNUR. However, processors could avoid liability by asking each of their suppliers to certify in writing whether the substance is subject to a SNUR, receiving a negative response, and maintaining records of each negative response. EPA believes that many processors ask suppliers to certify that chemical substances of unknown identity are on the Inventory. Therefore, the Agency believes that processors can similarly ask suppliers whether substances are subject to SNUR notice requirements. This alternative is consistent with the reporting alternative above in which EPA proposes to require submission by processors of SNUR notices for their significant new uses.

Third, EPA could require manufacturers and processors of this substance to notify, through a label or otherwise, any person to whom they distribute any of P–82–684 that the substance is subject to this SNUR. EPA could accomplish this in one of two ways. EPA believes that, where necessary, there is inherent authority in section 5(a)(2) of TSCA to require such notification since lack of notification would impair compliance with the rule. In addition, EPA could define distribution of the substance without a notification as a significant new use; before anyone could distribute the substance without providing notification, they would have to submit a SNUR notice to EPA.

The Agency specifically requests comments on these approaches as well as on other approaches to ensure that SNUR notice requirements are followed.

XI. Required Information

A. General

The Agency proposes that SNUR notice submitters use the premanufacture notice form and follow the PMN rules published in the **Federal Register** of May 13, 1983 (48 FR 21722), except as otherwise provided in this SNUR. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

B. Test Data

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is only required to submit test data in his possession or control and to describe any other data known to him or reasonably ascertainable by him. However, in view of the potential health risk that may be posed by a significant new use of P–82–684, EPA encourages possible SNUR notice submitters to test the substance's potential for oncogenicity through a two-year rodent bioassay. Depending on EPA's calculations of the risks involved, if a SNUR notice is submitted without such test data, EPA may take action under

section 5(e) similar to that already taken for the PMN submitter.

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance.

Test data should be developed according to good laboratory practices and through the use of methodologies generally accepted at the time the study is initiated. Failure to do so may lead the Agency to find the data to be insufficient to reasonably evaluate the health effects of the substance.

XII. EPA Review of Notice

EPA proposes to review SNUR notices the same way it reviews PMNs and to subject such notices to the procedures appearing in the final PMN rule. EPA will issue a summary of each notice in the Federal Register under section 5(d)(2) of TSCA. The review period for the notice will run 90 days from EPA's receipt of the notice. Under TSCA section 5(c), this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for a significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for the chemical substance without information sufficient to judge the toxicity and exposure potential of the substance, EPA may issue a section 5(e) Order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit the significant new use if it presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a SNUR notice to other EPA offices and other Federal agencies. If EPA does not take action under sections 5, 6, or 7 to control the new use of a substance on which it has received a significant new use notice, section 5(g) requires the Agency to explain in the Federal Register its reasons for not taking action.

XIII. Modification of Reporting Requirements

The Agency believes that there may be circumstances that will lead to modification of the new use descriptions. When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is necessary. If after review, EPA allows the use to occur, the use arguably should not be subject to further reporting. EPA will consider amending the SNUR to modify or eliminate the new use description if the Agency decides that a change is warranted or further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to eliminate or modify other use descriptions if it determines, based on new data, that the substance no longer presents health or environmental concerns for those uses.

EPA will amend the SNUR through a rulemaking. When EPA revises a SNUR by eliminating notice requirements for a single, narrow use of the substance, the Agency may, for good cause, dispense with notice and comment if it finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. However, EPA will completely revoke or substantially alter a SNUR only after notice and an opportunity for comment.

XIV. Proposed Rule Language

This proposed rule is structured as follows. The chemical substance and defined significant new uses are described in paragraph (a) of this rule. Paragraph (b) contains definitions applicable for this section, most of which have been used in other TSCA rules. Paragraph (c) sets forth the procedure for determining whether a substance is subject to the rule. Paragraph (d) describes the persons who must report. In this proposal, EPA also makes clear that the "principal importer" in an import transaction must be the party that submits the SNUR notice. An explanation of the principal importer concept appeared in EPA's clarification of its proposed premanufacture notification requirements which was published in the Federal Register of September 23, 1980 (45 FR 63006). The notice requirements and procedures for reporting under this proposed rule are stated in paragraph (e).

Paragraph (f) clarifies that the exemptions of TSCA section 5(h) apply in this SNUR. Test Marketing Exemptions (TMEs) under section 5(h)(4) generally apply to SNURs. However, in this case the the proposed significant new use involves the actual manufacture and process operations as opposed to marketable end use. Therefore, the Agency believes that TMEs should not apply in this case. Manufacture or processing without the use of designated protective equipment is not a use for which there is a market, and, therefore, a market cannot be tested. In paragraph (g) the Agency has described enforcement provisions applicable to this proposal. Paragraph (h) contains the recordkeeping requirements.

XV. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 or of any rule promulgated under section 5. Manufacture or processing of a chemical substance for a significant new use without prior submission of a SNUR notice, would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

1. Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of a SNUR.

2. Fail or refuse to permit entry or inspection as required by section 11.

3. Fail or refuse to permit access to or copying of records by an authorized EPA official, as required by TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirements of any provision of a SNUR may be subject to penalties calculated as if they never filed their notices. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of a SNUR could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

XVI. Economic Analysis

The Agency has evaulated the potential costs of establishing significant new use reporting requirements for P-82-684. This evaluation is summarized below.

The only direct costs that will definitely occur as a result of the

promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated that the Agency's costs of issuing the SNUR are $42,150. The Agency would also incur enforcement costs.

Subsequent to proposal of this SNUR, the Agency believes that there are four possible outcomes for firms that would manufacture or process the substance: (1) Manufacture and process the substance with the specified protective equipment in place and therefore not trigger the SNUR, (2) file a SNUR with information showing other methods of controlling exposures which may mitigate EPA's concern for exposures, (3) file a SNUR with the results of the recommended testing completed or be prepared to respond to a section 5(e) Order, or (4) not manufacture and process the substance (for persons other than the PMN submitter). The focus of this analysis is to estimate the benefits and costs of these outcomes and the likely response by industry to this SNUR. The costs of these outcomes are summarized below.

If a company decides to manufacture or process the substance under the terms of the SNUR, it will not incur the costs of submitting a SNUR notice. The only cost to the company will be the cost of protective equipment, fit tests, and recordkeeping. The net present value of the costs of providing protective equipment, estimated over a 10-year period, ranges from $632 to $2,645 per worker. The net present value of the costs of recordkeeping requirements is approximately $1,460 per company over the same period. Assuming, arbitrarily, that 10 workers are used per operation, over a 10-year period, fit testing is expected to cost between $4,840 and $5,215 per company. The total cost (including equipment, fit tests, and recordkeeping) is expected to be between $12,620 and $33,125 per company, for 10 workers, over a 10-year period. EPA will incur only enforcement costs once the SNUR has been proposed.

In some circumstances it could be cost effective for a company to file a SNUR notice with data which shows that other means of controlling exposures could mitigate EPA's concerns. In this case the company would incur the costs of filing the SNUR notice ($1,375 to $7,950) and possibly the cost of some exposure controls which ordinarily would not be used without the existence of the SNUR. EPA's costs following promulgation of the SNUR under this scenario would include reviewing the SNUR notice ($6,865) and modifying the terms of the SNUR ($8,430) if the information provided showed that EPA's concerns would be adequately addressed by use of a different type of exposure controls. EPA would continue to incur enforcement costs.

It is theoretically possible that a company could file a SNUR notice which would include the test results of the recommended two-year rodent bioassay. A company would incur the cost of filing a notice ($1,375 to $7,950), performing the test ($724,500 to $854,000) and the cost of delay (probably a delay in profits of up to three years). The cost of this option is expected to be prohibitive.

Some companies could find the cost of controlling exposures too expensive to justify manufacture or processing. Under this outcome a company would not incur any direct costs as a result of the SNUR. The company and society would then lose benefits that would have been derived from the manufacture or processing of the substance. However, the fact that the original PMN submitter intends to manufacture with the protective equipment in place indicates that at least some uses of the substance would still return an acceptable profit.

The Agency has not attempted to quantify the benefits of the proposed rule or of these outcomes. In general, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects can occur. The promulgation of the SNUR provides the benefits of reduced health risks until production or processing ceases. Furthermore, these benefits would continue regardless of the outcome chosen by industry in response to the SNUR.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it does not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, EPA believes that impact may be limited where an innovation has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a singificant economic impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this proposed rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

C. Paperwork Reduction Act

The information reporting requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0012.

XVIII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50507). The rcord includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The PMN for this substance.

2. An exposure analysis for the initial PMN review.

3. The **Federal Register** notice of receipt of the PMN.

4. A new use analysis for the initial PMN review.

5. The section 5(e) Consent Order.

6. The economic analysis of this proposed rule.

A public version of this record, containing sanitized copies from which CBI has been deleted, is available from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M Street, SW., Washington, D.C.

EPA will identify the complete rulemaking record by the date or promulgation. The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that proposed Part 721 of Chapter I of Title 40 be amended by adding § 721.325 to read as follows:

§ 721.325 Derivative of tetrachloroethylene.

This section identifies activities with respect to a certain chemical substance which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies procedures for reporting on that chemical substance.

(a) *Chemical substance and new uses subject to reporting.* (1) The chemical substance known generically as derivative of tetrachloroethylene (P–82–684) is subject to reporting under this section for the significant new use listed in paragraph (a)(2) of this section.

(2) Significant new uses subject to reporting:

(i) Manufacture or processing without requiring use of the following personal protective equipment, for persons involved in, and in the immediate area of, any operation where dermal contact and/or inhalation of the substance may occur, is a significant new use of derivative of tetrachloroethylene (P–82–684):

(A) A respirator, approved by the Department of Interior's Bureau of Mines (BOM), or by the National Institute for Occupational Safety and Health (NIOSH) to provide protection against dusts having an air contamination level not less than 0.05 mg per cubic meter of air and fitted according to procedures established by the Occupational Safety and Health Administration and set forth at 29 CFR 1910.134, and

(B) Gloves which are determined to be impervious to derivative of tetrachloroethylene in the conditions of potential exposure (gloves may be determined to be impervious to the substance by standard testing methods or by reliance on the manufacturer's specifications for the gloves selected).

(ii) Manufacture or processing without requiring that any container of derivative of tetrachloroethylene (P–82–684) or formulation containing the substance be:

(A) Packaged to prevent any leakage of the substance to the environment, and

(B) Labeled on the package that the substance should be handled only with using BOM or NIOSH approved respirators and impervious gloves.

(b) *Definitions.* The applicable definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section. Applicable definitions in § 720.3 of this chapter apply to this section. In addition, the following definition applies:

(1) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(2) [Reserved]

(c) *Determining whether a chemical substance is subject to this section.* (1) A person who intends to manufacture, import, or process a chemical substance which is described by the generic name in paragraph (a) of this section may ask EPA whether the substance is subject to this section. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance for commercial purposes.

(2) To establish a *bona fide* intent to manufacture, import, or process a chemical substance, the person who proposes to manufacture, import, or process the chemical substance must submit to EPA:

(i) The specific chemical identity of the chemical substance that the person intends to manufacture, import, or process.

(ii) A signed statement that the person intends to manufacture, import, or process that chemical substance for commercial purposes.

(iii) A description of the research and development activities conducted to date, and the purpose for which the person will manufacture, import, or process the chemical substance.

(iv) an elemental analysis.

(v) Either an X-ray diffraction pattern (for inorganic substances), a mass spectrum of the particular chemical substance, or if such data do not resolve uncertainties with respect to the identity of the chemical substance, additional or alternative spectra or other data to identify the substance.

(3) If an importer or processor cannot provide all the information required in paragraph (c)(2) of this section because it is claimed as confidential business information by the importer's or processor's manufacturer or supplier, the manufacturer or supplier may supply the information directly to EPA.

(4) EPA will review the information submitted by the proposed manufacturer, importer, or processor under this paragraph to determine whether it has a *bona fide* intent to manufacture, import, or process the chemical substance. If necessary, EPA will compare this information either to the information requested for the confidential chemical substance under § 710.7(e)(2)(v) of this chapter or the information requested under § 720.85(b)(3)(iii) of this chapter.

(5) If the proposed manufacturer, importer, or processor has shown a *bona fide* intent to manufacture, import, or process the substance and has provided sufficient unambiguous chemical identity information so EPA can make a conclusive determination as to the identity of the substance, EPA will inform the proposed manufacturer, importer, or processor whether the chemical substance is subject to this section.

(6) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance that the substance is subject to this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(7) EPA will answer an inquiry on whether a particular chemical substance is subject to this section within 30 days after receipt of a complete submission under paragraph (c)(2) of this section.

(d) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process for commercial purposes the substance listed in paragraph (a) of this section for the significant new use defined in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this chapter, and this section. Any notice of import must be submitted by the principal importer.

(e) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing the significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1) of the Act. The notice must be submitted on the notice form in Appendix A to Part 720 of this chapter and must comply with the requirements of Part 720 of this chapter, except to the extent that they are inconsistent with this section. EPA will process the notice in accordance with the procedures in Part 720 of this chapter, except to the extent they are inconsistent with this seciton.

(f) *Exemptions and exclusions.* The chemical substance listed in paragraph (a) of this section is not subject to the notification requirements of this section if:

(1) The substance is manufactured or processed only in small quantities solely for research and development, and the substance is manufactured or processed in accordance with § 720.36 of this chapter.

(2) The substance is manufactured or processed only as an impurity or byproduct.

(g) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit access to or copying of records, as required under section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection, as required by section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit false or misleading information in connection with the requirement of any provision of this section may be subject to penalties calculated as if they never filed a notice.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

(h) *Recordkeeping.* Manufacturers and processors of the substance identified in paragraph (a) of this section must maintain the following records for five years from the date of their creation:

(1) The names of persons required to wear protective equipment in accordance with paragraph (a) of this section.

(2) The names and addresses of any person to whom the substance is sold or transferred and the dates of such sale or transfer.

(3) Records of respirator fit tests for each person required to wear a respirator in accordance with paragraph (a) of this section.

(4) The method for determining that the gloves described in paragraph (a) of this section are impervious to P–82–684, the date(s) of such determination, and the results of that determination.

(Approved by the Office of Management and Budget under control number 2070–0012)

[FR Doc. 83-34812 Filed 12-30-83; 8:45 am]
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40 CFR Part 721

[OPTS–50505 FRL 2413–5]

Substituted Methylpyridine and Substituted 2-Phenoxypyridine; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: is proposing a Significant New Use Rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), which would require persons to notify EPA at least 90 days before manufacturing, importing, or processing five substances for a "significant new use." EPA is proposing that for the five generically named substances, manufacture or processing without certain personal protective equipment be designated as a significant new use. The five substances were the subjects of Premanufacture Notices (PMNs) P83–23 (substituted 2-phenoxypyridine), P83–24 (substituted methylpyridine), P83–49 (substituted methylpyridine), P83–75 (substituted 2-phenoxypyridine), and P83–272 (substituted methylpyridine) and a TSCA section 5(e) Consent Order issued by EPA. The Agency is concerned that these substances may present unreasonable risks of injury to human health if the defined new uses occur. These new uses were not allowed under the section 5(e) Consent Order.

DATE: Written comments should be submitted by March 5, 1983.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50505. Non-confidential comments and sanitized versions of confidential comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E–107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Toll free: (800–424–9065), in Washington, D.C.: (554–1404). outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720. In particular, these include the information

submission requirements of section 5(d)(1) and section 5(b), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f) of TSCA. If EPA does not take regulatory action under sections 5, 6 or 7 to control a substance on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain its reasons for not taking action in the **Federal Register**. Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs would be covered by TSCA sectoin 13 import certification requirements at 19 CFR Parts 12.118 through 12.127, and 127.8 (amended). EPA regulations discussing section 13 and TSCA's import requirements appear at 40 CFR Part 707.

II. Substances Subject to Proposed SNUR

The five chemical substances covered by this proposed rule were the subject of PMNs. Their generic names are substituted 2-phenoxypyridine (P83–23 and P83–75), and substituted methylpyridine (P83–24, P83–49, and P83–272). These five substances are being considered together because pyridine is a structural analogue to, and a moiety of concern in, each of the five substances. For purposes of clarity, these substances will be referred to by their PMN numbers throughout this preamble.

III. Background

EPA received five PMN submissions and issued them in the **Federal Register** on the following dates: P83–23 and P83–24 received October 7, 1982, notice of receipt published in the **Federal Register** of October 18, 1982 (47 FR 46371); P83–49 received October 15, 1982, notice of receipt published in the **Federal Register** of October 29, 1982 (47 FR 49072); P83–75 received October 27, 1982, notice of receipt published in the **Federal Register** of November 5, 1982 (47 FR 50338); P83–272 received December 3, 1982, notice of receipt published in the **Federal Register** of December 23, 1982 (47 FR 57332). In each of the PMN submissions the PMN submitter claimed the following as confidential business information (CBI): Company identity, chemical identity, production volume, manufacturing process, and use. In the PMNs the uses of these substances were described generically as "intermediates."

In the PMN submissions, data were provided which aided in the assessment of the acute health effects of the five substances. The PMN submissions also contained summaries of teratology, reproduction, mutagenicity, and acute toxicity studies on a structural analogue (identity confidential) of P83–75 and P83–23. In addition, EPA obtained a subchronic and a chronic feeding study on the same analogous substance. EPA used this information and available data on pyridine, a structural analogue to, and a moiety of concern in, all five PMN substances, to assess the potential health effects posed by the substances.

EPA believes all five of these substances will be absorbed readily through the gastrointestinal tract and the lungs, and more slowly via the dermal route, and may cause significant adverse effects to the liver, kidney, and nervous system following low-level chronic exposures. In addition, two of the substances may present a hazard to the reproductive system and to fetal development. Four of the five substances may also cause slight to moderate skin irritation and slight to severe eye irritation. The support for these concerns follows.

1. *Liver, kidney, and nervous system effects.* The Agency determined that P83–49 is a structural analogue to the other four subject substances. Data submitted for P83–49 and data obtained on two analogous substances (identities confidential) indicate liver, kidney, and nervous system toxicity following test animal exposure by three routes of administration (dermal, inhalation, and ingestion). The lowest no observable effect level (NOEL) was calculated by EPA from the data on P83–49, and found to be 50 mg/kg/day or 3,500 mg/day for a 70 kg person. Similar toxicities have been elicited in animals and humans by the administration of pyridine, an analogue to all five substances. EPA has chosen to apply a safety factor of 100 to provide a reasonable degree of protection from P83–49 and the other four substances pending the development of data. Based on a calculated NOEL of 3,500 mg/day for a 70 kg person for P83–49, and applying a safety factor of 100, chronic exposures to any of the five PMN substances in excess of 35 mg/day for a 70 kg person may produce liver, kidney, and/or nervous system toxicities.

2. *Skin and eye effects.* Data submitted on the neat, undiluted PMN substances indicate that, with the exception of P83–75, all of the substances have the potential to produce slight to moderate skin irritation and slight to severe eye irritation or other adverse ocular effects. Data on P83–75 indicate that this substance is not an irritant.

3. *Teratogenic and reproductive effects.* Data obtained on a substance (identity confidential) analogous to P83–75 and P83–23 show that teratogenic effects occurred in both rats and rabbits at does levels that are not maternally toxic. Based on these data, EPA calculated the NOEL for this effect in the analogue to be 1 mg/kg/day or 70 mg/day for a 70 kg person. In a 2-generation reproduction study in rats using the same analogous substance, adverse reproductive effects (reduction in weight of testes and epididymides, and reduction in litter size and survival rate) were observed at dose levels that did not cause other signs of adult toxicity. Minimal reproductive effects were reported at 1 mg/kg/day (the lowest dose tested) or 70 mg/day for a 70 kg person. EPA has chosen to apply a safety factor of 100 to provide a reasonable degree of protection from these substances, pending the development of data. Based on a calculated NOEL for teratogenicity and a minimal effect level for reproductive effects of 70 mg/day for a 70 kg person on an analogue of P83–75 and P83–23, and applying a safety factor of 100, these two substances may pose a hazard to both fetal development and the reproductive system if doses exceed 0.7 mg/day for a 70 kg person.

IV. Reasons for Proposing This Rule

The Agency evaluated available data and information which indicate that the five substances may present unreasonable risks to human health. However, because the Agency had to rely heavily on analogue data, it concluded that there is insufficient information to perform a reasoned evaluation of the health effects of these substances. The Agency determined that the substances may pose unreasonable risks to human health if manufactured or processed without restriction. The Agency concluded, however, that with certain protective equipment, exposure can be reduced sufficiently to mitigate health concerns. Based on these findings, EPA did not ban these chemical substances, but instead, chose to restrict their manufacture and processing, thereby encouraging innovation and benefits to society while continuing to protect human health. The Agency and the PMN submitter negotiated a section 5(e) Consent Order which requires the use of specific personal protective equipment during manufacture and processing of each of the PMN substances until appropriate data are developed to allow a reasoned evaluation of the substances. The Order became effective on March 9, 1983.

The section 5(e) Order, by its terms, applies only to the PMN submitter. Because the section 5(e) Order does not prohibit manufacture, the five substances will be added to the TSCA Chemical Substance Inventory when EPA receives a notice of commencement of manufacture from the PMN submitter. As a result, other persons could begin to manufacture or process the substances without notice to EPA and without the restrictions imposed by the section 5(e) Order. This manufacturing or processing could allow the exposures of concern to occur. Therefore, EPA is proposing to designate manufacture or processing of the substances without certain protective equipment as a significant new use so that the Agency can review that use before it occurs.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements and that EPA has an opportunity to review exposure and toxicity information on the substances so that, if necessary, action can be taken to ensure that persons will not be exposed to levels of these substances that are potentially hazardous. To assist EPA in making a reasoned evaluation of the potential of each of the five substances to elicit kidney, liver, and nervous system toxicity in humans, the notices submitted under the SNUR should contain appropriate test data. The notice should also contain data that would allow a reasoned evaluation of the potential for P83–75 and P83–23 to produce reproductive and teratogenic effects in humans. Studies that would produce the data necessary to evaluate the potential effects of the substances are discussed below in more detail. In addition, the Agency would want to see exposure information and any available data to aid in assessing whether exposure can be adequately controlled by means other than those stated in the proposed significant new uses for these substances.

Because of the CBI claims by the PMN submitter, EPA is unable to discuss in greater detail its reasons for proposing this SNUR. The Agency informally spoke with the PMN submitter to see if additional information could be disclosed in connection with this proposed rule without damaging the competitive position of the submitter. The PMN submitter believed that release of any additional information could endanger its competitive position.

EPA has decided not to disclose any of the CBI at this time. While under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding, "disclosure in such a proceeding shall be made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this proposed rule will be so impaired as to justify disclosure of CBI.

The Agency specifically requests comments on options for SNUR rulemakings involving CBI.

V. Alternatives

EPA considered other possible approaches to ensuring protection of human health. One alternative would be to promulgate a section 8(a) reporting rule for the substances. Under such a rule, EPA could require any person to report to EPA before manufacturing or processing the substances without protective equipment. Because the substances are subject to a section 5(e) Order, the normal small business exemption of section 8(a) would not apply. However, the use of section 8(a) rather than SNUR authority has one major drawback. If EPA received a report under section 8(a) indicating that a person intended to manufacture or process any of the subject substances without protective equipment, the Agency could not take action under section 5(e) as it can under a SNUR and thus would not be able to regulate the substances pending development of information. Rather, EPA would have to obtain test data after rulemaking under section 4 or, if necessary, regulate the substances under section 6. This approach would allow unnecessary risks to human health during the time needed for data development. In addition, the original PMN submitter would be at a competitive disadvantage because the section 5(e) Consent Order applies only to that company. It is not the intent of EPA in the PMN process to create unfair marketplace disruptions.

The Agency has the authority to regulate substances under section 6 of TSCA. However, section 6(a) specifies that the Agency may regulate only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of the chemical substance or mixture "presents or will present" an unreasonable risk to health or the environment. As stated previously, there is insufficient information to perform a reasoned evaluation of the health effects of these substances. Therefore, the Agency cannot state at this time that these substances "present or will present" unreasonable risks, but only that they "may present" unreasonable risks of injury to health. Therefore, the Agency cannot presently use section 6 to regulate these substances.

VI. Proposed Significant New Uses

To determine what would constitute a significant new use of these chemical substances, EPA considered relevant information about the toxicity of the substances, likely exposures associated with the manufacture and processing of the substances, and possible new uses. EPA considered the four factors listed in section 5(a)(2) of TSCA, particularly the reasonably anticipated manner and methods of manufacturing and processing and the extent to which these methods affect the magnitude and duration of human exposure. In framing the significant new uses, EPA drew directly from the restrictions outlined in the section 5(e) Order. Based on these considerations, EPA proposes to define the following as a significant new use of P83–49 and P83–272:

Manufacture or processing without:

1. Requiring use of the following personal protective equipment, for persons involved in, and in the immediate area of, any operation where dermal contact and/or inhalation of the substances may occur:

a. Full facepiece, positive pressure air-supplied respirators, approved by the Bureau of Mines, Department of Interior or by the National Institute for Occupational Safety and Health, and fitted according to procedures established by the Occupational Safety and Health Administration and set forth at 29 CFR 1910.134.

b. Chemical worker gloves, aprons, and armcovers, or other equivalent personal protective clothing determined to be impervious to the particular substances in its conditions of use.

2. Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard unless the specified protective equipment is used.

EPA proposes to define the following as a significant new use of P83–23, P83–24, and P83–75:

Manufacture or processing without:

1. Requiring use of the following personal protective equipment, for persons involved in, and in the immediate area of, any operation where dermal contact may occur:

a. Face-shields.

b. Chemical worker gloves, aprons, and armcovers, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use.

2. Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard unless the specified protective equipment is used.

For each of the five substances, the potential for accidental dermal or eye contact exists, but exposure cannot be quantified given the available information. The use of dermal protective equipment as designated above is expected to significantly reduce the availability of each of the five substances for both local dermal reactions and for absorption leading to systemic effects. The Agency is not requiring any specific method of determining whether gloves, aprons, and armcovers are impervious to these substances. Instead, persons who plan to manufacture or process any of the substances subject to this proposed rule, and who plan to use the designated protective equipment/clothing, can choose to test the gloves, aprons, and armcovers using methods such as the ASTM standard method or its equivalent, or choose to rely on manufacturers specifications for the type of equipment/clothing they choose to use. Protection for the eyes such as that provided by faceshields or full facepiece respirators will prevent accidental contact with, and adverse reaction of the eyes to, P83–23, P83–24, P83–49, and P83–272. Because the use of dermal protective equipment and eye protection is expected to reduce accidental dermal exposure to insignificant levels, the Agency has excluded exposure via the dermal route as a contributing factor in calculating the total daily doses of the substances received by workers. Therefore, the following information is based only on inhalational exposures to these substances.

Based on information submitted with the PMNs, EPA calculated vapor pressures and worst-case (minimal ventilation, minimum mixing of air) equilibrium concentrations of the five substances in the ambient workplace atmosphere. Using an average inhalation rate of 10 m^3 of air per 8 hour day per worker, the Agency calculated worst-case exposures for the substances.

EPA determined that for P83–75, P83–23, and P83–24, the worst-case exposures for inhalation were sufficiently low as not to be of concern. The vapor pressure of P83–75 was such that negligible ambient workplace concentrations were estimated. EPA's worst-case exposure estimate for P83–23 resulted in dose levels of 0.21 mg/day without the use of protective equipment to control inhalational exposure. The estimated doses for both substances are below the level at which the Agency has concern for liver, kidney, and nervous system effects (35 mg/day for a 70 kg person) and for reproductive dysfunction and fetal malformation (0.7 mg/day for a 70 kg person). The Agency's worst-case exposure estimate for P83–24 would result in a daily dose of 0.12 mg per person without controls limiting inhalational exposure. This level is below that at which the Agency has concerns for liver, kidney, and nervous system effects (35 mg/day for a 70 kg person).

The Agency determined that worst-case inhalation exposures for P83–49 and P83–272 could present significant risks and that protective equipment was necessary to reduce exposures to an acceptable level. The Agency calculated that for P83–49 and P83–272 doses could reach 23,000 mg/day per person and 6,100 mg/day per person, respectively. These dose levels are likely to result in liver, kidney, and nervous system effects. However, use of the full facepiece, positive pressure air-supplied respirator is expected to reduce potential inhalation of these two substances from the ambient air by 10,000-fold (National Institute of Occupational Safety and Health. A guide to industrial respiratory protection. DHEW Pub. NIOSH 76–189). Therefore, use of this equipment is expected to reduce the doses to 2.3 mg/day per person and 0.61 mg/day per person for P83–49 and P83–272, respectively. These levels are well below the above which effects are expected (35 mg/day for a 70 kg person).

The Agency requests comments on these definitions of significant new uses, and identification of any alternative definitions that would cover the scenarios of concern.

VII. Recordkeeping Requirements

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing that the following records be maintained for 5 years after the date of their creation, by persons who manufacture or process any of the substances subject to this proposed rule.

1. The names of persons required to wear protective clothing and/or equipment.

2. Records of respirator fit tests for each person required to wear a respirator.

3. The name and address of each person to whom any of these substances are sold or transferred and the date of such sale or transfer.

This proposed requirement is expected to encourage compliance with this proposed rule when promulgated and to support EPA's enforcement efforts. The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult.

Section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in paragraph (h) of this proposed rule. However, as discussed above, EPA believes that such recordkeeping is necessary to implement and enforce the requirements of the SNUR effectively. EPA believes that two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 of TSCA to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements (see 40 CFR 720.78). Clearly, there is no way to determine whether a manufacturer or processor is undertaking a new use of the type in this proposed rule unless the manufacturer or processor is required to keep records of its activities to show that the new use has not occurred. Otherwise, EPA would not be able to determine whether a violation has occurred unless the manufacturer or processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers and processors, but in this case a section 5(e) Order is in effect for the chemical substances in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small manufacturers and processors as well. However, by its own terms, the section 5(e) Order will automatically be revoked when the SNUR goes into effect. EPA chose to write this and other section 5(e) Orders in this fashion to ensure that the original PMN submitter would be treated in the same manner as other manufacturers and processors once the SNUR is in effect.

EPA believes that revocation of the section 5(e) Order after the SNUR and its accompanying section 8(a) recordkeeping requirements go into effect would not invalidate the recordkeeping requirement for small manufacturers and processors. Congress clearly believed that small businesses should be subject to section 8(a) when the particular chemical substances in question were the subject of specific regulatory actions and findings. In this case the "may present an unreasonable risk" finding in the section 5(e) Order would remain valid even though the

Agency had revoked the Order for administrative reasons.

As an alternative to the recordkeeping requirements in paragraph (h) of this proposed rule, EPA is considering making failure to keep certain records a significant new use. Thus, 90 days before any manufacturer or processor could cease keeping the specified records, it would be required to submit a notice to EPA. Any person who failed to keep the records without having notified EPA would be in violation of section 5 of TSCA and of the rule.

Another alternative being considered by the Agency would require recordkeeping by all persons importing, manufacturing, or processing a chemical substance subject to a 5(e) Order, in any fashion which does not constitute a significant new use.

VIII. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) of TSCA requires persons to submit a SNUR notice to EPA before they manufacture or process a substance subject to a SNUR for a significant new use. The language in this proposal makes clear that manufacturers, importers, and processors are subject to SNUR notice requirements. In past proposed SNURs, however, the Agency has determined that requiring both manufacturers (including importers) and processors to submit SNUR notices may result in duplicative information and cause an unnecessary burden on industry. Therefore, the Agency proposed to allow manufacturers and processors to decide which party should submit what information to EPA so long as all appropriate information was submitted. This approach would certainly be appropriate where the significant new use would occur downstream from the manufacture, importing, or processing operations. However, for these five substances, the exposure and hazard concerns involve workers in the manufacturing and processing operations and the proposed new use is the actual manufacturing and processing as opposed to a marketable end product. Therefore, the points and levels of exposure and the number of persons exposed will be unique to each manufacturer and processor. To assess the effects resulting from these significant new uses, the Agency proposes to require any person who intends to manufacture, import, or process any of the five substances for a defined significant new use to submit SNUR notices.

Using this approach, if a person plans to manufacture any of these substances without the designated protective equipment, that person would be required to submit a SNUR notice. If a person used the designated protection equipment in manufacturing any of these substances or imported the substance, but then planned to process the substance without using the designated protective equipment, that person would be required to submit a SNUR notice. If a person used the designated protective equipment in manufacturing any of these substances or imported the substance and then sold the substance to a person who planned to process it without using the designated protective equipment, both persons would be responsible for submitting a SNUR notice, but EPA is proposing that only one be required to submit a notice. In this situation, that person would be the processor because he is the one most familiar with the exposures resulting from the new use. In situations where the manufacturer/importer has information important to EPA's risk assessment the Agency would encourage the two persons to make a joint submission to provide complete information. If one person did not have complete information about the substance or the use and the other person did not submit that information, EPA could take action under section 5(e) to regulate the new use pending submission of the information. In situations where it is not clear who should submit a SNUR notice, the Agency encourages potential SNUR notice submitters to consult EPA prior to submitting their notice.

IX. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA recognizes that when chemical substances proposed to be subject to this SNUR are added to the Inventory they may be manufactured or processed for significant new uses as defined in this proposal before promulgation of the rule. EPA has decided that the intent of section 5(a)(1)(B) can best served by determining whether a use is "new" or "existing" as of the proposal date of the SNUR. If EPA considered uses begun during the proposal period to be "existing" rather than "new" uses, it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substances are manufactured or processed between proposal and promulgation for proposed significant new uses, the Agency will still consider such uses to be "new" if they are retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who began manufacture or processing for a significant new use during the proposal period. However, this proposal puts them on notice of that potential disruption, and they proceed at their own risk. The Agency specifically requests comments on ways to minimize this disruption.

X. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The final rule will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA also intends to publish information concerning final SNURs in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of final SNURs through footnotes to the chemical identities of substances subject to SNURs. The footnotes would refer to an Inventory Appendix which would give a **Federal Register** or CFR citation for the SNUR. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNURs as an Inventory Appendix.

Any person who intends to manufacture or process a substance for the first time would check the Inventory to determine if the substance is listed. If the person found that the substance is on the Inventory, but subject to a SNUR, he could determine whether he would be subject to reporting by contacting EPA or reviewing the rule. Because an updated Inventory is only published periodically, manufacturers and processors would also rely on the **Federal Register** and the TSCA Chemicals-in-Progress Bulletin. Since EPA maintains a current copy of the Inventory, any questions could be resolved by consulting EPA.

Determining whether a chemical substance is subject to a SNUR is more difficult when the identity of the chemical substance involved is confidential. In this case, the chemical identify of each of the five substances was claimed confidential in the PMNs. EPA is proposing to keep the specific identities of these five substances confidential in the final rule. The substances would be referred to by their generic chemical names. In printed versions of the Inventory, there would be a footnote indicating that some

chemical substances masked by these generic names are subject to a SNUR.

EPA is proposing that any person proposing to manufacture, import, or process a chemical substance within one of these generic names would be able to ask EPA whether its chemical substance is subject to the SNUR. To make such a request, the person would have to show EPA that the person has a *bona fide* intent to manufacture, import, or process the substance in question. The process proposed for doing so is very similar to that for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(g)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules as published in the Federal Register of May 13, 1983 (48 FR 21722). EPA would evaluate the SNUR inquiry under the same criteria and would answer the inquiry by either informing the requester that the substance is or is not subject to the SNUR or informing the requester that it has not furnished enough information to show a *bona fide* intent to manufacture, import, or process the substance in question. (If a manufacturer or importer makes an inquiry under either § 710.7(g) of the Inventory Reporting Rules or § 720.25(b) of the Premanufacture Notification Rules and EPA informs the manufacturer or importer that the substance is on the Inventory, EPA will also inform the manufacturer or importer whether the substance is subject to a SNUR.)

This procedure would allow manufacturers, importers, and processors to determine whether they are subject to the rule while protecting confidential business information from unnecessary disclosure. An alternative approach would be to publish the specific chemical identity of the substances in the final rule. EPA is particularly interested in comments on these approaches and any further alternatives.

EPA believes that all manufacturers and most processors will know the identities of the substances they manufacture or process and therefore can follow the above procedures. EPA recognizes, however, that some processors may not know the identity of substances they process and, as a result, may not know they are subject to a SNUR. At the same time, manufacturers do not always know what their processors/customers do with substances supplied to them. Therefore, EPA has identified several alternative approaches to address liability of manufacturers, importers, and processors of substances subject to a SNUR.

First, if a required SNUR notice has not been submitted, EPA could hold manufacturers and importers of these five substances liable if any of their customers process one of the substances for a significant new use (i.e., without using the worker controls) even if the manufacturer or importer did not know that the customer intended to process the substance for the significant new use. Manufacturers and importers could avoid liability in this situation by informing each of their customers in writing that the substance is subject to this SNUR and by maintaining records that verify each such customer notification. However, if the manufacturer or importer had reason to believe that a customer was processing the substance for a significant new use before submitting a SNUR notice, the manufacturer or importer would be required to immediately cease sales of the substance to the customer and notify EPA enforcement authorities to avoid liability. The manufacturer or importer could not resume sales of the substance to that customer until a SNUR notice had been submitted by the manufacturer, importer, or processor, and the notice review period had run without regulatory action by EPA.

Second, EPA could hold processors liable if they process one of these substances for a significant new use without submitting a SNUR notice, even if they did not know the identity of the substance or that the substance was subject to a SNUR. However, processors could avoid liability in this situation by asking each of their suppliers to certify in writing whether the substance is subject to a SNUR, receiving a negative response, and maintaining record of each negative response. EPA believes that many processors ask suppliers to certify that chemical substances they purchase of unknown identity are on the Inventory. Therefore, the Agency believes that processors can similarly ask suppliers whether the substances are subject to SNUR notice requirements. This alternative is consistent with the reporting alternative above in which EPA proposes to require submission by processors of SNUR notices for their significant new uses.

Third, EPA could require manufacturers and processors of any of these substances to notify, through a label or otherwise, any person to whom they distribute any of the substances that the substances are subject to this SNUR. EPA could accomplish this is one of two ways. EPA believes that, where necessary, there is inherent authority in section 5(a)(2) of TSCA to require such notification since lack of notification would impair compliance with the rule. In addition, EPA could define distribution of these substances without such notification as a significant new use. Using this approach, before anyone could distribute the substances without providing notification, they would have to submit to SNUR notice to EPA.

The Agency specifically requests comments on these approaches as well as on other approaches to ensure that SNUR notice requirements are followed.

XI. Required Information

A. General

The Agency proposes that SNUR notice submitters use the premanufacture notice form and follow the premanufacture notice rules which were published in the Federal Register of May 13, 1983 (48 FR 21722), except as otherwise specified in this SNUR.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substances and information on risks posed by the substances compared to risks posed by their substitutes.

B. Test Data

Persons required to submit a SNUR notice must decide what test data, if any, to develop. EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is only required to submit test data in his possession or control and to describe any other data known to or reasonably ascertainable by him. However, in view of the potential health risks that may be posed by a significant new use of P83–23, P83–24, P83–49, P83–75, and P83–272, EPA encourages possible SNUR notice submitters to conduct tests that would allow a more reasoned evaluation of each substance's potential to elicit liver, kidney, and nervous system toxicity in humans and, for P83–75 and P83–23, reproductive and teratogenic effects in humans. A more reasoned evaluation of liver, kidney, and nervous system toxicity could be made using data generated in a 90-day (subchronic) inhalation study in the rodent. Similarly, rodent teratology and 2-generation reproduction studies with P83–75 and P83–23 would allow a more reasoned evaluation of those risks for these two substances. Depending on EPA's calculations of the risks involved, if a SNUR notice is submitted for any of

the subject substances without such test data, or other information to demonstate that exposure is adequately controlled by means other than those specified in these proposed significant new uses; EPA could take action under section 5(e) similar to that already taken for the PMN submitter.

Any testing should be conducted according to good laboratory practices and through the use of methodologies acceptable to the Agency. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of these substances. As part of an optional prenotice consultation, EPA will discuss the test data or other information it believes necessary to evaluate a significant new use of the subject substances. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances.

XII. EPA Review of Notice

EPA proposes to review SNUR notices the same way it reviews PMNs and to subject such notices to the procedures in the final premanufacture notice rules. Under section 5(d)(2) of TSCA, EPA will issue a summary of each notice in the **Federal Register**. The review period for the notice will run 90 days from EPA's receipt of the notice. Under TSCA section 5(c), this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for the significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for the chemical substance without information sufficient to judge the toxicity and exposure potential of that substance, EPA may issue a section 5(e) Order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit the significant new use if it presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a SNUR notice to other EPA offices and other Federal agencies. If EPA does not take action under sections 5, 6, or 7 of TSCA to control the new use of the substance, section 5(g) of TSCA requires that the Agency explain in the **Federal Register** its reasons for not taking action.

XIII. Modification of Reporting Requirements

The Agency believes that there may be circumstances that will lead to modification of the new use descriptions. When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is necessary. If after review, EPA allows the use to occur, the use arguably should not be subject to further reporting. EPA will consider amending the SNUR to modify or eliminate the new use description if the Agency decides that a change is warranted or that further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to eliminate or modify other use descriptions if it determines, based on any data available to EPA, that a substance no longer presents health or environmental concerns for those uses.

XIV. Proposed Rule Language

This proposed rule is structured as follows. The substances and defined significant new uses are described in paragraph (a) of this proposal. Paragraph (b) contains definitions applicable to this section. Paragraph (c) sets forth the procedures for determining whether a substance is subject to the rule. Paragraph (d) describes the persons who must report. The notice requirements and procedures for reporting under this proposal are stated in paragraph (e). Paragraph (f) clarifies which exemptions of TSCA section 5(h) apply in this SNUR. Test Marketing Exemptions (TMEs) under TSCA section 5(h)(1) generally apply in SNURs. However, in this case the proposed significant new uses involve the actual manufacture and process operations as opposed to a marketable end use. Therefore, the Agency believes that TMEs should not apply in this case. Manufacture or processing without the use of designated protective equipment is not a use for which there is a market, and therefore, a market cannot be tested. In paragraph (g) the Agency has described enforcement provisions applicable to this proposal. Paragraph (h) outlines recordkeeping requirements for the subject substances.

EPA invites comments on all aspects of this proposed rule language.

XV. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 or any rule promulgated under section 5. Manufacture or processing of a chemical substance for a significant new use without prior submission of a SNUR notice would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

(1) Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know as manufactured or processed in violation of a SNUR.

(2) Fail or refuse to permit entry or inspection as required by section 11.

(3) Fail or refuse to permit access to or copying of records, as required by TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of a SNUR may be subject to penalties calculated as if they never filed their notices. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of a SNUR could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

XVI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for these substances. The economic analysis of the possible outcomes as a result of the promulgation of this SNUR is summarized below. The Agency's complete economic analysis is available in the public file.

After promulgation of the SNUR, the Agency believes there are four possible courses of action a company could take: (1) Produce the substances with the protective equipment in place, (2) file a SNUR notice with information showing other methods of controlling exposures that would mitigate EPA's health concerns, (3) file a SNUR notice with the results of recommended testing already completed or be prepared to respond to a section 5(e) Order requiring testing, or (4) not manufacture or process the substances. The costs of these outcomes are summarized below.

If a company decides to produce the substances using the protective equipment specified in the SNUR, it will not incur the cost of submitting a SNUR notice. The cost to the company will be the cost of the protective equipment and recordkeeping.

The net present value of the costs of providing protective equipment (gloves, aprons, armcovers, and face-shields) over a 10-year period for five workers is $19,140 each for P83–23, P83–24, and P83–75. In addition, the net present value of the cost of maintaining the records required in this proposed rule for 10 years is $1,460 per chemical substance. Therefore, the net present value of the cost of complying with the terms of this proposed rule over a 10-year period is $20,600 each for P83–23, P83–24, and P83–75.

The net present value of the cost of providing protective equipment (gloves, aprons, armcovers, and respirators) over a 10-year period for five workers is $31,170 each for P83–49 and P83–272. The net present value of the cost of providing respirator fit testing over a 10-year period for five workers ranges from $2,100 to $2,500 per chemical substance for P83–49 and P83–272. The net present value of the cost of maintaining the records required in this proposed rule for 10 years is $1,460 per chemical substance. Therefore, the net present value of complying with the terms of this proposed rule over a 10-year period is $34,730 to $35,130 each for P83–49 and P83–272. If one company chose to manufacture or process more than one of these substances, the costs for protective equipment per substance would be lower.

In some circumstances it could be cost effective for a company to file a SNUR notice with data which show that other means of controlling exposures could mitigate EPA's concerns. In this case the company incurs the cost of filing the SNUR notice ($1,375 to $7,950) and possibly the cost of some exposure controls which ordinarily would not be used without the existence of the SNUR. In addition, a company choosing this course of action could experience a 3.2 percent reduction in profits due to delays in manufacture or processing.

It is theoretically possible that a company could file a SNUR notice which would include the test results of the recommended testing (subchronic inhalation for all five substances and teratology and reproduction studies for P83–23 and P83–75). A company would incur the cost of filing a notice ($1,375 to $7,950), performing the tests ($90,000 to $125,000 each for P83–24, P83–49, and P83–272; $242,576 to $342,728 each for P83–23 and P83–75) and the cost of delay (probably a delay in profits of 0.5 to 1.5 years). The total cost of this option is expected to be prohibitive.

Some companies could find the cost of controlling exposures too expensive to justify beginning production or processing. Under this outcome a company would not incur any direct costs as a result of the SNUR.

EPA has not attempted to quantify the benefits of the proposed rule or of the outcomes. In general, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects can occur. The issuance and promulgation of the SNUR provides the benefits of reduced health risks until production or processing ceases. Furthermore, these benefits would continue regardless of the outcome chosen by industry in response to the SNUR.

Given the relative cost of the recommended testing versus the required protective equipment, fit tests, and recordkeeping it is unlikely that testing will be performed. Some potential exists for the cost of protective equipment, fit tests, and recordkeeping to cause some companies to decide to forego production or processing. However, the fact that the original PMN submitter intends to produce under these restrictions indicates that at least some uses of these substances could still return an acceptable profit.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it does not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 50 SNUR notices, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substances subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation which has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small businesses. EPA is unable to predict realistically whether parties affected by this proposed rule will be small businesses. However, the Agency believes that few manufacturers or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected would not be substantial.

C. Paperwork Reduction Act

Information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*) and have been assigned OMB control number 2070–0012.

XVIII. Confidential Business Information

Any person who submits comments which the person claims as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50505). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The PMNs for these five substances.

2. The **Federal Register** notices of receipt of the PMNs.

3. A copy of the section 5(e) Consent Order.

4. The toxicity support document for the section 5(e) Order.

5. The proposed SNUR for these five substances.

6. The toxicity support document for the proposed SNUR.

7. The economic support document for the proposed SNUR.

8. Data on analogues.

A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E–107, 401 M St., SW., Washington, D.C.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between this proposed rule and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that proposed Part 721 of Chapter I of Title 40 be amended by adding § 721.265 to read as follows:

§ 721.265 Substituted methylpyridine and substituted 2-phenoxypyridine.

This section identifies activities with respect to certain chemical substances which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies procedures for reporting on these substances.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The following five chemical substances, listed by their premanufacture notice numbers and generic names, are subject to reporting under this section for the significant new uses listed in paragraph (a)(2) of this section: (P83–23) Substituted 2-phenoxypyridine, (P83–24) substituted methylpyridine, (P83–49) substituted methylpyridine, (P83–75) substituted 2-phenoxypyridine, and (P83–272) substituted methylpyridine.

(2) Significant new uses subject to reporting:

(i) Manufacture or processing without adhering to the following, is a significant new use of P83–49 and P83–272.

(A) Requiring use of the following personal protective equipment, for persons involved in, and in the immediate area of, any operation where dermal contact and/or inhalation of the substances may occur:

(*1*) Full facepiece, positive pressure air-supplied respirators, approved by the Bureau of Mines, Department of Interior or by the National Institute for Occupational Safety and Health, and fitted according to procedures established by the Occupational Safety and Health Administration and set forth at 29 CFR 1910.134.

(*2*) Chemical worker gloves, aprons, and armcovers, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use.

(B) Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard unless the specified protective equipment is used.

(ii) Manufacture or processing without adhering to the following is a significant new use of P83–23, P83–24, and P83–75.

(A) Requiring use of the following personal protective equipment, for persons involved in, and in the immediate area of, any operation where dermal contact may occur:

(*1*) Face-shields.

(*2*) Chemical worker gloves, aprons, and armcovers, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use.

(B) Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard unless the specified protective equipment is used.

(b) *Definitions.* Applicable definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section. Applicable definitions in § 720.3 of this Chapter apply to this section. In addition, the following definitions apply:

(1) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(2) [Reserved]

(c) *Determining whether a chemical substance is subject to this section.* (1) A person who intends to manufacture, import, or process a chemical substance which is described by one of the generic names in paragraph (a) of this section may ask EPA whether the substance is subject to this section. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance for commercial purposes.

(2) To establish a *bona fide* intent to manufacture, import, or process a chemical substance, the person who proposes to manufacture, import, or process the chemical substance must submit to EPA:

(i) The specific chemical identity of the chemical substance that the person intends to manufacture, import, or process.

(ii) A signed statement that the person intends to manufacture, import, or process that chemical substance for commercial purposes.

(iii) A description of the research and development activities conducted to date, and the purpose for which the person will manufacture, import, or process the chemical substance.

(iv) An elemental analysis.

(v) Either an X-ray diffraction pattern (for inorganic substances), a mass spectrum (for most other substances), or an infrared spectrum of the particular chemical substance, or if such data do not resolve uncertainties with respect to the identity of the chemical substance, additional or alternative spectra or other data to identify the substance.

(3) If an importer or processor cannot provide all the information required in paragraph (c)(2) of this section because it is claimed as confidential business information by the importer's or processor's manufacturer or supplier, the manufacturer or supplier may supply the information directly to EPA.

(4) EPA will review the information submitted by the proposed manufacturer, importer, or processor under this paragraph to determine whether it has a *bona fide* intent to manufacture, import, or process the chemical substance. If necessary, EPA will compare this information either to the information requested for the confidential chemical substance under § 710.7(e)(2)(v) of this Chapter or the information requested under § 720.85(b)(3)(iii) of this Chapter.

(5) If the proposed manufacturer, importer, or processor has shown a *bona fide* intent to manufacture, import, or process the substance and has provided sufficient unambiguous chemical identity information so EPA can make a conclusive determination as to the identity of the substance, EPA will inform the proposed manufacturer, importer, or processor whether the chemical substance is subject to this section.

(6) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance that the substance is subject to this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(7) EPA will answer any inquiry on whether a particular chemical substance is subject to this section within 30 days after receipt of a complete submission under paragraph (c)(2) of this section.

(d) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process for commercial purposes, any of the substances listed in paragraph (a) of this section for a significant new use defined in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this Chapter, and this section. Any notice of import must be submitted by the principal importer.

(e) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing the significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1) of the Act. The notice must be submitted on the notice form in Appendix A to Part 720 of this Chapter and must comply with the requirements of Part 720 except to the extent that they are inconsistent with this section. EPA will process the notice in accordance with the procedures in Part 720 of this Chapter, except to the extent that they are inconsistent with this section.

(f) *Exemptions and exclusions.* The chemical substances listed in paragraph (a) of this section are not subject to the notification requirements of this section if:

(1) The substances are manufactured or processed July only in small quantities solely for research and development, and the substances are manufactured or processed in accordance with the provisions of § 720.36 of this Chapter.

(2) The substances are manufactured or processed only as an impurity or byproduct.

(g) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commerical purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit access to or copying of records, as required under section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection, as required under section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirement of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

(h) *Recordkeeping.* Manufacturers and processors who manufacture or process any of the substances listed in paragraph (a) of this section, must maintain the following records for five years from the date of their creation:

(1) The names of persons required to wear protective clothing and/or equipment.

(2) Records of respirator fit tests for each person required to wear a respirator.

(3) The name and address of each person to whom any of these substances are sold or transferred and the date of such sale or transfer.

(Approved by the Office of Management and Budget under control number 2070–0012)

[FR Doc. 83–34795 Filed 12–30–83; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 799

[OPTS–42054; TSH–FRL 2500–1]

Aniline and Chloro-, Bromo- and/or Nitroanilines; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In the Fourth Report of the Interagency Testing Committee (ITC), transmitted to the Administrator of EPA in April 1979, the ITC designated the anilines category for testing consideration. The Agency is publishing this Advance Notice of Proposed Rulemaking (ANPR) to initiate rulemaking to require the testing that appears necessary to characterize the health and environmental effects of the anilines. The amount of data available differs among the various category members and effects, so that testing needs are chemical-and effect-specific. This notice constitutes EPA's response to the ITC's designation of the anilines category for testing consideration. EPA seeks comment on its conclusions as to the need for further testing of the anilines and the submission of data, information and views on a number of issues.

DATE: All comments should be submitted on or before March 5, 1984.

ADDRESS: Written comments should bear the document control number [OPTS–42054] and should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460.

The administrative record supporting this action is available for public inspection in Rm. E–107 at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, D.C. 20460, toll free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469.90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate

regulations requiring manufacturers and processors to test chemical substances and mixtures in order to develop data relevant to determining the risks that such chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act.

In April 1979, the ITC placed on its priority testing list a category of chemicals known as "aniline and chloro-bromo- and/or nitroanilines" (see 44 FR 31866, June 1, 1979). The ITC defined this category as aniline and aniline substituted in one or more positions with a chloro, bromo, or nitro group, or any combination of these substituents. Anilines bearing other substituents are excluded from the category, even if they also carry one or more of the allowed substituents. The ITC recommended that the anilines be considered for testing for the following health effects: carcinogenicity, mutagenicity, teratogenicity and chronic effects (with special emphasis on blood disorders and neurotoxicity). In addition, the ITC recommended that an epidemiology study be considered because of the large-scale production and potential for substantial occupational exposure to certain anilines. The ITC also recommended that the anilines be considered for environmental effects testing and expressed specific concern about the lack of information on the potential for anilines to persist in the environment, to bioaccumulate and to cause adverse effects in cases where exposure can be identified. This Advance Notice of Proposed Rulemaking provides EPA's response as required by TSCA section 4(e) to the ITC's designation of the anilines.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight to evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine if there is substantial production, significant or substantial exposure, and substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production, exposure, and release criteria are met.

For the findings under both section 4(a)(1)(B)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemcial and whether testing that the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations for the anilines, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of anilines under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and other published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

The twenty anilines listed below have been specifically identified by industry as being currently in production.

1. Aniline (CAS No. 62–53–3).
2. 2-Chloroaniline (CAS No. 95–51–2).
3. 3-Chloroaniline (CAS No. 108–42–9).
4. 4-Chloroaniline (CAS No. 106–47–8).
5. 2,3,-Dichloroaniline (CAS No. 608–27–5).
6. 2,4-Dichloroaniline (CAS No. 554–00–7).
7. 2,5-Dichloroaniline (CAS No. 95–82–9).
8. 3,4-Dichloroaniline (CAS No. 95–76–1).
9. 2,4,6-Trichloroaniline (CAS No. 634–93–5).
10. 2-Nitroaniline (CAS No. 88–74–4).
11. 3-Nitroaniline (CAS No. 99–09–2).
12. 4-Nitroaniline (CAS No. 100–01–06).
13. 2,4-Dinitroaniline (CAS No. 97–02–9).
14. 2-Chloro-4-nitroaniline (CAS No. 121–87–9).
15. 2-Chloro-5-nitroaniline (CAS No. 6283–35–6).
16. 4-Chloro-2-nitroaniline (CAS No. 89–63–4).
17. 4-Chloro-3-nitroaniline (CAS No. 635–22–3).
18. 2,6-Dichloro-4-nitroaniline (CAS No. 99–30–9).
19. 2,6-Dibromo-4-nitroaniline (CAS No. 827–94–1).
20. 2-Bromo-4,6-dinitroaniline (CAS No. 1817–73–16).

II. Tentative EPA Decision And Issues

A. Development of Rulemaking

The Agency has reviewed available data which indicate that human and environmental exposure to and the toxicity of individual anilines category members may be sufficient to support a finding of potential unreasonable risk under TSCA section 4(a)(1)(A). EPA has previously indicated that although it would generally initiate rulemaking for testing through publication of a proposed rule, it may initiate action on chemical categories and certain complex chemicals through publication of an Advance Notice of Proposed Rulemaking (ANPR), as it is doing in this case. There are several reasons, both general to categories and specific to the anilines category, why the Agency has chosen to use this approach to initiate rulemaking with respect to this ITC designation of the anilines category.

The Agency has found that in developing rules for chemical categories, the issues that require attention are considerably more complex and numerous than in rulemaking for a single chemical. These issues thus require considerable additional time to resolve. For example, in order to avoid unnecessary or duplicative testing while assuring that adequate data are developed, the Agency needs to determine whether it is scientifically valid to test a set of representative chemicals rather than test each individual chemical substance in the category. One method of achieving this goal is through the use of structure-activity relationships (SAR). The Agency believes that there is a logical basis for pursuing SAR along the lines outlined in this notice (i.e., subcategorization according to the structures of the anilines). In addition, the Agency is setting forth for public comment a variety of other methods for selecting test substances (see Unit III. 8).

Identifying the appropriate means for selecting which anilines category compounds should be tested is only part of the effort necessary for development of a proposed test rule for this category. The Agency must also consider what the proper scope of the anilines category should be, because there are numerous anilines that are listed in the TSCA inventory but are not currently in production, and there is also a large number of anilines that are neither in production nor on the TSCA inventory, but which have been reported in the chemical literature (see Unit III.10). The Agency's decisions with regard to the scope of the testing category and the method for selecting test substances will have important effects on reimbursement and exemption issues that arise under TSCA section 4 test rules. Because of the complexity of these important issues, the Agency believes that the issuance of an ANPR is the most appropriate method to initiate rulemaking for the anilines category.

Furthermore, EPA must review data applicable to exposure, release, and unreasonable risk (including consideration of testing costs and economic impact) for many chemical substances when dealing with a category.

A major part of EPA's data-gathering efforts on chemical substances is completed through two rules under section 8 of TSCA. The first, published in the **Federal Register** of June 22, 1982 (47 FR 26992), required, pursuant to section 8(a) of TSCA, that manufacturers of specified chemicals supply the Agency with certain production data and other information relating to potential exposure and release of the substances in question. The second rule, published September 2, 1982 (47 FR 38780), required, pursuant to section 8(d) of TSCA, that manufacturers of the specified chemicals supply the Agency with all unpublished health and safety studies in their possession relating to the chemicals. All substances nominated for priority consideration for testing are subject to these rules.

The section 8(d) rule has resulted in the submission to EPA of important data during 1983. Moreover, the Aniline Association and the Substituted Anilines Task Force (SATF) of the Synthetic Organic Chemical Association have recently submitted important environmental release and human exposure information for the manufacturing situation (Refs. 20 and 27). However, the incomplete nature of the information, especially on human exposures and environmental releases resulting from the non-captive processing and use of anilines category members, as well as a lack of reliable environmental monitoring data has also prompted EPA to issue an ANPR for these chemicals, rather than issue a proposed test rule.

In addition to the conceptual difficulties EPA has in directly preparing a proposed rule on a category of this size, EPA believes there are positive advantages in using an ANPR to initiate the process of rulemaking for testing this category of chemical substances. Publication of such a notice provides an opportunity for public comment on the difficult issues involved in the use of subcategories based on chemical structure, the other methods for choosing representative test substances, the scope of the testing category, and the complex questions related to reimbursement and exemptions (see Unit III), before the agency expends its resources on developing a proposed test rule for the anilines category. Because of the complexity of the issues involved, development of a proposed rule before receiving such input may result in needless expenditure of Agency resources and considerable delay in rule promulgation because of the potential volume of public comments on the proposed rule. For these reasons EPA has chosen to initiate rulemaking by issuing an ANPR in response to the ITC designation of the anilines category.

EPA, in publishing this ANPR, wishes to receive comment on its tentative basis for requiring testing, on the tests the Agency believes necessary to characterize the health and environmental effects of the anilines, on EPA's tentative approach to a representative sample of chemicals for testing, and on certain technical and regulatory issues that bear significantly on the makeup of a future proposed rule for this category. The bases for the suggested findings, and for the tests under consideration, are discussed below.

B. Preliminary Findings

1. *Potential human and environmental exposure.* Production and import volumes for members of the anilines category, which are derived from the TSCA public inventory, are provided in Table 1. The most recent information available to the Agency indicates that aniline is produced in substantial quantities, that aniline may be released into the environment in substantial quantities and that there may be significant or substatial human exposure to this substance. Thus for this one category member the available data suggest that the Agency could make the section 4(a)(1)(B) findings for human and environmental exposure potential.

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TABLE 1. EXPOSURE, PRODUCTION, USE AND USAGE OF ANILINES (SUBSTITUTED AND UNSUBSTITUTED)

Chemical	Uses	Usage (10^6 lbs)		Production Volumes[d](1977)		Dyes Produced Commercially: 1980[b]	NIOSH Worker Exposure Est.[c]
		JRB for 1978[a]	SRI for 1980[b]	US (10^6 lbs)	Import (10^3 lbs)		
aniline	Isocyanate synthesis	290	350-360	300-1500	1-10	15(1.3 x 10^6 lbs)	85,127 (16,191 to aniline derivatives)
	Rubber Chemicals	183	140				
	Dyes & Pigments Intermediate	315	28				
	Hydroquinone	325	17-20				
	Miscellaneous, Pharmaceuticals and Pesticides	24.2	55-65				
aniline hydrochloride	Dyes & Pigments Intermediate	.02	ND[e]	ND	ND	ND	537
	Photographic Chemicals	ND	ND				
2-chloroaniline	Dyes & Intermediates	ND	ND	0.1-1.0	200-2,000	2(>15,000 lbs)	18,138
3-chloroaniline	Dyes & Pigment Intermediate	ND	ND	.001-.01	100-1,000	1(>5000 lbs)	ND
	Herbicide Intermediate	ND	ND				
	Pharmaceutical Intermediate	ND	ND				
4-chloroaniline	Dyes & Pigments Intermediate	ND	ND	0.1-1.0	10-100	1(>10,000 lbs)	ND
	Pesticide Intermediate	ND	ND				
2,4-dichloroaniline	Pigment Intermediate	ND	ND	.001-.01	0-1.0	ND	110 (mixed isomers)
2,5-dichloroaniline	Dyes & Pigments Intermediate	ND	ND	ND	ND	4(>48,000 lbs)	
3,4-dichloroaniline	Pigment Intermediate	ND	ND	0.1-1.0	ND	ND	ND
	Herbicide Intermediate	ND	ND				
2,4,6-trichloroaniline	Pigment Intermediate	ND	ND	0.1-1.0	2	1(>10,000 lbs)	ND
4-bromoaniline	Azo Dyes	ND	ND	ND	ND	ND	1744
	Organic Synthesis Reagent	ND	ND				

[a]JRB (1980). JRB Associates, Inc. Level I materials balance for anilines, for office of Pesticides and Toxic Substances (OPTS), USEPA (Ref. 31)
[b]SRI (1982). SRI International Anilines by Kashiwase D and Rich P Technical Directive 60 for OPTS, USEPA. (Ref. 76)
[c]NIOSH (1983). National Institute for Occupational Health and Safety. Aniline and derivatives. In: Quarterly Hazard Summary Report (Ref. 62)
[d]USEPA (1983). Computer printout of nonconfidential TSCA inventory of anilines. Management Support Division, USEPA. (Ref. 81)
[e]ND - No Data.

TABLE 1. EXPOSURE, PRODUCTION, USE AND USAGE OF ANILINES (SUBSTITUTED AND UNSUBSTITUTED) - CONTINUED

Chemical	Uses	Usage (10^6 lbs)		Production Volumes[d] (1977)		Dyes Produced Commercially: 1980[b]	NIOSH Worker Exposure Est.[c]
		JRB for 1978[a]	SRI for 1980[b]	US (10^6 lbs)	Import (10^3 lbs)		
2-nitroaniline	Dye & Pigment Pesticide Intermediate Intermediate to phenylenediamine	7.7	ND[e]	1.2-10	ND	6(>60,000 lbs)	336
3-nitroaniline	Dye & Pigment Intermediate Organic Synthesis Intermediate	ND	ND	ND	10-100	3(>15,000 lbs)	ND
4-nitroaniline	Dye & Pigment Intermediate Intermediate to p-phenylenediamine Rubber Chemicals Gasoline Antioxidant Fungicide Intermediate	6.6 ND 13.2 2.2 6.6	ND ND ND ND ND	10-50	10-100	17(2.6×10^6 lbs)	2813
2,4-dinitroaniline	Dye & Pigment Intermediate	ND	ND	.01-.1	100-1000	1(581,000 lbs)	ND
2-chloro-4-nitroaniline	Dye & Pigment Intermediate Pesticide Intermediate	ND	ND	ND	ND	5(741,000 lbs)	2938
2,6-dichloro-4-nitroaniline	Dye & Pigment Intermediate Direct Fungicide	ND ND	ND 0.4	ND	ND	3(879,000 lbs)	3580
4-chloro-2-nitroaniline	Dye & Pigment Intermediate	ND ND	ND 0.4	0.2-2.0	10-100	10(521,000 lbs)	ND
4-chloro-3-nitroaniline	Intermediate for Azo dyes, Pharmaceuticals and Organic Synthesis	ND	ND	0.1-1.0	1-10	ND	ND
2,6-dibromo-4-nitroaniline	Dye & Pigment Intermediate	ND	ND	ND	ND	ND	ND
2-bromo-4,6-dinitroaniline	Dye & Pigment Intermediate	ND	ND	ND	ND	2	ND
2-bromo-6-chloro-4-nitroaniline	Dye & Pigment Intermediate	ND	ND	ND	ND	ND	

[a]JRB (1980). JRB Associates, Inc. Level I materials balance for anilines, for office of Pesticides and Toxic Substances (OPTS), USEPA (Ref. 31)
[b]SRI (1982). SRI International Anilines by Kashiwase D and Rich P Technical Directive 60 for OPTS, USEPA. (Ref. 76)
[c]NIOSH (1983). National Institute for Occupational Health and Safety. Aniline and derivatives. In: Quarterly Hazard Summary Report (Ref. 62)
[d]USEPA, (1983). Computer printout of nonconfidential TSCA inventory of anilines. Management Support Division, USEPA. (Ref. 81)
[e]No Data.

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Other information available to the Agency indicates that some of the remaining category members are being produced in substantial quantities. Although certain category members are or may be produced in substantial quantities, available data do not clearly indicate that they are released into the environment in substantial quantities or that there is or may be significant or substantial human exposure to these chemical substances. Thus, without additional environmental release and/or human exposure information, the Agency does not believe that a TSCA section 4(a)(1)(B) finding can be made for the substituted anilines in the category. EPA requests the submission of additional data on the environmental release of anilines category members and information on the potential for human exposure to any of these substances. The Agency will review such information before making a determination as to whether a 4(a)(1)(B) finding can be made for anilines category members besides aniline itself.

However, the Agency does consider that publicly available and confidential information indicate that each of the twenty members of the anilines category currently in production may have sufficient human and environmental exposure to meet the criterion for a finding under section 4(a)(1)(A)(i): That the manufacture, distribution in commerce, processing, use, or disposal of anilines category members, or any combination of such activities may present an unreasonable risk of injury to health and the environment. Summaries of the available data on human exposure and environmental release are set forth below and in Unit II.B.3, respectively.

Current (1983) NIOSH estimates of the number of workers potentially exposed to the anilines addressed in this notice range from 110 to 85,127 (Ref. 62) and are summarized in Table 1. The ACGIH-recommended 8-hour, time-weighted-average (TWA) limits for aniline and 4-nitroaniline are 2 ppm and 1 ppm, respectively (Ref. 2). The OSHA-required 8-hour TWA limit for aniline is 5 ppm (Ref. 65).

The Aniline Association, which deals solely with unsubstituted aniline, has reported to EPA that a total of 344 operators and 532 other workers were potentially exposed to aniline during production and internal use by manufacturers. According to the Association, the measured level of exposure to aniline by operators was below 1 ppm in all cases (Ref. 27). The SATF reported to EPA on the numbers of workers potentially exposed and levels of exposure to the substituted anilines; however, this information is claimed confidential (Ref. 20). The Aniline Association and the SATF are compiling information on worker exposure from the distribution and processing of aniline and the substituted anilines. This information should be available to the Agency in the near future. The Agency also has confidential information on the number of workers exposed to aniline and substituted anilines submitted by manufacturers under section 8(a) of TSCA.

There is very little information on the potential for consumer exposure to the anilines. The publicly available information on usage volume and major end-uses of aniline and substituted anilines is listed in Table 1. The major TSCA uses include gasoline additives, rubber chemicals, and intermediates in the production of dyes and pigments, pesticides, isocyanates and photographic chemicals. There is no information on the presence of aniline or the substituted anilines as impurities in other chemicals.

There may be some potential for human exposure due to inadvertent aniline production (Ref. 32). Aniline has been detected in the retort water from oil shale processing and in product water from coal gasification. Reported concentrations vary widely because of differences in nitrogen content and process conditions. Aromatic amines, including aniline, have been identified as a major class of organics in effluents from coal liquefaction processes. Aniline also has been detected in cigar and cigarette smoke. However, at this time EPA has insufficient exposure-related information to suggest that it will be able to make a section 4(a)(1)(B) finding of significant or substrantial human exposure to members of the anilines category other than aniline itself.

2. *Adequacy of information and need for health effects testing.* The ITC recommended that the anilines category be considered for health effects testing in the areas of carcinogenicity, mutagenicity, teratogenicity, and chronic effects, with special emphasis on blood disorders and neurotoxicity, and for epidemiology studies. EPA has approached its analysis of these recommendations on the anilines from the standpoint of potential unreasonable risk (section 4(a)(1)(A)). Table 2 summarizes the tentative testing needs for the twenty anilines currently in production. In both Table 2 and in the discussions of specific testing needs that follow, the testing needs are presented in terms of all 20 commercial substances. However, EPA is considering whether testing a smaller number of representative substances is a possible option for this category. An application of this approach is discussed in Unit II.C; issues related to the scope of the category and what chemicals should be tested are raised for public consideration in Unit III.8 through 10.

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TABLE 2. HEALTH EFFECTS FOR WHICH TESTING IS BEING CONSIDERED*

Chemical (CAS No.)	Onco-genicity	Muta-genicity[c]	Terato-genicity	Reproductive Effects	Acute Effects	Chronic Effects[d]	Neurotoxic Effects	Epidemi-ology[e]
aniline (62533)	-	x	x[a]	x	-	x	x	x
2-chloroaniline (95512)	x	x	x	x	-	x	x	-
3-chloroaniline (108429)	x	x	x	x	-	x	x	-
4-chloroaniline (106478)	-	x	x	x	-	x	x	-
2,3-dichloroaniline (608275)	x	x	x	x	x	x	x	-
2,4-dichloroaniline (554007)	x	x	x	x	-	x	x	-
2,5-dichloroaniline (95829)	x	x	x	x	-	x	x	-
3,4-dichloroaniline (95761)	x[a]	x	x	x	-	x	x	-
2,4,6-Trichloroaniline (634935)	x	x	x	x	-	x	x	-
2-nitroaniline (88744)	x	x	x	x	-	x	x	-
3-nitroaniline (88744)	x	x	x	x	-	x	x	-
4-nitroaniline (100016)	-[b]	-	-[a]	-[b]	-	x	x	-
2,4-dinitroaniline (97029)	x	x	x[a]	x	-	x	x	-
2-chloro-4-nitroaniline (121879)	x	x	x	x	x	x	x	-
2-chloro-5-nitroaniline (6283256)	x	x	x	x	-	x	x	-
4-chloro-2-nitroaniline (89634)	x	x	x	x	-	x	x	-
4-chloro-3-nitroaniline (635223)	x	x	x	x	-	x	x	-
2,6-dichloro-4-nitroaniline (99309)	x	x	x	x	-	x	x	-
2,6-dibromo-4-nitroaniline (827941)	x	x	x	x	-	x	x	-
2-bromo-4,6-dinitroaniline (1817738)	x	x	x	x	x	x	x	-

*x = Testing being considered.

a. Testing with second species being considered.

b. On test [Dickson B. (1983). Report to USEPA by Substituted Anilines Task Force on health and environmental effects of anilines. NTP. 1983. On-going and planned testing by National Toxicology Program (Ref. 21)].

c. Tests to evaluate gene mutational and cytogenetic potentials are being considered.

d. With emphasis on blood effects.

e. Study being considered for aniline only, no cohort currently identified for substituted anilines [Dickson B. 1983. (Ref. 21)].

a. *Hematologic disorders.* Studies have been conducted on different anilines using several test species and various routes of administration (Refs 30, 44, 58, 70 through 72 and 85). Aniline and many of the substituted anilines cause methemoglobinemia (elevation of methemoglobin, the oxidized form of hemoglobin) as well as effects on the spleen (an organ that take part in red blood celll production and destruction) and changes in the populations of various blood elements. In addition to aniline itself, other anilines shown to cause methemoglobinemia in one or more species include all three monochloroanilines, 2,4,- and 3,4-dichloroaniline, 2,4,6-trichloroaniline, and 4-nitroaniline.

Methemoglobin induction appears to be related to the formation of N-oxidized metabolites such as phenyl hydroxylamines and nitrosobenzenes (Ref. 35). Thus, any anilines category member has the potential to cause this effect, but among those tested there is considerable variation in potency and in species sensitivity. For example, 2,4,6-trichloroaniline does not induce methemoglobin in the rat but induces 44 percent methemoglobin in the cat at a single dose of 49 mg/kg (Refs. 39 and 44); 4-chloroaniline at 8 mg/kg induces 61 percent methemoglobin in the cat but is somewhat less effective in the dog, rat or monkey (Refs. 44, 70 and 75). The Agency believes that species other than the rat may be preferred for testing of anilines category members for effects that may be related to methemoglobinemia; for further discussion see Unit III.5.

The Agency believes that the decrease in the oxygen-carrying capacity of the blood that accompanies methemoglobin formation and possibly causes anoxia may cause or contribute to the development of adverse health effects [i.e., teratogenicity (see Refs. 19, 16, 56 and 63) and neurotoxicity (Refs. 6, 77 through 79, 83 and 84)]. The available data on teratogenic and neurotoxic effects raise only limited concern that the anilines category members may cause these effects. However, the potential for these substances to induce methemoglobinemia, possibly leading to anoxia, in combination with the data on neurotoxicity and teratogenicity suggests that exposures to sufficiently high levels may cause either or both of these latter effects. The available information is insufficient to evaluate the potential effects of the anilines category members *per se* or to correlate any observed teratogenic or neurotoxic effects with induction or specific levels of methemoglobin. Therefore, the Agency is considering requiring testing to adequately characterize the teratologic, hematologic and systemic (including neurotoxic) effects of the anilines category members.

The Agency is also raising for public consideration and comment the issue of whether available positive oncogenicity data on aniline and 4-chloroaniline permit regulatory alternatives that would render further health effects testing for these chemicals unnecessary (see Unit III. 4).

b. *Reproductive effects.* Aniline and the substituted anilines were not recommended by the ITC for testing for reproductive effects. On the basis of information that repeated subcutaneous injection of aniline interferes with steroidogenesis in the rat uterus and that repeated oral administration of 4-chloro-3-nitroaniline causes sperm degeneration and an increase in testes weights in rats (Ref. 28 and 69), the Agency believes that other anilines category members may cause adverse reproductive effects, and is considering requiring testing to adequately characterize the reproductive effects of these substances.

c. *Mutagenicity.* Many of the commercially available anilines have been tested in either the Ames assay or other lower-tier mutagenicity assays; in most cases, positive results were obtained in at least one system (Refs. 5, 7, 17, 25, 57, 64, 73, 74 and 89). However, few data on the anilines have been developed using higher-tier mutagenesis test systems necessary to adequately characterize the mutagenic potential of a chemical that is positive in a lower-tier test. Thus, EPA is considering requiring a set of mutagenicity tests on the anilines category members, to determine or reasonably predict their gene mutational and cytogenetic potentials. Such tests may include short-term mutagenicity tests for those category members that have not been adequately tested in such systems, as well as higher-tier mutagenicity tests for some or all of the anilines. Examples of additional mutagenicity tests include, but are not necessarily restricted to, specific-locus gene mutation tests on cells in culture, tests for induction of chromosomal aberrations in cells in culture, and tests for induction of mutations in drosophila, rats or mice.

d. *Oncogenicity.* EPA believes at this time that human exposure to anilines category members may present an unreasonable risk of oncogenicity. Three oral chronic toxicity studies have reported on the oncogenic effects of aniline hydrochloride on rats or rats and mice (Ref. 18, 59 and 87). The final report on the study sponsored by CIIT (Ref. 18) indicates that dietary intake of aniline hydrochloride for 104 weeks at levels of 10, 30 and 100 mg/kg/diet is associated with an increased incidence of primary splenic sarcomas, principally in male F344 rats. Similar effects of aniline hydrochloride exposure were observed in rats and mice in studies completed by Ward and Reznick (Ref. 87) and NCI (Ref. 59). Comparable results were noted in the two oral chronic toxicity studies on the oncogenic effects of 4-chloroaniline and 4-chloroaniline hydrochloride (Ref. 60, 61 and 87). A study completed by NCI in 1978 (Ref. 59) also reported an increase in splenic neoplasms in male rats exposed to 250 and 500 mg/kg/day and both sexes of mice after chronic dietary exposure to 4-chloroaniline hydrochloride; a confirmatory study sponsored by NTP is in progress (Ref. 64).

In a study by Weisburger *et al.* (Ref. 88), a significant dose-related increase in vascular tumors in male mice was observed after chronic oral exposure to dietary levels of 6,000 and 12,000 mg/kg/day of 2,4,6-trichloroaniline hydrochloride.

EPA believes that the available positive oncogenicity data on three anilines raise a suspicion that oncogenic effects may result from human exposure to the remaining anilines category members, but that the sum of available evidence is insufficient to reasonably determine the oncogenic effects of the untested chemicals. Therefore, EPA is considering requiring testing of untested anilines for oncogenic effects. In addition, whereas for aniline and 4-chloroaniline the data from completed or ongoing studies should be sufficient to support oncogenicity risk assessments, the study of 2,4,6-trichloroaniline may be inadequate for this purpose. For example, the authors did not report actual consumption of test compound by the animals or the relationship of the doses to the maximum tolerated dose; further, no dose-response relationship was observed. Therefore, the Agency is also considering whether to require further oncogenicity testing of this compound.

e. *Epidemiology.* The SATF has reported to EPA that based on their information there is no suitable cohort of workers available on which to conduct an epidemiology study for the substituted anilines currently produced or imported (Ref. 20). However, EPA has information which suggests that an adequate cohort of workers can be defined for the conduct of an epidemiology study on aniline. This chemical has been reported by NIOSH

(Ref. 62) to have the greatest occupational exposure among the anilines category members. In addition, the major uses of aniline are representative of the major uses of the substituted anilines. Hence EPA believes that an epidemiological study of workers exposed to aniline may be justified in light of the health effects exhibited by laboratory animals. Unless information indicating the existence of a suitable cohort becomes available for one or more of the substituted anilines, EPA will conclude that epidemiological studies of category members other than aniline may not be feasible at this time and will not propose that epidemiological studies be undertaken on those category members.

3. *Environmental release.* The Agency has tentatively concluded that aniline and the 19 substituted anilines are released into the environment from their manufacture, distribution, processing, use or disposal. The Agency has arrived at this tentative conclusion using information on the release of these substances reported by manufacturers under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712), information provided by the SATF and the Aniline Association, and other published and unpublished data available to the Agency.

JRB Associates (Ref. 31) has estimated for EPA that the total emission of aniline from manufacture, processing and on-site use was approximately 19 million pounds in 1978. Of this amount, 18.5 million pounds was estimated to be released into water and 222,000 pounds into the air. No information was available on the disposal of solid residues.

The Aniline Association has reported to EPA that the environmental release of aniline itself from production and internal use by manufacturers was approximately 638,000 pounds in 1982. Approximately 481,000 pounds was released to air and approximately 174,000 pounds was released to water (Ref. 27).

There is little monitoring information available on environmental concentrations of anilines category members in soil. One probable source of release of residues of some of these compounds is from their direct application to soil for pesticidal uses (e.g. 2,6-dichloro-4-nitroaniline, a nematocide). However, control over the potential for exposure of plants and animals to residues of aniline or substituted anilines in the terrestrial compartment from the application of pesticides falls under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Another potential source of residues of anilines category members is from treated or untreated solid wastes generated from chemical reaction processes, because these chemicals are used almost exclusively as chemical intermediates. Because there is no information on the manner in which treated or untreated solid wastes that may contain anilines are disposed of, it is not possible to estimate the release of anilines to the soil from solid wastes. If it is assumed that the disposal of these solid wastes is localized either in controlled landfills or monitored sites of agricultural fertilizer application (aniline is regulated under the Resource Conservation and Recovery Act (RCRA) as a hazardous waste, while the substituted anilines are not) there would not be a reason to assume a significant uncontrolled release of anilines into soil from solid waste disposal, nor significant exposure of terrestrial plants or animals to the anilines.

The total emissions of 2-nitro-, 3-nitro-4-nitro-aniline for 1978 were estimated to be 152,000, 5,240, and 1,738,000 pounds, respectively (Ref. 31). Of these emissions, nearly all (152,000, 5,000, and 1,580,000 pounds, respectively) were estimated to be released into water. No estimates were available for releases to land. The SATF has reported to EPA on the environmental release of the 19 substituted anilines currently in production (Ref. 20). The Agency also has confidential information on the production and release of anilines category members submitted by manufacturers under section 8(a) of TSCA. Although this information is claimed confidential it does support EPA's tentative conclusion that releases of some category members occur in connection with manufacturing and on-site uses. The SATF has agreed to supply EPA with results of its survey of downstream users of anilines.

Limited data were found on residue levels for aniline and five substituted anilines in water and sediments. Wastewater, the receiving waters and sediments near a specialty manufacturing plant that manufactures a broad range of chemicals were analyzed for organic pollutants (Ref. 34). One sample of wastewater contained 0.02 ppm of aniline. Aniline was not detected in river water or sediments. Monochloroanilines (isomers unspecified) were not detected in wastewater or river water but were found in sediments at 1–2 ppm. Games and Hites (Ref. 24) studied organic compounds in the untreated and final effluent of wastewater originating from a dye manufacturing plant near Charleston Bay, South Carolina. Results of a 2.5-month compositing study for both treated and untreated plant effluent showed the presence of six of the substituted aniline compounds. USEPA data on the STORET system include a total of 78 data points or observations on environmental levels of anilines in streams (Ref. 80). The mean residue level was 188.5 ppb, with maximum and minimum values of 2,800 and 100 ppb, respectively. The STORET data were collected from August 29, 1978 to August 4, 1980.

While the available monitoring studies and the data from the EPA STORET data base have not reported large amounts of aniline or the substituted anilines in water, wastewaters, and sediments, the Agency is concerned about the potential for exposure of aquatic organisms to anilines resulting from estimated and reported releases and the reports that the chloroanilines and possibly other substituted anilines bind to organic components in water and sediments, possibly reaching concentrations sufficient to cause acute and chronic effects on these organisms.

4. *Chemical fate.* The Agency is concerned about the chemical fate of anilines category members in water and sediment because of the estimated and reported release and dispersion of these compounds into water and because of the known toxic effects of some anilines on aquatic organisms. Therefore chemical fate testing as outlined in Table 3 is being considered by the Agency. The following is a summary of the available information on chemical fate of anilines category members.

The Agency believes there are sufficient data to reasonably determine or predict the hydrolysis of anilines category members (Ref. 20). These data suggest that, because of their chemical structure, anilines would not be susceptible to hydrolysis. The Agency also believes that there are sufficient data to reasonably determine or predict the partitioning of anilines into an organic phase from water (Refs. 36, 40 through 42). These data suggest that, because of their low to moderate octanol-water partition coefficients (log P), anilines would not partition into an organic phase in water, such as the fatty tissues of aquatic organisms.

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TABLE 3. CHEMICAL FATE TESTING BEING CONSIDERED*

Chemical (CAS No.)	Aquatic Photolysis Rates	Aquatic Volatility Rate	Aerobic Aquatic Biodegradation Rate	Sediment Adsorption	Aerobic Sediment Biodegradation Rate	Anaerobic Sediment Biodegradation Rate
aniline (62533)	x	-	-	x	x	x
2-chloroaniline (95512)	x	x	x	x	x	x
3-chloroaniline (108429)	x	x	x	x	x	x
4-chloroaniline (106478)	x	-	x	x	x	x
2,3-dichloroaniline (608275)	x	x	x	x	x	x
2,4-dichloroaniline (554007)	x	x	x	x	x	x
2,5-dichloroaniline (95829)	x	x	x	x	x	x
3,4-dichloroaniline (95761)	-	-	x	x	x	x
2,4,6-trichloroaniline (634935)	x	x	x	x	x	x
2-nitroaniline (88744)	x	x	x	x	x	x
3-nitroaniline (99092)	x	x	x	x	x	x
4-nitroaniline (100016)	x	x	x	x	x	x
2,4-dinitroaniline (97029)	x	x	x	x	x	x
2-chloro-4-nitroaniline (121879)	x	x	x	x	x	x
2-chloro-5-nitroaniline (6283256)	x	x	x	x	x	x
4-chloro-2-nitroaniline (89634)	x	x	x	x	x	x
4-chloro-3-nitroaniline (635223)	x	x	x	x	x	x
2,6-dichloro-4-nitroaniline (99309)	x	x	x	x	x	x
2,6-dibromo-4-nitroaniline (827941)	x	x	x	x	x	x
2-bromo-4,6-dinitroaniline (1817738)	x	x	x	x	x	x

*(x)=Testing being considered.
(-)=No testing being considered.

The Agency believes that there are insufficient data to reasonably determine or predict the persistence of anilines category members in the aquatic environment. Sufficient data exist to predict the aquatic photolysis rate of 3,4- dichloroaniline ($Tp\frac{1}{2}$=0.3–2 days; Ref. 46) and the aquatic volatility rates of aniline, 4-chloroaniline and 4-nitroaniline ($Tv\frac{1}{2}$=15.5, 44.5 and 106 days, respectively) (Refs. 22 and 23). Additional experimental data developed for 4-chloroaniline and 3,4-dichloroaniline suggest that their aquatic volatilization rates are low (Refs. 22, 23 and 38). Sufficient data exist to predict the aerobic aquatic biodegradation rate of aniline since it is recommended as a reference substance for aerobic biodegradation testing by EPA (Ref. 82). The predicted aquatic half-life of aniline in one mathematical model is 3 days (Refs. 22 and 23). The Agency believes that aniline should be used as a reference substance for any of the aerobic biodegradation rate tests being considered in this ANPR to provide an adequate internal standard for comparing test results. The Agency also believes that aquatic photolysis, aquatic volatility and aerobic aquatic biodegradation rate testing should be considered for the anilines listed in Table 3 to evaluate their potential as rate-limiting processes influencing the persistence of anilines in the aquatic environment.

The Agency believes that there are insufficient data to reasonably determine or predict the persistence of anilines in the sediment environment. Data exist to predict that a number of chloroanilines bind chemically to soil (Refs. 8, 10, 29, 35, 66, 67 and 87). These data indicate that binding of chloroanilines is greater than would be predicted from water solubilities and the algorithms of Kenega and Goring (Ref. 36) to estimate their partitioning to soil organic matter. Data also exist to predict that aniline and a number of chloroanilines are biodegraded by soil microorganisms (Refs. 10 through 13, 16, 26, 35) and activated sludge microorganisms (Refs. 43 and 68). However, the existing data do not allow the Agency to reasonably determine or predict the adsorption of anilines to sediment or the rate at which anilines may be biodegraded aerobically or anaerobically in sediment. Therefore, the Agency believes that sediment adsorption as well as aerobic and anaerobic sediment biodegradation rate testing should be considered for the anilines listed in Table 3 to evaluate their potential as rate-limiting processes influencing the persistence of anilines in the sediment environment.

5. *Environmental Effects.* The Agency has tentatively concluded that the available information indicates that aniline and the 19 substituted anilines may cause acute and chronic effects in aquatic organisms, and therefore is considering proposing the environmental effects testing listed in Table 4 under TSCA section 4(a)(1)(A). Sufficient data exist to predict the toxicity of aniline and 3,4-dichloroaniline to freshwater algae. The reported 48-hour LC_{50}'s are 0.16 mg/l and 2.2–3.2 mg/l for aniline and 3,4-dichloroaniline, respectively (Refs. 4 and 14). In addition, sufficient data exist to predict the toxicity of 3,4-dichloroaniline to marine algae. The reported 48-hour LC_{50} is 0.48 mg/l (Ref. 14). However, the Agency believes data are insufficient to reasonably determine or predict the toxicity of other anilines category members to freshwater and marine algae. The Agency believes that algal toxicity testing should be considered for the anilines category members indicated in Table 4 to determine the potential adverse effects of these substances on algae.

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TABLE 4. ENVIRONMENTAL EFFECTS FOR WHICH TESTING IS BEING CONSIDERED*

Chemical (CAS No.)	Algal Bioassay		FW Invertebrates		Marine Invertebrates			FW Vertebrates				Marine Vertebrates		Benthic Invertebrates			
	FW	Marine	Daphnid Acute	Daphnid Chronic	Mysid Acute	Mysid Chronic	Oyster Acute	FHM Acute	FHM-ELS	RT Acute	RT-ELS	SHM Acute	SHM-ELS	FW Acute	FW Chronic	Marine Acute	Marine Chronic
aniline (62533)	-	X	-	X	-	X	X	-	-	-	X	X	X	X	X	X	X
2-chloroaniline (95512)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
3-chloroaniline (108429)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
4-chloroaniline (106478)	X	X	-	X	-	X	-	-	X	X	X	X	X	X	X	X	X
2,3-dichloroaniline (608275)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2,4-dichloroaniline (554007)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2,5-dichloroaniline (95829)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
3,4-dichloroaniline (95761)	-	-	-	-	-	X	-	-	X	-	X	X	X	X	X	X	X
2,4,6-trichloroaniline (634935)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2-nitroaniline (88744)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
3-nitroaniline (99092)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
4-nitroaniline (100016)	X	X	-	X	-	X	X	-	X	-	X	X	X	X	X	X	X
2,4-dinitroaniline (97029)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2-chloro-4-nitroaniline (121879)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2-chloro-5-nitroaniline (6283256)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
4-chloro-2-nitroaniline (89634)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
4-chloro-3-nitroaniline (635223)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2,6-dichloro-4-nitroaniline (99309)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2,6-dibromo-4-nitroaniline (827941)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2-bromo-4,6-dinitroaniline (1817738)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

*Key to Abbreviations: (X) = Testing being considered, (-) = No testing being considered, FW = Freshwater, FHM = Fathead minnow, ELS = Early life stage, RT = Rainbow Trout, SHM = Sheepshead Minnow.

The Agency believes there are insufficient data to reasonably determine or predict the toxicity of most of the anilines to freshwater and marine invertebrates. However, sufficient data do exist to predict the acute toxicity of aniline, 4-chloroaniline, 3,4-dichloroaniline and 4-nitroaniline to daphnids. The reported 48- or 24-hour LC_{50}'s are 0.65 mg/l, 6.2 mg/l, 0.23–0.29 mg/l and 20–24 mg/l (24-hour), respectively (Refs. 3, 15, 51 through 53). Sufficient daphnid chronic toxicity data exist for 3, 4-dichloroaniline. The reported 21-day LC_{50} is 0.1 mg/l (Ref. 4). Sufficient acute toxicity data to marine invertebrate species (*Crangon septemspinosa*, shrimp) exist for aniline, 4-chloroaniline, 3,4-dichloroaniline, and 4-nitroaniline. The reported 48-hour LC_{50}'s are 28.4 mg/l, 12.5 mg/l, 3.6 mg/l and 12.6 mg/l, respectively (Ref. 45). Sufficient data exist to predict the toxicity of 4-chloroaniline and 3,4-dichloroaniline to oysters. The reported 48-hour LC_{50}'s are 10 mg/l and 24 mg/l, respectively (Ref. 48). The Agency believes that toxicity testing using freshwater and marine invertebrates should be considered for the anilines category members indicated in Table 4.

Data are not sufficient to reasonably determine or predict the toxicity of anilines to freshwater and marine vertebrates although sufficient data exist to predict the acute toxicity of 4-chloroaniline and 3,4-dichloraniline to the fathead minnow, and aniline and 4-nitroaniline to the golden orfe. The 48-hour LC_{50}'s are 61–65 mg/l and 106 mg/l for aniline and 4-nitroaniline, respectively (Ref. 33). The 48-or 96-hour LC_{50}'s for 4-chloroaniline and 3,4-dichloroaniline are 44–50 mg/l and 5.6 mg/l (96h), respectively (Refs. 49 and 50).

Sufficient data also exist to predict the acute toxicity of aniline, 3,4-dichloroaniline, and 4-nitroaniline to rainbow trout. The 48-or 96-hour LC_{50}'s are 28.3 mg/l, 2.4-3.2 mg/l (96h), and 45 mg/l (96h) (Refs. 1, 47, 54). Sufficient data exist to predict the fish early life stage toxicity of aniline to the bass, catfish and goldfish. The LC_{50}'s are 43.2-47.3, 5.6-7.4 and 10.2 mg/l, respectively (Ref. 9). There are no data on the acute or early life stage toxicity of anilines category members to marine vertebrates. The Agency believes that acute and early life stage testing of freshwater and marine vertebrates should be considered for the anilines category members indicated in Table 4 to determine their potential adverse effects on these organisms.

Finally, the Agency believes there are incomplete data to determine or predict the toxicity of anilines category members to freshwater and marine sediment-dwelling invertebrates. There are data indicating that anilines bind to soils, and the Agency believes that anilines have the potential to bind to sediments. Therefore, the Agency believes that testing of sediment-dwelling invertebrates should be considered for the anilines category members indicated in Table 4 to determine their potential adverse effects of on these organisms.

C. Subcategorization of the Anilines Category

1. *Technical analysis.* EPA is considering whether it should require testing of all anilines category members or adopt an approach in which tests are performed on substances chosen to represent smaller groups (i.e., subcategories) of anilines. In considering this issue, the Agency developed a number of alternatives as set forth in Unit III.6–8. The Agency has tentatively concluded, for the reasons outlined below, that the most feasible approach to developing test data sufficient to determine or reasonably predict the health and environmental effects of the anilines is subcategorization of the larger category and selection of representative test candidates from among the smaller subcategories.

The anilines category is rather strictly defined. The three allowed substituents are all electron-withdrawing in nature and thus tend to deactivate aromatic molecules. They (particularly the halogens) also are generally less reactive than the amino group. The amino group common to all the anilines is so reactive compared to the other substituents that it can be expected in many respects to dominate the chemistry and the toxicology of the category. Thus, the category presents the picture of a general type of behavior modified in roughly predictable ways by the various substituents. Certain effects do in fact appear to be common to several anilines—examples are hematologic effects (methemoglobinemia), mutagenesis in short-term *in vitro* assays, and tumor formation. However, the relationship between the degree and complexity of substitution and the probability and potency of a given effect is unclear. Therefore, EPA believes it may be appropriate to subdivide the anilines category into smaller, more homogeneous subcategories. The Agency is tentatively defining these subcategories by chemical structure type, in the belief that the differences in chemical structure thus emphasized can reasonably be expected to be reflected in the toxicological data. The rationale supporting the definition of the Agency's tentative subcategories is as follows:

a. Aniline is the only category member not bearing an electron-withdrawing (deactivating) substituent, and therefore comprises a one-chemical subcategory.

b. Chlorinated anilines are less reactive chemically than aniline because chlorine atoms are deactivating substituents. Increases in degree of chlorination lead to corresponding decreases in reactivity and increases in lipid solubility, as with most haloaromatic compounds. Thus, differences in metabolic reaction rates and pharmacokinetic properties can reasonably be expected for chlorianted anilines versus aniline, and to some extent among chloroanilines having different numbers of chlorine atoms. The Agency therefore believes that chloroanilines can be represented by two subcategories: monochloroanilines and polychloroanilines.

c. For nitroanilines the situation is similar to that for chloroanilines: deactivating nitro-substituents are expected to result in lowered amino and ring reactivity, with increasing substitution leading to still lower reactivity. However, in contrast to the unreactive chloro substituent, the nitro group can be reduced to hydroxylamino, nitroso or amino functions, thus making possible new families of metabolites that may produce unique toxic effects. The Agency is tentatively proposing two nitroanilines subcategories: mononitroanilines and polynitroanilines.

d. Halonitroanilines are again deactivated anilines, but the mix of substituent types complicates the chemistry as well as the potential toxicological picture. The degree to which the toxicology of a halonitroaniline might be predicted from data on individuals halo- and nitroanilines is unknown. Therefore, EPA is tentatively proposing a subcategory of halonitroanilines.

The Agency is considering proposing testing of one substance from each of the first five subcategories. While this approach may not remove all the uncertainties as to the toxicity of untested subcategory members, it may suffice to provide a reasonable basis for characterizing the risk to human health and the environment presented by members of that subcategory. Because of the complexity of the halonitroanilines subcategory, the Agency is considering proposing testing of two substances from this group.

The subcategories and chemicals under consideration for testing by EPA are as follows:

Category identification	Test substance
Subcategory A: Aniline	Aniline.
Subcategory B: Monochloroaniline	4-chloroaniline.
Subcategory C: Polychloroanilines	3,4-dichloroaniline.
Subcategory D: Monochloroaniline	4-nitroaniline.
Subcategory E: Polychloroanilines	2,4-dinitroaniline.
Subcategory F: Halonitroanilines	2-chloro-4-nitro-aniline and 2-bromo-4,6-dinitroaniline.

2. *Legal/regulatory implications of subcategorization.* The obligation to test and exemption and reimbursement implications of this approach are discussed in this section.

Two of the subcategories—aniline and polynitroanilines—have only a single member on the Inventory and currently in commercial production—aniline and 2,4-dinitroaniline, respectively. Consequently, the testing of those two substances raises no issues about equivalence or exemptions. However, EPA believes that data developed on 2,4-dinitroaniline could be used in the future to predict the effects of other polynitroanilines that might enter commerce.

The remaining four subcategories have three or more members on the Inventory and currently in commercial production. For three subcategories—monochloroanilines, polychloroanilines, and mononitroanilines—EPA is considering proposing the testing of a single member of the subcategory—4-chloroaniline, 3,4-dichloroaniline, and 4-nitroaniline, respectively. EPA believes that within these three subcategories all members are likely to be similar toxicologically and, consequently, that testing any member of the subcategory will reasonably predict the effects of the others. EPA believes the test substance in each of these three subcategories should be a substance that is among the highest in production volume. The choice of test substances based on production volume would also result in structural variations among the entire set of seven substances that will enable EPA to compare data between subcategories to verify the effects of substituent changes in certain positions.

EPA believes that data on the three test substances in subcategories B, C and D could be used to reasonably predict the effects of all the other members and that EPA could regulate the other members of each subcategory on the basis of data produced for the designated test substance. This approach presents the advantage of avoiding unnecessary, duplicative testing and allowing industry to spread its testing resources further.

For purposes of exemptions and reimbursement, EPA is considering proposing that each member of the three subcategories B, C and D be considered equivalent to the designated test substance for that subcategory. Thus, manufacturers and processors of substances in the subcategory who apply for an exemption would not be required to show equivalence. The cost of testing the single test substance would be spread among all the manufacturers and processors of members of the subcategory and would probably be weighted on the basis of production volume.

However, EPA recognizes that a company making another substance in one of these subcategories might wish to test its own substance for some or all of the effects of concern rather than contribute to testing of the designated test substance. Accordingly, EPA is considering allowing a manufacturer or processor to test the substance it manufactures or processes, rather than the designated test substance in its subcategory, for any or all of the effects of concern. Such a manufacturer or processor would not be required to test the designated test substance or seek an exemption for any designated test that it performs with the chemical substance it manufactures or processes.

The final subcategory—halogenated nitroanilines—presents a different problem. EPA believes that to characterize adequately the effects of all the members of this subcategory it is necessary to test at least two representative substances—2-bromo-4, 6-dinitroaniline and 2-chloro-4-nitroaniline—because the variations in structure are greater within this subcategory. Here again, EPA is considering proposing as the test substances two of the highest production members of the subcategory, which also reflect the variations in structure within the subcategory. EPA's tentative conclusion is that data on the two test substances will reasonably predict the effects of the other members in the subcategory and that EPA could regulate the other members on the basis of these data.

EPA is considering proposing that the other members of the subcategory be considered equivalent to the two test substances together. Thus, a manufacturer or processor of another member of the category must seek an exemption from the testing requirements for both test substances and would be required to reimburse for testing of both test substances. However, a demonstration of equivalence would not be necessary in the exemption application. As with the three subcategories discussed above, EPA is considering that a manufacturer or processor of another member of the subcategory could instead test its own substance for some or all of the effects of concern and that it would not be required to test the test substances or seek an exemption for any designated test that if performs with the substance it manufactures or processes.

In addition, EPA is considering proposing that manufacturers and processors of only one of the two designated test substances for this subcategory not be required to perform tests for the other test substance, to contribute to that testing, or to seek exemption from testing the other test substance. The reason is that data on the substance that person manufactures or processes are all that is necessary to predict its health effects.

This testing scheme is predicated on EPA's belief that data on the designated test substances can be used to predict the effects of the other members of each subcategory and that it can regulate the other members on the basis of those data. EPA believes the intent of section 4 of TSCA is to provide enough information to regulate substances of concern. EPA also believes that the section 4 equivalence finding is inextricably intertwined with the conclusion that the data from one substance can be used to regulate another. Thus, if the data for the test substances cannot be used to predict the effects of the other members of each subcategory and, therefore, cannot be used to regulate the other members of the subcategory, testing of each of the twenty substances individually would be necessary.

III. Issues for Comment

1. For a given test organism, should some or all of the test substances be administered as salts rather than free bases? This would be expected to increase the stability of the materials, but changes the possible exposure routes and pharmacokinetic properties (for example, vapor pressures of the salts are lower than those of the free bases while water solubilities are much greater). What would be appropriate test sample purity requirements?

2. Should all the test substances to be tested in the anilines category be administered by the same route? This approach would increase comparability of test results, but might result in some discrepancies between actual and experimental exposure routes. Would comparative pharmacokinetic studies be useful?

3. EPA's analysis to date of exposure-related information shows that information on processing and use practices by non-manufacturers of anilines will be a very important factor in the Agency's eventual determinations under TSCA section 4. The SATF and the Aniline Association have told EPA that they are collecting such information and intend to supply it to the Agency. EPA wishes to hear directly from processors and users of anilines and from any other knowledgeable persons about specific uses of individual anilines, amounts of anilines devoted to particular uses, numbers of employees potentially exposed, quantities of anilines disposed, treatment of anilines-containing wastes, and any other information bearing on potential release and exposure for the anilines.

4. The Aniline Association has suggested that the Agency consider existing oncogenicity data on aniline as a sufficient basis for defining exposure controls to adequately protect human health, thereby obviating the need for further health effects testing on aniline.

Three studies show that aniline hydrochloride is oncogenic in rodents (see Unit II B.2.d), and they provide sufficient information to reasonably assess the oncogenic risk from known exposures to aniline. Consequently, as an alternative to requiring additional health effects testing of aniline EPA, is considering evaluating the need for additional exposure controls to limit the levels of aniline to which workers can be exposed on the basis of the oncogenicity data (the Occupational Safety and Health Administration (OSHA) in 1978 promulgated an 8-hour time-weighted-average (TWA) standard of 5 ppm for aniline (Ref. 65), and the American Conference of Governmental Industrial Hygienists (ACGIH) has recommended an 8-hour TWA standard of 2 ppm (Ref. 2); these standards are intended to protect workers from methemoglobinemia and related effects).

Similarly, positive oncogenicity data on 4-chloroaniline may also be sufficient for a risk assessment (See Unit II B.2.d). EPA requests comments on exposure controls as an alternative to requiring testing of aniline or 4-chloroaniline for effects other than oncogenicity—i.e., will oncogenicity-based controls be sufficiently protective against the other effects?

5. The Agency believes that methemoglobin formation and the attendant oxygen depletion resulting from exposure to aniline or the substituted anilines may cause or contribute to effects such as teratogenicity and neurotoxicity.

Laboratory studies using rats do not report structural teratologic effects after exposure to aniline or 4-nitroaniline at doses that produce significant maternal and tetal toxicity. However, the rat may be an inappropriate test species since fetal rats have 10 times the methemoglobin reductase of adult rats, while human cord blood contains 0.7 times the methemoglobin reductase found in human blood (Reg. 8). Thus, human fetal effects could occur at a dose lower than rat fetal effects in the absence of maternal methemoglobin toxicity. EPA has received comment from industry representatives on this issue; however, EPA is requesting further comment to determine which species of laboratory animals are the most appropriate for reproductive, teratological, neurotoxicological and possibly other studies of aniline and the substituted anilines.

6. The environmental effects testing being considered by the Agency may provide sufficient data to reasonably determine the environmental effects of aniline category chemicals. Is the testing being considered sufficient? Are there existing data that the Agency has not obtained on the environmental effects of aniline category compounds? Are there existing validated structure-activity data to predict the environmental effects of these compounds? Are there benthic organisms that are true detritivores for which validated protocols are available to determine the environmental effects of sediment-adsorbed aniline category members? Would testing in a model benthic ecosystem be a useful approach to testing for toxicity to benthic organisms? Are there available data to indicate the bioavailability of sediment-bound category members?

7. The chemical fate testing being considered by the Agency may provide sufficient data to reasonably determine the chemical fate of anilines category chemicals in the aquatic environment. Are there available data on the fate or these chemcials that the Agency has not obtained? Are there methods of which the Agency is unaware for extracting these types of chemicals from sediments? Are there additional tests that the Agency should be considering? Since anilines may be released to the aquatic environment from waste treatment facilities, should the Agency consider additional testing to evaluate the fate of anilines in treatment plants, e.g., sorption to primary and secondary sludge solids, losses through volatilization under conditions of high aeration and mixing, biodegradation under simulated waste treatment conditions and sorption or other removal in tertiary treatment processes? Finally, should the Agency require testing to identify major transformation products of anilines resulting from environmental fate processes?

8. There are several alternatives for defining the size and scope of the anilines category for test rule purposes. As set forth in Unit II, for this ANPR EPA has focused on the twenty anilines that are on the Inventory and currently imported or in commercial production, and could limit the testing to those twenty substances. However, there are 34 anilines on the Inventory. The 14 anilines on the Inventory not now in commercial production could be put into commercial production at any time without notice to EPA. In addition, 56 anilines have been assigned CAS registry numbers, indicating that someone has explored the use of substances in addition to those on the Inventory. Theoretically, there are over one hundred more aniline structures that would fit the definition of the category recommended by the ITC.

From EPA's analysis, it appears that the twenty anilines currently in production have the same or very similar uses. Thus, the Agency believes that anilines not now in production would have uses similar to anilines now being produced. Anilines not on the Inventory may be produced in volumes and give rise to exposures and releases during production in the same ranges as those currently in production. In view of this EPA has also considered two other alternatives for defining which anilines would be subject to a test rule.

a. *All anilines on the inventory.* One alternative approach to including only the twenty anilines in commercial production would be to include in the category for the test rule all the anilines on the Inventory. All these are or have been in commercial production. They can be made at any time in any quantity without notification of EPA. Since production, uses, exposures, and releases would be similar to those currently in production, EPA believes that it could make a section 4(a)(1)(A) finding that the manufacture, processing, use, and disposal of each aniline on the Inventory "may present an unreasonable risk of injury" to human health and the aquatic environment for the effects of concern even though some of them are not now in commercial production.

Under the approach set forth in Unit II, a person could begin to manufacture a category member on the Inventory, other than the twenty covered by the proposed rule, without being required to test that chemical or to reimburse those

undertaking the testing of the anilines currently in production. The alternative discussed here, which make the test rule applicable to all anilines in the Inventory, would bring those persons into the coverage of the rule and would more fairly distribute the cost and burden of testing. A person beginning manufacture of another aniline on the Inventory would be subject to the testing requirement, but the requirement would not prevent manufacture from beginning. Rather, testing or seeking an exemption would take place as manufacture began in a manner similar to that for new manufacturers of any chemical substance under a test rule.

b. *All anilines within the ITC's category definition.* A still broader approach would be to include in the category for the test rule all the anilines that have been assigned CAS registry numbers or all those possible structures that fit the ITC category definition, regardless of whether they are on the Inventory.

EPA would make a section 4(a)(1)(A) finding in a manner similar to that discussed above for all anilines on the Inventory. The Agency believes that new anilines would probably be made for the same or very similar uses as the existing anilines. Consequently, production, use, exposures, and releases are likely to be within the same ranges. EPA believes such a finding would be appropriate for new anilines not on the Inventory because section 5(b) of TSCA clearly contemplates that new chemical substances will be subject to secton 4 test rules, and thus it is clear that EPA has the authority to subject them to such rules. In this case, a finding of "may present an unreasonable risk" based on knowledge of production, use, exposures, and releases of other members of the category would be appropriate.

This alternative would present the advantages of alternative III.8.a discussed above in that all manufacturers and processors of anilines, whether on the Inventory or not, would be required to test equally. There is, however, an impact of this approach that is inherent in TSCA. Under section 5(b) of TSCA a person required to submit a premanufacture notice under section 5(a) of TSCA for a new chemical substance that is the subject of a test rule may not submit the notice until that person has either performed and submitted the required testing or submitted the data upon which an exemption has been granted. Thus, the manufacturer of the new chemical substance may be at a competitive disadvantage relative to new manufacturers of substances subject to the test rule but already on the Inventory.

EPA is interested in comments on the advantages and disadvantages of adding substances to the category for this test rule and, in particular, on the ability of the Agency to make the "may present an unreasonable risk" finding for substances not in commercial production, whether on the Inventory or not.

9. EPA is considering proposing that rather than require testing on all members of the anilines category, it adopt an approach in which testing is performed on a selected number of representative category members and that these test results be used to predict the toxicity of all other category members. This type of an approach may be justified when the physicochemical and biological properties of category members are similar in important respects or change more or less regularly across the category, or when the category can be divided into smaller groups of similar chemicals. When this is the case, data obtained on a properly chosen subset of chemicals can be expected to allow reasonable predictions about the behavior of untested category members. The Agency is requesting comment on the appropriateness of using this approach to evaluate the health and environmental effects of the anilines category. The Agency also requests comment on other aspects of its overall approach as outlined in Unit II.C; for example, is the number of chemical substances to be tested adequate? Are the substances the Agency has selected the most appropriate to be tested and is the category appropriately subdivided?

10. EPA has tentatively decided to propose to require testing of seven anilines as representative of the substances in six subcategories. However, the Agency has considered the following alternatives to the subcategorization and the choice of test substances discussed in Unit II. Each alternative has certain exemption, reimbursement and regulatory consequences.

a. *Require testing of all category members.* One alternative would be to require testing of each substance subject to the test rule. This alternative would be appropriate if EPA finds that data from one or more representative test substances cannot be ued to predict the effects of other members of the category, that EPA could not regulate other members of the category on the basis of data from the test substances, or that the members of the subcategories are not equivalent to the test substances. This alternative would be appreciably more burdensome and would consume a far greater amount of industry testing resources.

EPA could perhaps reduce this burden by allowing any manufacturer or processor to seek an exemption by showing in its exemption application that its substance is equivalent to one or more substances being tested. This alternative would preserve the possibility that testing of selected category members could be used to predict the effects of other members and to support regulation of those other members, but it would shift the burden of showing equivalence for those purposes to the individual manufacturer or processor seeking an exemption.

b. *Base set testing for all category members and follow-up testing on one or more category members.* In this approach a set of base set testing such as mutagenicity and subchronic testing would be required of all category members. These data would be used to select one or more test substances for longer term testing. This approach offers an advantage over that described in unit II in that subcategorization and the selection of test substances would be based on toxicity data on all category members as well as relying on chemical structure considerations. The disadvantage is that this approach may add substantially to the time required for rulemaking by necessitating an additional proposal after the base set testing is completed.

In the case of base set testing, the exemptions and reimbursement implications would be the same as for individual chemicals; that is, manufacturers and processors would pay for the testing of the chemicals they manufacture or process. The exemptions and reimbursement provisions for the long term testing would be the same as for the subcategorization option if subcategories are used, or for one of the alternatives if subcategories are not used and more than one test substance is selected.

c. *Require testing of all category members but make generic equivalence decision in rulemaking.* Another alternative would be to require testing of all members of the category but to find in the rulemaking that, within the five subcategories where EPA is proposing to require testing of only a single test substance, all members of the subcategory are equivalent. Thus, manufacturers and processors of substances in those subcategories woud choose the test substances by deciding to perform testing. Other manufacturers

and processors in the subcategory could seek exemptions without having to show equivalence to the substances actually being tested.

This approach presents many of the advantages of the approach set forth in Unit II.C and provides additional flexibility for affected industry to choose the test substances. However, to the extent the EPA-chosen test substances provide a scientific cross check between the variations in structure across the subcategories, industry-chosen test substances might not provide the same cross checks.

d. *Require testing of seven representative test substances without subcategories.* Another alternative would be to require testing of the seven suggested test substances (see Unit II.C) as representative of the aniline category as a whole. Such an approach would recognize that it might be necessary to examine variations in effects across the variations in structure within the category to adequately characterize the effects of untested members of the category. Under this alternative, EPA would find that the other members of the aniline category are equivalent to the seven test substances collectively. Manufacturers and processors of other members of the category would receive exemptions without showing equivalence, but they would be obligated to reimburse for their share of testing all seven test substances. However, any manufacturer or processor could choose to test the substance it manufactures or processes instead of testing the test substances.

e. *Test the seven test substances and make a decision not to test the other category members.* A final alternative would be to require testing of the seven suggested test substances and to make a decision not to require testing of the other anilines on the basis that testing is not necessary. The finding that testing the other anilines is not necessary would be based on the conclusion that data on the seven tested anilines could be used to predict the effects of any other anilines and to regulate those other anilines. The effect of this alternative would be to limit exemptions and reimbursement to the manufacturers and processors of the seven test substances, Manufacturers and processors of other anilines would not be required to test or to pay for testing even though their substances would be evaluated using the data on the seven test substances. This would reduce the complexity of the exemptions and reimbursement but would also reduce the pool of persons obligated to pay for testing, and may be less equitable since the burden of paying for testing would not be borne by all manufacturers and processors.

EPA is particularly interested in comments on approaches to exemptions and reimbursement in light of the other issues on which substances to test and how to define the category.

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V. Rulemaking Record

The EPA has established a record for this testing decision (docket number OPTS–42054). The record includes the following information:

(1) Federal Register notices pertaining to this notice consisting of:

(a) Advance notice of proposed rulemaking for aniline and chloro-, bromo- and/or nitroanilines.

(b) Notice containing the ITC designation of the anilines to the Priority List.

(c) Notices relating to EPA's health effects test guidelines and GLP standards.

(d) Notice of proposed rule on exemption policy and procedures.

(e) Final rule on reimbursement policy and procedures.

(2) Minutes of informal meetings.

(3) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Telephone conversations.

(c) Meetings.

(d) Reports: Published and unpublished factual materials, including contractor's reports and information submitted by industry.

The record enumerated above includes basic information considered by the Agency in developing this decision. The Agency will supplement the record periodically with additional relevant information received.

A public version of the record with CBI deleted is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. Monday through Friday (except legal holidays) in Rm. E–107, 401 M St., SW., Washington, D.C. 20460.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83–34650 Filed 12–30–83; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 628

Bluefish Fishery Management Plan; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public hearing on the proposed revised bluefish Fishery Management Plan (FMP). The public hearing is being held in conjunction with the public meetings that the Council is holding from January 11 to January 13, 1984. A notice for these meetings was published in the **Federal Register** on December 21, 1983 (48 FR 56424).

DATES: Written comments on the FMP will be accepted at the public hearing. The hearing will be held on Thursday, January 12, 1984, from 11:15 to 11:45 a.m. Copies of the summaries can be requested from the Council. The revised FMP will ba available at the Council meeting. The hearing will be taped recorded and the tapes will be filed as an official transcript of the proceedings. A written summary will be prepared at the hearing.

ADDRESS: The hearing will be held at the Tidewater Inn, Dover and Harrison Streets, Easton, Maryland 21601: phone 301–822–1300.

FOR FURTHER INFORMATION CONTACT: John C. Bryson (302–674–2331), Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

SUPPLEMENTARY INFORMATION: This hearing will provide the public with a final opportunity to comment on the revised bluefish FMP before Council adoption. The revisions involve the establishment of an allocation system for the commercial fishery and reporting requirements that have been revised from the earlier draft.

Dated: December 29, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84–33739 Filed 12–30–84; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 49, No. 1
Tuesday, January 3, 1984

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Development of Cranberry Multi-Peril Crop Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Crop Insurance Corporation (FCIC), USDA has accepted a proposal by private multi-peril crop insurers through the Crop Hail Insurance Actuarial Association, to provide insurance for all applicants in all areas approved by FCIC for cranberry crop insurance, who would be insurable under FCIC's own criteria, using only FCIC approved rates and forms for this purpose, beginning with the 1984 crop year. Insurers wishing to write this business may be reinsured under FCIC's Reinsurance Agreements. Cranberry producers wishing to contact participating insurance companies, or insurers wishing further information may contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Alan S. Walter, Chief, Reinsurance Branch, Federal Crop Insurance Corporation, P.O. Box 293, Kansas City, MO, 64141, telephone (816) 926–7939.

Approved by: Edward Hews, *Acting Manager.*

[FR Doc. 83–34740 Filed 12–30–83; 8:45 am]
BILLING CODE 3410–08–M

Federal Grain Inspection Service Designation Renewals of Farwell Grain Inspection Company (TX) and Fort Smith-Van Buren Grain Inspection Service (AR)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewals of Farwell Grain Inspection Company and Fort Smith-Van Buren Grain Inspection Service as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: February 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The August 1, 1983, issue of the **Federal Register** (48 FR 34788) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Farwell's and Fort Smith's designations terminate on January 31, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by August 31, 1983.

Farwell and Fort Smith were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the September 30, 1983, issue of the **Federal Register** (48 FR 44871). Comments were to be postmarked by November 14, 1983.

No comments were received regarding designation renewal of Farwell or Fort Smith.

FGIS has evaluated all available information, regarding the designation criteria in Section 7(f)(1)(A) of the Act and in accordance with Section 7(f)(1)(B), and has determined that Farwell and Fort Smith are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the August 1 **Federal Register** issue.

Effective February 1, 1984, and terminating January 31, 1987, the responsibility for providing official inspection services in their respective specified geographic areas is assigned to Farwell and Fort Smith.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agencies at the following addresses:

Farwell Grain Inspection Company, P.O. Box 488, Farwell, TX 79325
Fort Smith-Van Buren Grain Inspection Service, P.O. Box 498, Van Buren, AR 72956

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 20, 1983.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 83–34482 Filed 12–30–83; 8:45 am]
BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Areas Currently Assigned to Chattanooga Grain Inspection Company, Inc. (TN), and Enid Grain Inspection Company, Inc. (OK)

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Chattanooga Grain Inspection Company, Inc., and Enid Grain Inspection Company, Inc.

DATE: Comments to be postmarked on or before February 17, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The October 28, 1983, issue of the **Federal Register** (48 FR 49896) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by November 28, 1983.

Chattanooga Grain Inspection Company, Inc., Enid Grain Inspection Company, Inc., the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than February 17, 1984.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 20, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83-34[illegible] Filed 12-30-83; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Perform Official Services in the Geographic Areas Currently Assigned to R. A. Gray Grain Inspection Service, Inc. (KY), and North Dakota Grain Inspection Service, Inc. (ND)

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are R. A. Gray Grain Inspection Service, Inc., and North Dakota Grain Inspection Service, Inc.

DATE: Applications to be postmarked on or before February 2, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

R. A. Gray Grain Inspection Service, Inc. (Gray), P.O. Box 91, Owensboro, KY 42301, was designated under the Act as an official agency for the performance of inspection functions on October 20, 1978. North Dakota Grain Inspection Service, Inc. (North Dakota), 1601 Seventh Avenue North, Fargo, ND 58102, was designated under the Act as an official agency for the performance of inspection functions on October 25, 1978.

The agencies' designations will terminate on June 30, 1984. This date reflects administrative extensions of official agency designations, as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Gray, in Indiana and Kentucky, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the following: In Indiana, Perry and Spencer Counties.

In Kentucky,

Bounded: on the North by the northern Daviess and Hancock County lines;

Bounded: on the East by the eastern Hancock, Ohio, and Muhlenberg County lines;

Bounded: on the South by the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; and

Bounded: on the West by State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

The geographic area presently assigned to North Dakota, in the State of North Dakota, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern Steele County line from State Route 32 east; the eastern Steele County line south to State Route 200; State Route 200 east-southeast to the State line;

Bounded: on the East by the eastern North Dakota State line:

Bounded: on the South by the southern North Dakota State line west to State Route 1; and

Bounded: on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

An exception to the described geographic area is the following location situated inside North Dakota's area which has been and will continue to be serviced by Grain Inspection, Inc., Jamestown, North Dakota: Norway Spur and Oakes Grain, Oakes, Dickey County.

Interested parties, including Gray and North Dakota, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning July 1, 1984, and ending June 30, 1987. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than to be eligible for consideration.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 20, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83–34484 Filed 12–30–83; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in the Decatur, Indiana, Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the Decatur, Indiana, area.

DATE: Comments to be postmarked on or before February 17, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667, South Building, 1400 Independence Avenue SW., Washington, D.C. 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The October 28, 1983, issue of the **Federal Register** (48 FR 49897) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the Decatur, Indiana, area. This area was previously assigned to W. F. Christen Grain Inspection (Christen). Applications were to be postmarked by November 28, 1983.

Winchester Grain Inspection (Winchester), the only applicant for the designation, requested designation for the entire geographic area available for assignment. Winchester purchased the Christen Agency's assets and has been providing official inspection service in this area on an interim basis since November 15, 1983.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicant for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than February 17, 1984.

Comments and other available information will be considered before a final decision is made in this matter. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 20, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83–34482 Filed 12–30–83; 8:45 am]

BILLING CODE 3410–EN–M

Soil Conservation Service

City of Browning Watershed, Montana; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Proctection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the City of Browning Watershed project, Glacier County, Montana, effective on December 2, 1983.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, Federal Building, 10 East Babcock, Bozeman, Montana 59715, telephone 406–587–5271, Ext. 4322.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: December 21, 1983.

Wallace A. Jolly,

Assistant State Conservationist.

[FR Doc. 83–34743 Filed 12–30–83; 8:45 am]

BILLING CODE 3410–16–M

McHessor-Dry Gulch RC&D Measure, Montana; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives

notice than an environmental impact statement is not being prepared for the McHessor-Dry Gulch RC&D Measure, Madison County, Montana.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock Street, Bozeman, Montana, 59715, telephone 406–587–4271.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for improved irrigation water management. The planned works of improvements include installation of a gravity pressurized pipeline delivery system and on farm irrigation water management plans.

The Notice of a Finding of No Significant Impact (Notice) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Notice and Environmental Assessment are available to fill single copy requests at the above address. Basic data developed during the environmental Assessment are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Glen H. Loomis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Glen H. Loomis,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 83-34784 Filed 12-30-83; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Private Sector Survey on Cost Control; Meeting Amendment

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Amendment to Notice of Open Meeting of the Subcommittee and the Executive Committee of the President's Private Sector Survey on Cost Control (PPSSCC).

SUPPLEMENTARY INFORMATION: On December 28, 1983, a notice dated December 22, 1983 was published in the **Federal Register** (48 FR 57147–57148), announcing a meeting of the Subcommittee and Executive Committee of the PPSSCC on January 10, 1984 at the Washington Marriot, 22nd and M Streets, NW., Washington, D.C.

The purpose of this notice is to announce that the meeting date has been changed to January 15, 1984. The times of each meeting session remain the same— 2:00 p.m. and 9:00 p.m. Both January 15 sessions will be open to the public. The public may file written statements for consideration of the Executive Committee or the Subcommittee any time before, at, or after the meeting.

Dated: December 29, 1983.

Lester G. Welch, Jr.,

Acting Chief, Information Management Division, Office of the Secretary.

[FR Doc. 83-34798 Filed 12-30-83; 10:07 am]

BILLING CODE 3510-CW-M

National Bureau of Standards

Membership of General and Limited Performance Review Boards

AGENCY: National Bureau of Standards, Commerce.

SUMMARY: This notice announces the purpose of the National Bureau of Standards (NBS) General and Limited Performance Review Boards, changes in the membership of those Boards, and the terms of appointment of its members.

SUPPLEMENTARY INFORMATION: The purpose of the General Performance Review Board (GPRB) is to review performance agreements, performance appraisals and ratings, recommendations for certain personnel actions and other related material, and to make appropriate recommendations to the Director of NBS as the Appointing Authority for the Senior Executive Service at NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives and the organizations of which they are members and instill in the minds of such senior executives confidence in the integrity, competence, and impartiality of the GPRB. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

The purpose of the Limited Performance Review Board (LPRB) is the same as the GPRB. However, the LPRB performs its review functions for all NBS senior executives who are members of the NBS Executive Board (except the NBS Deputy Director) and those senior executives who are members of the NBS GPRB.

The individuals who have been newly appointed by the Director of NBS to membership on the GPRB and the LPRB or have had their term of membership extended, and the term of their appointment or extension, are listed below.

GPRB

Mr. Samuel A. Lawrence, Assistant Administrator for Management and Budget, National Oceanic and Atmospheric Administration, Rockville, MD 20852. Term: January 1, 1984 to December 31, 1985.

Dr. David R. Lide, Jr., Director, Standard Reference Data, National Measurement Laboratory, National Bureau of Standards, Washington, D.C. 20234. Term: January 1, 1984 to December 31, 1985.

Mr. Thomas N. Pyke, Jr., Director, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. Term: January 1, 1984 to December 31, 1985.

Dr. Alvin H. Sher, Deputy Director, Center for Electronics and Electrical Engineering, National Engineering Laboratory, National Bureau of Standards, Washington, D.C. 20234. Term: January 1, 1984 to December 31, 1985.

LPRB

Dr. William P. Raney, Assistant Associate Administrator for Space Science and Applications (Programs), National Aeronautics and Space Administration, Washington, D.C. 20546. Term: extended to December 31, 1985.

The full membership and expiration dates of the GPRB and the LPRB as now constituted, including the changes made by this notice, are set out below.

GPRB

Dr. Howard E. Sorrows, Chair, Technology Adviser to the Director, National Bureau of Standards, Washington, D.C. 20234. Expiration of appointment—December 31, 1984.

Dr. Robert A. Kamper, Director, Boulder Laboratories, National Bureau of Standards, Boulder, Colorado 80303. Expiration of appointment—December 31, 1984.

Mr. Samuel A. Lawrence, Assistant Administrator for Management and Budget, National Oceanic and Atmospheric Administration, Rockville, MD 20852. Expiration of appointment—December 31, 1985.

Dr. David R. Lide, Jr., Director, Standard Reference Data, National Measurement Laboratory, National Bureau of Standards, Washington, D.C. 20234. Expiration of appointment—December 31, 1985.

Mr. Thomas N. Pyke, Jr., Director, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. Expiration of appointment—December 31, 1985.

Dr. Alvin H. Sher, Deputy Director, Center for Electronics and Electrical Engineering, National Engineering Laboratory, National Bureau of Standards, Washington, D.C. 20234. Expiration of appointment—December 31, 1985.

Dr. John K. Taylor, Voluntary Standards Coordinator, Center for Analytical Chemistry, National Measurement Laboratory, National Bureau of Standards, Washington, D.C. 20234. Expiration of appointment—December 31, 1984.

LPRB

Dr. Edward L. Brady, Chair, Associate Director for International Affairs, National Bureau of Standards, Washington, D.C. 20234. Expiration of appointment—December 31, 1984.

Dr. Richard H. Kropschot, Associate Director for Basic Energy Sciences, Office of Energy Research, Department of Energy, Washington, D.C. 20545. Expiration of appointment—December 31, 1984.

Dr. William P. Raney, Assistant Associate Administrator for Space Science and Applications (Programs), National Aeronautics and Space Administration, Washington, D.C. 20546. Expiration of appointment—December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3555.

Dated: December 27, 1983.

Ernest Ambler,

Director.

[FR Doc. 83–34785 Filed 12–30–83; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Establishment of a NOAA Industrial Research Associate Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This notice serves as official notification of the establishment of a new NOAA Industrial Research Associate Program designed to strengthed the ties between the Nation's private and Federal sectors through joint efforts in research and engineering.

FOR FURTHER INFORMATION CONTACT: Organizations wishing to explore the possibility of sponsoring an Industrial Research Associate should contact the program's coordinator R. L. Carnahan (Wx5), National Oceanic and Atmospheric Administration, Rockville, MD 20852, telephone (301) 427–7258.

SUPPLEMENTARY INFORMATION: Under this program, NOAA invites qualified scientists and engineers from organizations outside the Government to come to NOAA laboratories and operating centers to work with Federal personnel and facilities on projects of mutual interest to the Government and private industry. Industrial Research Associates work with NOAA scientists and engineers in such areas as the atmospheric sciences, hydrology, oceanography, aeronomy, space sciences, and fishery sciences. Other fields, such as geodesy and cartography, represent additional possibilities, as well as engineering projects in computer sciences, instrumentation, and communications. Organizations in the private sector who elect to participate in this program can expect their representatives to gain access to extensive laboratory test and computational facilities and data sources. They will be able to work with some of the Nation's leading authorities in specialized fields. They will gain an appreciation of NOAA programs and future requirements and will be able to communicate to NOAA the needs and concerns of their sponsor organizations. NOAA Industrial Research Associates will be invited to work full time from 1 to 3 years on projects of interest both to NOAA and to their employers. Costs will be underwritten by their sponsoring companies.

Dated: December 21, 1983.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services.

[FR Doc. 83–34744 Filed 12–30–83; 8:45 am]

BILLING CODE 3510–12–M

Marine Mammal Permits; Modification No. 3 to Permit No. 363; Dr. Jennifer Buchwald, et al.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 363 issued to Drs. Jennifer Buchwald, Carl Shipley, and Robin Fisher, Department of Physiology and Brain Research Institute, University of California, Los Angeles, California 90024, on January 4, 1982 (47 FR 997), as modified on January 6, 1983 (48 FR 684), and March 3, 1983 (48 FR 10421), is further modified to extend the period of authorized taking for one year.

Section B–6 is deleted and replaced by:

"6. This permit is valid with respect to the taking authorized herein until December 31, 1984."

This modification becomes effective upon publication in the **Federal Register**.

The permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR. Doc. 83–34613 Filed 12–30–83; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammal Permits; Receipt of Application for General Permits; Dederazione Nazionale delle Imprese di Pesca, et al.

Notice is hereby given that the following applications have been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone during 1984 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1631–1407) and the regulations thereunder.

1. The Dederazione Nazionale delle Imprese di Pesca, Rome, Italy, has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 20 harbor seals (*Phoca vitulina*) and 20 small cetaceans in the North Atlantic Ocean squid fishery.

2. The Asociacion Nacional de Armadores de Buques Congeladores de Buques Congeladores de Pesquerias Varias, Vigo, Spain has applied for a Category 1: "Towed or Dragged Gear" general permit to take 20 harbor seals (*Phoca vitulina*) and 20 small cetaceans in the North Atlantic Ocean squid fishery.

The applications are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Interested parties may submit written views on these applications within 30 days of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: December 27, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-34812 Filed 12-30-83; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal Permits; Receipt of Application for Permit; Ocean Research and Educational Society

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations, Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Ocean Research and Education Society (P153A).

b. Address: 19 Harbor Loop, Gloucester, Massachusetts 01930.

2. Type of Permit: Scientific research/ Scientific purposes.

3. Name and Number of Animals: Various species of cetaceans unspecified.

4. Type of Take: Potential harassment during the course of photographic reidentification and sound recording studies from vessels and divers. Importation of specimen material from dead marine mammals in accordance with laws of the country of origin.

5. Location of Activity: Western North Atlantic from Nova Scotia to Caribbean Sea.

6. Period of Activity: 3 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01910; and Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-34814 Filed 12-30-83; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting with a partially closed session.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), will hold a public meeting with a closed session to discuss the following topics:

Public Meeting: Discuss reports of the herring, groundfish, bluefish, foreign fishing and gear conflict oversight committees; conflict of interest, data confidentiality, swordfish trip presentation as well as other fishery management and administrative matters.

Closed Session: Discuss personnel and internal administrative matters. Only Council members and required staff will be allowed to attend this closed session.

DATES: *Public Meeting:* The open session of the meeting will convene on January 10, 1984 at approximately 1:30 p.m. and adjourn on January 11 at approximately 4:00 p.m. The meeting may be lengthened or shortened, or agenda items rearranged, depending on progress on the agenda.

Closed Session: The closed session of the meeting will convene on January 10, 1984 at approximately 10:00 a.m. and adjourn at approximately 12:00 noon on the same day.

ADDRESS: The meeting will take place at King's Grant Inn, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Rte. 1), Saugus, Massachusetts 01906, Telephone: 617–231–0422.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: December 27, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management National Marine Fisheries Service.

[FR Doc. 83-34811 Filed 12-30-83; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Frozen Pork Bellies Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange has submitted a proposal to revise the defect-discount schedule applicable to deliveries on the frozen pork bellies futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that proposal

is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before February 2, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C., 20581. Reference should be made to CME Rule 1404.B.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C., (202) 254–6990.

SUPPLEMENTARY INFORMATION: The Chicago Mercantile Exchange ("CME" or "Exchange") is proposing to amend Rule 1404.B, Quality Deviations and Allowances, which would revise the defect-discount schedule applicable to deliveries on the Exchange's frozen pork bellies futures contract. Under the CME's proposal, the maximum number of minor defect equivalents allowed would be increased to 190 from the current 175 per sample of 50 bellies. Bellies with 176 to 190 minor defect equivalents would be deliverable at a 2½¢ per pound discount. Bellies with more than 190 minor defect equivalents would not be deliverable under the revised contract.

The CME submits that the proposed increase in the defect range for frozen pork bellies would allow more of the commercial belly supply to be deliverable under the contract. The Exchange maintains that the increase in the maximum number of minor defect equivalents allowable under the belly contract to 190 would permit more bellies to pass inspection. In addition, the Exchange notes that the increased defect range should encourage a larger number of bellies to be offered for inspection.

The Exchange indicates that had the proposed increase in the defect range been applicable to deliveries on the frozen pork bellies contract during the 1983 crop year, deliverable supplies for the contract would have increased by a minimum of 204 contracts or 35%. The Exchange believes deliverable supplies during 1983 would have likely increased by more than 35% since the revised defect schedule would have had a tendency to encourage more bellies to be offered for inspection.

The Exchange further submits that the proposed discount of 2½¢ for bellies with 176 to 190 minor defect equivalents would be adequate to compensate for any loss in yields on these bellies.

The proposed amendments to the frozen pork bellies contract would not apply to existing contracts. The amendments would become effective after Commission approval for the February 1985 contract and all other contract months subsequently listed by the Exchange for trading.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CME concerning its frozen pork bellies futures contract is of major economic significance. Accordingly, the CME's proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the proposed rule may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, by February 2, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on December 27, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-34816 Filed 12-30-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Fort Lewis Military Installation, Fort Lewis, Washington; Intent To Prepare a Supplemental Environmental Impact Statement

ACTION: Notice of Intent.

Notice is hereby given of intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the Fort Lewis ongoing mission Final Environmental Impact Statement entitled "Fort Lewis Military Installation" and dated June 1979. The SEIS will address environmental concerns related to the transitioning of the 9th Infantry Division (9th ID) to a High Technology Light Division (HTLD). The transition process will transform the 9th ID from a "walking" infantry division to a fully motorized division prossessing weapons of greater lethality, range, and mobility. As the result of this, many "high technology" vehicles and weapons systgems will be fielded at Fort Lewis with consequent impacts on training methodologies, tactics, land use requirements, and the installation's master plans. There is currently no scoping meeting scheduled for this action.

Questions about the transition process should be directed to: Commander, I Corps and Fort Lewis ATTN: AFZH–DEH (Mr. Bart Ives), Fort Lewis, Washington 98433.

John O. Roach,

DA Liaison Officer with the Federal Register.

[FR Doc. 83-34731 Filed 12-30-83; 8:45 am]

BILLING CODE 3710-08-M

Command and General Staff College Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Command and General Staff College (CGSC) Advisory Committee

Date: 8–10 January 1984

Place: College Conference Room, Bell Hall, Ft. Leavenworth, KS 66027

Time: 2000–2200, 8 January 1984; 0900–1630, 9 January 1984; 0900–1400, 10 January 1984.

Proposed Agenda:

2000–2200, 8 January 1984: Review of CGSC educational program.

0900–1630, 9 January 1984: Continuation of review.

0900–1000, 10 January 1984: Continuation of review.

1000–1130, 10 January 1984: Executive session.

1300–1430, 10 January 1984: Report to the Commandant.

The purpose of the meeting is for the Advisory Committee to examine the entire range of College operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested

to reserve space by contacting the Committee's Executive Secretary.

Philip J. Brookes,

Executive Secretary, CGSC Advisory Committee.

[FR Doc. 83-34708 Filed 12-30-83; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Terms for Extension of the Deadline by Which the Alumax Pacific Corporation Must Declare Its Intent to Place Load on the Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Terms for Deadline Extension.

BPA File No.: Alx-1.

SUMMARY: The Alumax Pacific Corporation (Alumax) holds a contract with the Bonneville Power Administration for delivery of power to the corporation's proposed aluminum reduction plant to be located near Umatilla, Oregon. The contract requires Alumax to declare by Octoer 1, 1983, whether it will eventually require power from BPA under the contract. Alumax requested that the deadline be extended to October 1, 1985. BPA granted an interim extension to January 31, 1984, to study the matter and consider alternatives. BPA now proposes to allow Alumax to notify BPA on or before July 1, 1985, if the corporation wishes to receive power from BPA under its contract. BPA further proposes to require that BPA retain a significant amount of discretion in determining the date on which power will actually be made available for the plant, between July 1, 1987, and December 5, 1989.

Responsible Official: Thomas M. Noguchi, Director, Division of Customer Service.

DATE: Comments on this proposal must be received by the BPA Public Involvement Manager no later than January 24, 1984.

ADDRESS: Address comments to Ms. Donna L. Geiger, BPA Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, at the above address, 503–230–3478. Oregon callers outside of Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9138.

SUPPLEMENTARY INFORMATION:

I. Background

Alumax holds a 20-year power sales contract with BPA, terminating on July 1, 2001, for electricity for an aluminum reduction plant Alumax proposed to build and operate in Umatilla, Oregon. The contract requires that Alumax commit itself by October 1, 1983, to receive power under the contract. On July 25, 1983, Alumax asked BPA to delay the October 1, 1983, deadline to October 1, 1985.

On August 18, 1983, BPA requested public comment on this matter (48 FR 37510). BPA received more than 70 comments in the comment period which closed September 12, 1983. Copies of the comments are available from the BPA Public Involvement office.

Commenters from the Umatilla, Oregon, area generally supported extending the deadline. Commenters from other areas generally expressed reservations or opposed extension of the deadline. Many commenters suggested BPA further analyze the implications of an extension on future Northwest Power resource needs and on BPA rates. Other commenters suggested BPA impose contract amendments on Alumax reflecting the value of a deadline extension.

Agreeing that further time was needed to analyze the situation, BPA granted Alumax an interim extension of the October 1, 1983, deadline to January 31, 1984. On October 3, 1983, BPA stated that it would request public comments on its proposed course of action during this period (48 FR 45148). BPA now requests public comment on the proposed course of action described below. To be considered in making BPA's final determination on this matter, comments must be received by the BPA Public involvement Manager by January 24, 1984.

II. Proposal

BPA proposes to grant Alumax an extension of its deadline to notify BPA that it will place load on BPA under the contract. BPA proposes to extend the deadline to July 1, 1985, rather than October 1, 1985, as requested by Alumax. The 3-month difference between the deadline requested by Alumax and that proposed by BPA will allow Alumax sufficient time after publication of rates applicable July 1, 1985, to analyze rate impacts that could affect a decision whether or not to build its plant. It will also simultaneously provide additional planning time for BPA to arrange to meet the load once Alumax gives notice.

BPA further proposes to have a substantial amount of discretion in determining when, in the contractually specified construction period of July 1, 1987, through December 5, 1989, Alumax would place its load on BPA. Alumax currently has the right to specify any date within this period. Upon Alumax making a commitment and proposing a construction date, BPA proposes to have the right to reasonably specify any date between January 1, 1988, and December 5, 1989. Further, BPA may specify a date earlier than January 1, 1988, provided that Alumax may reasonably be expected to have completed design, material procurement and construction.

BPA has not yet determined the extent to which costs may be reasonably assessed against Alumax should it not meet such earlier construction dates for reasons other than contractually specified "Uncontrollable Forces."

BPA believes that with the initial offer of a contract to Alumax, it complied with the provisions of Sections 5(d) and 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act). Circumstances have not changed BPA's ability to serve the Alumax load. Accordingly, BPA did not contemplate refusal to serve the load, but developed this proposal within the contractual framework.

III. Effect of this Proposal on BPA Resource Planning

BPA has considered the desirability of maintaining the size of the existing direct-service industrial load, particularly in providing reserves and carrying out the exchange provisions of the Regional Act. In recent years, various events have significantly affected both the size and viability of this customer class. There is no indication that such events will diminish or not occur in the future. BPA considers this proposal to be the most prudent alternative at present to preserve its options.

Under its existing contract, the Alumax load is scheduled to come on line between July 1, 1987, and December 5, 1989, at Alumax's option. This opening occurs during a period of declining power surpluses projected under BPA's present base-case load growth forecast. In its previous load and resource forecasts, BPA has assumed that the load would come on line in 1987.

BPA recognizes the uncertainties inherent in planning for the balance between loads and resources. Obtaining the option upon certain conditions to select the date Alumax would come on line within a July 1987-December 1989 timeframe would give BPA flexibility in responding to load and resource exigencies as they emerge. Such an option, heretofore not available to BPA may become of significant value to BPA and the region's ratepayers as a means of marketing otherwise unsold firm surplus power and maximize revenues. Certainly this flexibility would enable BPA to minimize any impacts of bringing this load into the region. Given the uncertainties of load growth, marketing, and resource availability currently facing the region, BPA believes the best course of action is to retain as much flexibility as possible to respond to a range of conditions. This proposal enhances that flexibility.

For example, under current BPA's base-case load growth forecast and current resource expectations, bringing Alumax on line in 1987 produces a 70-megawatt energy shortage in the 1988–89 operating year. BPA could meet this deficit and serve the Alumax load through short-term energy purchases or by bringing resources on line sooner than they would otherwise be needed. However, with the proposed option under these circumstances, BPA would have the opportunity of choosing a later in-service date for the Alumax load.

However, should load growth patterns be lower than those projected in BPA's 1983 base forecast, or should conservation or other pressures become available during the 1987–1989 period, the region might still have surplus firm power resources into the early 1990's or beyond. In that case, serving the Alumax load with surplus resources starting in 1987 would provide net revenues to BPA compared to receiving the load in December 1989.

Based on current information, BPA has analyzed the relative costs and benefits of bringing Alumax on line as early as July 1987 or as late as December 1989 under various load-growth and resource scenarios. This analysis shows that based on assumptions about load growth and resource availability, different dates would be chosen by BPA to accept the Alumax load.

IV. Rate To Be Charged to Alumax

Like all BPA's direct-service industrial customers, Alumax will pay for power from BPA under the industrial firm power rate established through BPA's ratemaking process. The industrial firm power rate is currently 26.8 mills (2.68 cents) per kilowatthour. Alumax will be subject to the then-applicable industrial firm power rates whenever it comes on line, and throughout the duration of its contract. Any impacts on these rates which occur as a result of serving Alumax loads will be determined through the BPA ratemaking process.

V. Final Action To Be Published

BPA will consider the comments it receives on its proposal in making its final determination on Alumax's request for a 2-year extension of the October 1, 1983, deadline. BPA will then publish a notice of its final action on this matter in the **Federal Register** after January 31, 1984.

Issued in Portland, Oregon, on December 23, 1983.

James J. Jura,

Acting Administrator.

[FR Doc. 83-34845 Filed 12-30-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER82-412-001]

Kansas Gas & Electric Co.; Revised Refund Report

December 28, 1983.

Take notice that on December 12, 1983, Kansas Gas & Electric Company (KG&E) submitted for filing its Refund Report pursuant to a November 25, 1983 Commission Letter Order.

KG&E states that the refund amounts to the Cities of Girard and Oxford include interest from the date payment was received through December 8, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 11, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34821 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-418-000]

Kansas Power & Light Co.; Refund Report

December 28, 1983.

Take notice that on December 5, 1983, Kansas Power & Light Company (KP&L) submitted for filing its Refund Report pursuant to a Commission Order issued on November 4, 1983, which allowed KP&L to collect reduced rates to replace those the Commission previously accepted for filing which took effect June 7, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 11, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34822 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2081-000]

Donald C. Platten; Application

December 28, 1983.

The filing individual submits the following:

Take notice that on December 9, 1983, Donald C. Platten filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director—Consolidated Edison Company of New York, Inc.
Director—Chemical New York Corporation and Chemical Bank

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34823 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2084-000]

Donald B. Riefler; Application

December 28, 1983.

The filing individual submits the following:

Take notice that on December 20, 1983, Donald B. Riefler filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Niagara Mohawk Power Corporation
Director—Morgan Bank (Delaware)
Chairman, Sources and Uses of Funds Committee—Morgan Guaranty Trust Company of New York
Chairman, Sources and Uses of Funds Committee—J. P. Morgan & Company, Incorporated
Director—The National Reinsurance Corporation
Treasurer—J. P. Morgan Leasefunding Corporation
Treasurer—J. P. Morgan Interfunding Corporation
Director—Private Export Funding Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34824 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2083-000]

C. Larry Schmidt; Application

December 28, 1983.

The filing individual submits the following:

Take notice that on December 19, 1983, C. Larry Schmidt filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President—The Cincinnati Gas & Electric Company
Vice President Director—The Union Light, Heat and Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34825 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-708-000 and ER83-77-000]

West Texas Utilities Co.; Refund Report

December 28, 1983.

Take notice that on December 2, 1983 West Texas Utilities Company (West Texas) submitted for filing its Refund Report pursuant to an October 19, 1983 Commission Letter Order which accepted the settlement agreement reached by West Texas and its wholesale customers.

West Texas states that it refunded any amounts collected in excess of the settlement rates.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 11, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34826 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2082-000]

Franklin H. Williams; Application

December 28, 1983.

The filing individual submits the following:

Take notice that on December 9, 1983, Franklin H. Williams filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Consolidated Edison Company of New York, Inc.
Director—Chemical New York Corporation and Chemical Bank.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34827 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS 42046; FRL 2466-7]

Cyclohexanone; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC) recommended to EPA

that cyclohexanone be considered for health and environmental effects testing. Following the recommendation, a group of U.S. cyclohexanone manufacturers submitted a proposed program on cyclohexanone for health effects testing. EPA has tentatively concluded that the industry testing proposal is adequate to address the ITC's and the Agency's testing concerns for health effects and that environmental effects testing for cyclohexanone is not necessary. Consequently, EPA is not at this time proposing a rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require health or environmental effects testing of cyclohexanone. This notice constitutes the Agency's response to the ITC's designation of cyclohexanone as required by section 4(e) of TSCA.

DATE: Interested persons are invited to comment on this proposed decision. All comments should be submitted on or before February 17, 1984.

ADDRESS: Written comments should bear the document control number [OPTS–42046] and should be submitted in triplicate to TSCA Public Information Officer (TS–793), Office of Pesticides and Toxic Substances, Rm E–108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations to require manufacturers and processors to test particular chemical substances and mixtures. Data developed through these test programs are used by EPA in assessing the risks that the tested chemicals present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act.

In April, 1979, the ITC designated cyclonexanone for priority consideration in its Fourth Report, published in the **Federal Register** of June 1, 1979 (44 FR 31866) (Ref. 54). The ITC recommended that cyclohexanone be considered for: (1) Health effects testing, including carcinogenicity, mutagencity, teratogenicity (with behavioral studies in the offspring) and other chronic effects (including neurological and reproductive studies); (2) an epidemiological study; and (3) environmental effects testing. The ITC's recommendations for testing of cyclohexanone were based on: (1) substantial production, (2) its widespread use as an industrial solvent and as a solvent in consumer use products, which was expected to result in potentially high worker and general population exposure, and (3) potentially large quantities released to the environment.

In evaluating the ITC's testing recommendations for cyclohexanone, EPA considered all revelant information, including the following: (1) Information presented in the ITC's Fourth Report; (2) information reported by manufacturers of cyclohexanone, represented by the Industrial Health Foundation Cyclohexanone Study Group; (3) data submitted under TSCA sections 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) and 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and (4) other published and unpublished data available to the Agency. Based on its evaluation, as discussed in Unit IV, EPA is not initiating rulemaking at this time under section 4(a) to require health or environmental effects testing of cyclohexanone.

II. Assessment of Exposure and Health and Environmental Effects

A. Production, Use, and Exposure

Cyclohexanone is a six carbon, saturated, cyclic ketone. The only functional group present is the carbonyl (C=O) group. It is a colorless liquid at room temperature (boiling point 156°C at 1 atm.) with an odor resembling peppermint and acetone (Ref. 24).

1. *Production.* Production of cyclohexanone in 1981 was reported to be 766 million pounds, most of which was used as a captive intermediate in the production of caprolactam and adipic acid, which in turn are intermediates for nylon 6 and nylon 6,6, respectively. Merchant sales of cyclohexanone were 4.7 percent (36 million pounds) of the 1981 production total (Ref. 56).

Cyclohexanone has uses as a chemical intermediate and as a solvent for resins, lacquers, dyes, and insecticides (Ref. 26). Cyclohexanone is sold in various grades, including a commercial grade (89 percent ketone) and a high purity grade (99.5 percent ketone, Ref. 26).

Cyclohexanone's slow evaporation rate and good solvency make it an attractive solvent in coatings where a slower drying rate is desirable. It is an excellent solvent for various protective coatings and adhesives, for vinyl chloride and copolymer resins, and is also used as an ingredient in some pesticide formulations (Ref. 33). Because of its expense relative to other solvents (such as acetone and methyl ethyl ketone) and because of undependable supplies during a tight (1973) market, growth of cyclohexanone as a solvent has not occurred as one might have expected (Ref. 32). Of the ketone solvents, cyclohexanone comprises about three percent of the market; only about four to five percent of total cyclohexanone production is used as a solvent (Refs. 4 and 43).

2. *Occupational exposure.* The number of persons exposed to cyclohexanone in its use as a chemical intermediate is limited because nylon manufacturing is done in an automated, closed system. Exposure in these operations could occur during cleaning operations or from accidental spills. Humans are likely to be exposed to cyclohexanone when it is used as a solvent in open processes. The National Institute for Occupational Safety and Health (NIOSH) surveyed three industrial sites where cyclohexanone was known to be used as a solvent. Concentrations of cyclohexanone in atmospheric samples varied from < 1 ppm to 21 ppm, depending on the operation (Ref. 36). The American Conference of Governmental Industrial Hygienists (ACGIH) has a recommended standard (8-hour time-weighted average) of 50 ppm in air for cyclohexanone in the workplace. ACGIH is planning on lowering its recommendation to 25 ppm, based on a NIOSH (1978) proposal (Ref. 1). According to NIOSH (1980) estimates, 839,200 people are potentially exposed to cyclohexanone in the workplace.

3. *Consumer exposure.* Even in its solvent uses, cyclohexanone is used more frequently in industrial rather than consumer applications. Lee *et al.* (1979) reported, however, that cyclohexanone is used as a solvent in consumer products such as spot removers for leathers and textiles, metal degreasers, lacquers and stains, and paint removers used in furniture repairing and refinishing. Exposure from these uses could occur through inhalation or through skin absorption.

4. *General population exposure.* Patterson *et al.* (1976) modelled the release of cyclohexanone from a major manufacturing plant. They assumed a

plant production of 240 million pounds/year and an emission rate of one percent of that, or 34.5 g/sec of cyclohexanone. This latter estimate was derived from information on similar chemical processes (Ref. 40). They calculated that ground level concentrations, 500 meters from the release source, could average 1.3 ppm over a 1-hour time period or approximately 1.0 ppm over a 24-hour time period. Aside from this postulated exposure from cyclohexanone in the atmosphere in vicinities very close to industrial plants, there is little indication of general population exposure. However, Shackleford and Keith (1976) reported the presence of cyclohexanone in four samples of finished drinking water analyzed by the EPA Laboratory in Cincinnati, Ohio and in one sample of drinking water analyzed in Ottumwa, Iowa. Sampling sites and concentration levels were not given.

5. *Release.* Releases of cyclohexanone into the environment are expected to be largely due to atmospheric releases resulting from production, storage, and (especially) solvent use of the chemical substance (Ref. 40). Patterson *et al.* (1976) estimated annual losses of cyclohexanone in 1974 (production about 850 million pounds) of 42.5 million pounds from solvent use, 8.5 million pounds from production losses and 0.3 million pounds from storage losses. They assumed that all of this loss would be to the atmosphere and, in the case of the solvent loss, would be widely scattered geographically. Using some other assumptions, JRB (1981) estimated annual releases of cyclohexanone to the environment for 1979 (production 875 million pounds); again it was estimated that the single greatest release of cyclohexanone into the environment would occur from solvent loss to the atmosphere (43.6 million pounds). Production losses would contribute an additional 4.85 million pounds to the atmosphere and 20.3 million pounds to wastewater. Losses from other processes would account for an additional 0.35 million pounds to air and 0.055 million pounds to wastewater.

The greatest point source of cyclohexanone release to surface waters would be from wastewater discharge (Ref. 24). Modelling was performed for this source using worst case assumptions, including saturated influent (25,000 ppm cyclohexanone) and no waste treatment (Ref. 57). Maximum environmental concentrations of less than 1 ppb up to 60 ppm, varying according to the particular receiving stream, were calculated for each of the seven plants manufacturing cyclohexanone in the United States. Mean environmental levels were estimated to be less than 1 ppb up to 8.23 ppm cyclohexanone, depending on the site (Ref. 57). However, cyclohexanone is treated before being discharged and available information indicates that environmental levels of cyclohexanone, which would occur as a result of wastewater discharge, are four to six orders of magnitude lower than the worst-case estimates just given (i.e., maximum aquatic concentrations would be less than 6 ppb after treatment). It was reported that four of the six cyclohexanone producers discharge to wastewater treatment plants that utilize activated sludge systems. A fifth producer has two sites, one which also discharges to an activated sludge treatment plant. The second site discharges to a retention basin only. However, analysis of the effluent from the retention basin has shown no detectable cyclohexanone (detection limit 1 mg/1). The sixth producer's wastewater containing cyclohexanone is disposed of in injection wells (Ref. 21).

It was further reported that there is little information available at the present time on actual influent and effluent concentrations of cyclohexanone in wastewater. However, limited data suggest that concentrations vary from 1–100 mg/1 in the influent to the activated sludge treatment plants. One in-house treatability study of cyclohexanone, utilizing a scale model of an activated sludge plant, showed reductions greater than 99 percent (Ref. 21). Furthermore, process wastes containing cyclohexanone are regulated under RCRA. Spent cyclohexanone solvent and the still bottoms from the spent solvent recovery are hazardous wastes listed under 40 CFR § 261.31 as EPA Hazardous Waste No. F003.

B. Health Effects Information

1. *Metabolism.* Cyclohexanone is quickly metabolized and excreted with the major metabolic pathway being transformation to cyclohexanol followed by glucuronidation in the liver with subsequent excretion of the glucuronic acid conjugates in the bile and urine (Refs. 14, 23, 29, 52, and 53).

2. *Acute Toxicity.* Acute LD_{50} studies on guinea pigs, rats, mice and rabbits show that the acute toxicity of cyclohexanone to these species is on the order of 1,000 to 2,000 mg/kg (oral or intravenous routes of administration); no significant difference in acute toxicity was found between males and females (Refs. 19, 52 and 53).

Exposure by inhalation killed two of four rabbits exposed for 90 hours at 3,082 ppm (Ref. 53). Although there were signs of toxicity observed, no fatalities were observed among the four animals treated at the next highest dose in this experiment, 1,414 ppm, after 300 hours of exposure.

The major sign of intoxication in rabbits following an acute oral dose of 1.6–1.9 grams/kg of cyclohexanone was narcosis (Ref. 52).

Pathological examination also revealed marked lung damage, including atelectasis, edema, hemorrhage, and necrosis of the respiratory epithelium (Ref. 52). Treon *et al.* (1943a) also noted severe, widespread, vascular damage at unspecified dosage levels. Postmortem examination of rat and mice dosed with cyclohexanone revealed intestinal congestion, suggesting an irritant effect. Light narcosis and loss of coordination were also observed in rabbits given an inhalation dose of 3,082 ppm, 6 hours per day, 5 days per week, for 90 hours, but not in rabbits given 1,414 ppm for 300 hours, under the same dosing schedule (Ref. 53). Irritation to cyclohexanone was also observed down to 300 ppm but was not seen at the lowest dose of 190 ppm (total exposures for 300 hours).

Cyclohexanone has also been shown to be irritating to both the skin and eyes of rabbits (Refs. 8 and 19). Undiluted cyclohexanone (0.005 ml and 0.02 ml) applied directly to the eyes of rabbits caused injury of grade 5 (out of a maximum severity score of grade 10, which the authors classified as having a severe irritating effect (Ref. 8). Topical application of cyclohexanone to the skin of rabbits, as a 12.4 to 99 percent solution in cottonseed oil, caused slight (12.4%) to moderate (49.5%) to greater than marked (99%) skin irritation within one day of application (Ref. 19). The irritation effect seen from each solution gradually decreased, with no observable irritation on day 2, day 3, and day 7 for each of the above three concentrations, respectively.

3. *Subchronic and chronic toxicity.* The major effects seen from subchronic exposure to cyclohexanone include primary irritation and general central nervous system effects such as narcosis, lethargy, temors, and hypothermia (Refs. 27 and 53).

Rengstorff *et al.* (1972) also observed a significant cataractogenic effect when cyclohexanone was administered to guinea pigs three times per week for 3 weeks, however, subsequent studies have not confirmed that cyclohexanone causes cataractogenic effects. In the Rengstorff *et al.* (1972) study, three groups of guinea pigs received cyclohexanone either cutaneously (0.5 ml doses of undiluted material) or subcutaneously (0.05 ml doses of 5 percent cyclohexanone in saline).

Subsequent work includes: studies sponsored by the Industrial Health Foundation (1983b) in which rats and guinea pigs were cutaneously administered cyclohexanone using the same dose and treatment schedule as Rengstorff *et al.*; studies by Travenol Laboratories (1982) in which rabbits and guinea pigs were administered cyclohexanone intravenously (iv) at two dosages (0.5 and 5.0 mg/kg), or cutaneously, at a dosage of 0.5 ml of undiluted cyclohexanone, again using the same treatment schedule as Rengstorff *et al.* (1972); and a study by Greener *et al.* (1982) in which rats were administered (iv) 50 and 100 mg/kg cyclohexanone in saline solutions containing 0.25 and 0.50 percent cyclohexanone, respectively, for 28 consecutive days. No cataractogenic effect due to cyclohexanone was observed in any of the three species tested in these studies. Additionally, data from the studies utilizing guinea pigs also indicated that guinea pigs are not an appropriate model for cataractogenesis studies; lenticular changes are indicated to be an inherent characteristic of guinea pigs, as shown by relatively high levels of cataracts observed in the control groups (Refs. 22, 51 and 55).

4. *Neurotoxocity.* Although cyclohexanone exhibits generalized CNS effects with sufficient administration, it does not appear to affect the peripheral nervous system. Perbelini *et al.* (1981) studied cyclohexanone in Sprague-Dawley rats to determine whether or not cyclohexanone causes peripheral nervous system lesions. Control rats were treated with peanut oil and experimental rats received intraperitoneally 400 mg/kg/day cyclohexanone. The animals were dosed for a 5 day period each week for 13 weeks. After 6 and 13 weeks of administration, electrophysiological and histological examinations were performed. The rats treated with cyclohexanone remained in good condition throughout the study and maintained a steady weight-gain comparable to the controls. The treated rats did not exhibit signs of neurotoxicity, such as motor deficits or ataxia, either at week 6 or week 13. The neuropathological examination also showed that there was no effect indicative or neurologic deficit.

5. *Mutagencity.* The mutagenic potential of cyclohexanone is somewhat unclear. Massoud *et al.* (1980) obtained positive results in mutagenicity assays with *Bacillus subtilis* and *Salmonella typhimurium* (strains TA 1535, TA 1537, TA 1538, TA 98, and TA 100).

However, Florin *et al.* (1980) also ran cyclohexanone in the Ames assay (with and without metabolic activation) in *S. typhimurium* strains TA 1535, TA 1537, TA 98, and TA 100 and found negative results in their tests. Collins (1971) found that cyclohexanone also had a cytogenetic effect in his investigations using human leukocyte cultures. McGregor (1980) screened cyclohexanone for mutagenic effects in five tests: unscheduled DNA synthesis (UDS), bone marrow cytogenicity, mouse dominant lethal, sperm abnormality, and *Drosphila* sex-linked recessive lethal. The UDS and sperm abnormality tests appeared to be clearly negative; the three other tests were also considered by the author to be statistically negative, but the results were not as clear because of various problems with reproducibility, positive control response or, in one case, with the experimental response possibly being affected by a viral infection in the animals.

6. *Teratogencity.* A study done on chicken embryos by Griggs *et al.* (1971) indicates that cyclohexanone may have teratogenic potential. Six experimental groups of eggs were exposed to cyclohexanone vapors (at an unknown, but reportedly constant concentration) for 3 to 12 hours, beginning at either the start of incubation or after the first 96 hours of incubation; there also were six nonexposed control groups. Although the results are difficult to interpret, there did appear to be treatment-related effects, such as increased mortality and, in two experimental groups, functional changes observed in the chicks. The chicks were unable to walk and had curled-in toes. There were no other anatomical abnormalities observed, aside from the curled toes. Griggs *et al.* (1971) postulated that an upper motor neuron lesion or other functional abnormality at the neuromuscular junction would be the embryopathic effect of cyclohexanone. No histopathology was performed, however.

7. *Reproductive effects.* There are no adequate reproductive effects studies of cyclohexanone. Hall *et al.* (1974) reported a study in which eight female CF_1 mice were dosed intraperitoneally for 28 days with 50 mg/kg/day cyclohexanone. Compared to control values, the experimental mice had the same percentage of pregancies and 83 percent as many viable fetuses per litter (a value of 75 percent would be considered significant in this test). The number of resorption sites was 46 percent of the control value of 0.48 per litter. A significant anti-fertility effect was, therefore, not observed for cyclohexanone in this screening test.

C. Environmental Fate and Effects Information

1. *Environmental fate.* Cyclohexanone is very water soluble (23,000 mg/1 at 20°C), of moderate volatility (4 mm Hg at 20°C), with a low soil adsorption coefficient (K_{OC}=17) and a low octanol/water partition coefficient of log P=0.81 (Refs. 12 and 58). As discussed in Unit II.A., most of the cyclohexanone released into the environment will be released to air. Most of this release will be from cyclohexanone's dispersive use as a solvent, and concentrations in air will be low. Low environmental concentrations are also expected as a result of wastewater discharge from manufacturing plants (see Unit II.A.). Data obtained from mathematical modelling indicate that cyclohexanone will partition preferentially to water from air. It will also volatilize from water 1 meter in depth to air with a calculated half-life of 2.6 to 5.0 days (Refs. 13 and 24). Modelling by Falco *et al.* (1980) further indicates that little cyclohexanone will be sorbed to soils or sediments and that concentrations in these compartments will only be a fraction of those in the water compartment (Ref. 15).

In air, cyclohexanone should readily break down by photo-oxidation or photolysis reactions (Refs. 3, 24 and 36). In urban atmosphere, cyclohexanone is expected to photodecompose at a fairly rapid rate, with a half-life of 1.9 to 3.2 hours (Ref. 24). In rural atmospheres, which have a low concentration of hydroxyl radicals and other oxidizing compounds, photodegradation would be much slower and would depend more strongly on cyclohexanone's potential for direct photolysis. Cyclohexanone is also expected to undergo direct photolysis. Serat and Mead (1959) reported that cyclohexanone absorbs substantial amounts of radiation at wavelengths above 290 nm (a cut-off value on the low end for photolysis, Ref. 34).

In water or soils, cyclohexanone is readily degraded by microorganisms. A number of microorganisms have been identified as being able to grow on and degrade cyclohexanone, including strains of *Nocardia Zoogloea, Acinetobacter,* and *Pseudomonas.* These species were isolated from soil, sewage and estuarine habitats and grew on and degraded cyclohexanone while using the chemical as a sole carbon source (Refs. 2, 11, 35, 38, 48, 49 and 50). Murray *et al.*

(1974) found that *Nocardia* sp. grew at an average rate of 0.22/hr. using cyclohexanone as a carbon source. There was an initial lag of 16 hours with the stationary phase of growth reached by 39 hours. Pitter (1976), found that an initial cyclohexanone concentration of 200 mg/liter disappeared, as measured by chemical oxygen demand (COD), from a medium of adapted activated sludge at a rate of 30 mg COD/g dry inoculum per hour over a 5 day period. Patel and Patel (1977), in another test, found that after 5 days 58.3 percent of theoretical oxygen demand for cyclohexanone was removed when cyclohexanone was added to acclimated sewage sludge from a laboratory-scale activated sludge unit. Measured COD in this experiment was 2.44 mg/mg; measured biological oxygen demand (BOD) was 1.6 mg/mg; and theoretical oxygen demand was 2.74 mg/mg.

2. *Environmental effects.* Cyclohexanone has been shown to be only slightly toxic to a variety of organisms that have been tested in acute toxicity tests. Acute LC_{50} values for the fish, *Leuciscus idus*, and the invertebrate, *Daphnia magna*, were between 536 and 800 mg/L (Refs. 6 and 25).

Tests on algae, a protozoan, and terrestrial plants also indicate that cyclohexanone is not very toxic to environmental species. In toxicity tests of seven days duration with the algae *Scenedesmus quadricauta* and *Microcystis aeruginosa*, cyclohexanone inhibited cell multiplication at concentrations of 52 mg/L and 370 mg/L, respectively. (Ref. 7). In a similar test of three days duration, the minimum concentration for inhibition of cell multiplication for the protozoan, *Entosiphon sulcatum*, was 545 mg/L (Ref. 5). Corn plants irrigated with wastewater containing cyclohexanone were unaffected in terms of yields of cobs and number of kernals per cob, compared to untreated plants, up to the highest concentration tested, 500 mg/L (Ref. 10). Reynolds (1977), however, observed a 50 percent inhibition of seed germination of lettuce seeds at a cyclohexanone concentration of 41 mg/L.

III. Testing Program Proposed by Representatives of the Cyclohexanone Industry

In the spring of 1981, EPA began discussions with representatives of the cyclohexanone industry regarding the need for testing of cyclohexanone to characterize its health and environmental effects. The industry, organized as the Cyclohexanone Study Group under the auspices of the Industrial Health Foundation, submitted a testing proposal to address the EPA's testing concerns for the potential health effects of cyclohexanone. The study group was not asked to pursue environmental effects testing in the program because the Agency does not believe that environmental effects testing is necessary at this time. The Study Group was, however, asked to address all of the health effects concerns raised by the ITC, and their proposal includes testing for all of the ITC's and the Agency's effects of concern in this area.

Mutagenicity, teratogencity, and reproductive effects testing will be performed by the Study Group. The neurological and behavioral effects on rats exposed prenatally to cyclohexanone will also be examined. Mutagenicity testing will examine the induction of sister chromatid exchanges, chromosome aberrations and gene mutations, using cultured Chinese hamster ovary cells. Protocols for the mutagenicity testing have been submitted by the Study Group and have been reviewed by the Agency and judged to be adequate. The Study Group has proposed that mutagenicity testing begin September 28, 1983, be completed December 15, 1983; with a final report on April 30, 1984. Teratogenicity testing will be an inhalation study using the rat. A probe study, setting exposure concentrations, has already been completed. Both the teratogencity protocol and the probe study have been reviewed and found adequate by the Agency. The Study Group will also run, in tandem with the rat teratogenicity study, a teratogenicity screening study using the mouse. Mice will be exposed to cyclohexanone at the high dose of the rat study, using a sufficient number of mice to obtain 20 pregnant females. The effects of cyclohexanone on these mice will be compared to a control group. Should a teratogenic effect be seen, a full teratogencity study on mice will be conducted by the Study Group. The Study Group proposed that the teratology study begin October 15, 1983, and be completed December 15, 1983; with a final report on April 30, 1984.

The protocol for the reproductive effects test has been received by the Agency and testing is anticipated to start in 1984. Included as an addition to the reproductive effects study is a study to examine development neuropathology in the rat. Previous work by Perbellini *et al.* (1981) demonstrated no neurological effects on adult rats; however, work by Griggs *et al.* (1971) on chick embryos did show effects on developing chickens and suggested a need for follow-up work using mammals. The Study Group has proposed test initiation two months after final EPA publication in the **Federal Register** accepting the Study Group's test program; with test completion 13 months after test initiation, and a final report 24 months after test initiation.

The Study Group has furnished EPA with the names and addresses of the laboratories conducting these tests. The Study Group has also committed to adhere to the final TSCA Good Laboratory Practice Regulations.

The Study Group also has agreed to permit laboratory audits/inspections in accordance with the authority and procedures outlined in TSCA, section 11, at the request of duly designated representatives of the EPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluation thereof, and that the studies are being conducted according to Good Laboratory Practices.

The Study Group has further committed that all raw data, documentation, including correspondence related to the conduct and interpretation of the study, records, protocols, specimens, and reports generated as a result of each study will be retained for 10 years. In addition, the raw data documentation, records, protocols, specimens, and reports, will be made available during an inspection or submitted to EPA if requested by EPA or its duly designated representative.

The Agency plans to issue in the **Federal Register** a notice of the receipt of all data submitted under this test program. Subject to TSCA section 14, the notice will provide information similar to that described in section 4(d). Except as otherwise provided in TSCA section 14, any data submitted will be made available by EPA for examination by any person.

Should the Study Group fail to conduct the testing according to the specified protocols or fail to follow Good Laboratory Practices, such actions may invalidate the tests. In such cases, a data gap may still exist, and the Agency may decide to promulgate a test rule or otherwise require further testing.

IV. Decision Not To Initiate Rulemaking

The Agency has concluded that there are sufficient data on cyclohexanone's environmental release, fate, and effects to indicate that, at the present time, cyclohexanone does not present an unreasonable risk to the environment. In addition, while the quantity of

cyclohexanone released to the environment might be considered substantial as that term is used in TSCA section 4(a)(1)(B)(i), EPA believes that available data allow the Agency to reasonably predict that the effects on the environment of such releases will be minimal. Cyclohexanone is readily degraded in the environment and data indicate that cyclohexanone is only slightly toxic to environmental organisms (see Unit II.C.). Furthermore environment levels of cyclohexanone in air, water, and soils are expected to generally be much less than 1 ppm (see Unit II.A.). Therefore, the Agency is not at this time requiring testing of this substance for environmental fate or effects under section 4 of TSCA.

The Agency further believes that the results of the testing being undertaken by the Study Group, combined with exising data, are likely to provide sufficient data to reasonably determine or predict the health effects of cyclohexanone for which EPA has concluded testing should be undertaken. EPA, therefore, is not proposing a TSCA section 4 rule for health effects testing at this time. The Study Group has agreed to test for mutagenicity, teratogenicity, reproductive effects, and developmental neuropathology. Cataractogenic effects of cyclohexanone have already been examined to the Agency's satisfaction, and a 2-year oncogenicity study has been performed by the National Cancer Institute. The National Toxicology Program is now evaluating the data and has not yet released results. The ITC also recommended epidemiology studies. However, the Agency has concluded that an epidemiology study is not practical at this time. There has not yet been identified a cause-effect relationship for an effect of cyclohexanone in laboratory animals that is of sufficient significance or distinction that one could reasonably pursue in epidemiology study for this substance. The Agency will, however, reevaluate the need for an epidemiology study when the results of the Study Group's program are received.

In conclusion, the Agency has decided not to initiate rulemaking to require further testing of cyclohexanone at this time. However, should the test results from the Study Group or other information reveal a need for additional testing that the Study Group is unwilling to perform, the Agency reserves its right to require testing under section 4(a).

EPA is soliciting comments on the IHF Cyclohexanone Study Group's program and the Agency's decision to accept it in lieu of section 4(a) rulemaking at this time. After considering these comments, EPA will either publish in the **Federal Register** a final notice of acceptance of a negotiated test program or will initiate rulemaking under section 4(a) of TSCA.

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VI. Public Record

The EPA has established a public record for this testing decision, docket number [OPTS–42046] which includes:

(1) **Federal Register** notice designating cyclohexanone to the Priority list and comments received thereon.

(2) Communications from industry consisting of letters, contact reports of telephone conversations, and meeting summaries.

(3) Testing proposals and protocols.

(4) Published and unpublished data.

(5) **Federal Register** notice requesting comment on the negotiated testing proposal and comments received in response thereto.

The record, containing the basic information considered by the Agency in developing the decision, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83–34801 Filed 12–30–83; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53056; FRL 2500–8]

Premanufacture Notices; Monthly Status Report for November 1983

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for November 1983.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E–106 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments are to be identified with the document control number "[OPTS–53056]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street., SW., Washington, D.C. 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hammett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–229, 401 M Street., SW., Washington, D.C. 20460. (202–382–3736).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during November; (b) PMNs

received previously and still under review at the end of November; (c) PMNs for which the notice review period has ended during November; (d) chemical substances for wich EPA has received a notice of commencement to manufacture during November; and (e) PMNs for which the review period has been suspended. Therefor, the November 1983 PMN Status Report is being published.

Dated: December 23, 1983.

Linda A. Travers,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report—November 1983

I. 51 Premanufacture Notices Received During the Month

PMN No.	Identity-generic name	FR citation	Expiration date
84-191	Generic name: Polymer of laurolactam, caprolactam, alkanedioic acid and alkanediamine	48 FR 52504 (11/18/83)	Jan. 29, 1984.
84-192	Generic name: Polymer of laurolactam, caprolactam, alkanedioic acid and alkanediamine	48 FR 52504 (11/18/83)	Do.
84-193	Generic name: Functional copolymer of styrene with acrylate type monomers	48 FR 52504 (11/18/83)	Do.
84-194	Generic name: Diisocyanate polymers with polyether polyols	48 FR 52504 (11/18/83)	Do.
84-195	Generic name: Diisocyanate polymers with polyether polyols	48 FR 52504 (11/18/83)	Do.
84-196	Generic name: Diisocyanate polymers with polyether polyols	48 FR 52504 (11/18/83)	Do.
84-197	Carboxylic acid, C_8-C_{18} mono and C_8-C_{18} di, polymers with neopentyl glycol and propylene glycol	48 FR 52506 (11/18/83)	Do.
84-198	Generic name: 2-ethyl-2(hydroxymethyl)-1,3-propanediol; benzoic acid; substituted propanediol, 1,3-benzenedicarboxylic acid; cyclic oxo-benzene carboxylic acid; mixed vegetable oils and polymer.	48 FR 52506 (11/18 /83)	Do.
84-199	Acriflavine hydrochloride	48 FR 52506 (11/18/83)	Feb. 4, 1984.
84-200	4,4'-(1,2-ethanediyldiimino) bis-3-pentene-2-one	48 FR 52506 (11/18/83)	DO.
84-201	Generic name: Tetrasubstituted dithiadiphosphetane	48 FR 52506 (11/18/83)	Feb. 5, 1984.
84-202	Generic name: Chromophore substituted polyoxyalkylene	48 FR 52503 (11/18/83)	Do.
84-203	Generic name: Trisubstituted amino thiopene	48 FR 52506 (11/18/83)	Do.
84-204	Generic name: A derivitized olefinic polymer	48 FR 52506 (11/18/83)	Feb. 6, 1984.
84-205	Generic name: Thermoplastic polyurethane	48 FR 53162 (11/25/83)	Feb. 7, 1984.
84-206	Generic name: Thermoplastic polyurethane	48 FR 53162 (11/25/83)	Do.
84-207	Generic name: Thermoplastic polyurethane	48 FR 53162 (11/25/83)	Do.
84-208	Generic name: Vegetable oil polyamide resin	48 FR 53162 (11/25/83)	Feb. 11, 1984.
84-209	Generic name: Pentasubstituted phenyl fatty acid ester	48 FR 53162 (11/25/83)	Do.
84-210	Generic name: 4-substituted benzoyl chloride	48 FR 53162 (11/25/83)	Do.
84-211	Generic name: 3,7-bis(di-substituted amino)-5-(substituted phenyl) phenazinium salt	48 FR 53162 (11/25/83)	Do.
84-212	Generic name: 3,7-bis(di-substituted amino)-5-(substituted phenyl) phenazinium salt	48 FR 53162 (11/25/83)	Do.
84-213	Generic name: 2,8-phenazinediamine, tetra-substituted-5,10-dihydro-10-(substituted-phenyl)-5-(4-substituted) benzoyl	48 FR 53162 (11/25/83)	Do.
84-214	Generic name: Reaction products of quinone and amine	48 FR 53163 (11/25/83)	Feb. 12, 1984.
84-215	2-Butenedioic (E)-, ditridecyl ester	48 FR 54394 (12/2/83)	Feb. 15, 1984.
84-216	Generic name: Phosphate ester	48 FR 54394 (12/2/83)	Do.
84-217	Generic name: Phosphonium catalyst	48 FR 54394 (12/2/83)	Do.
84-218	Generic name: Modified polyester	48 FR 54394 (12/2/83)	Feb. 19, 1984.
84-219	Generic name: Modified alkyd polymer	48 FR 54394 (12/2/83)	Do.
84-220	Generic name: Benzenesulfonic acid, 4-[[4-substituted]-3-methyl-5-oxo-2-pyrazolin-1-yl]-, salt	48 FR 54395 (12/2/83)	Do.
84-221	Generic name: Ethoxylated alkyl quaternary amine	48 FR 54395 (12/2/83)	Feb. 20, 1984.
84-222	Generic name: Urethane bisoxazolidine	48 FR 54395 (12/2/83)	Do.
84-223	Generic name: Aromatic sulfonate of substituted heteropolycycle	48 FR 55332 (12/12/83)	Feb. 22, 1984.
84-224	Generic name: Alkoxylated disphenol A, inorganic ester, monoethanolamine salt	48 FR 55332 (12/12/83)	Do.
84-225	Generic name: Polyester—imide resin	48 FR 55332 (12/12/83)	Do.
84-226	Generic name: 1,3 benzenedicarboxylic acid polymer with 1,4-benzenedicarboxylic acid adipic acid and polyols	48 FR 55332 (12/12/83)	Feb. 25, 1984.
84-227	Generic name: Fatty acids, esters with polyol	48 FR 55332 (12/12/83)	Do.
84-228	Generic name: Modified copolymer of alkenoic esters and substituted alkenoic esters with styrene	48 FR 55333 (12/12/83)	Do.
84-229	Zinc ammonium phosphate	48 FR 55333 (12/12/83)	Do.
84-230	Zinc Magnesium orthosphosphate	48 FR 55333 (12/12/83)	Do.
84-231	Generic name: Aliphatic polycarbonate diol	48 FR 55333 (12/12/83)	Do.
84-232	Generic name: Alkyd resin	48 FR 55333 (12/12/83)	Feb. 26, 1984.
84-233	Silicon aluminum oxynitride	48 FR 55333 (12/12/83)	Do.
84-234	Generic name: Diisocyanate polymer with polyether polyols	48 FR 55333 (12/12/83)	Feb. 27, 1984.
84-235	Generic name: Diisocyanate polymer with polyether polyols	48 FR 55333 (12/12/83)	Do.
84-236	Generic name: Diisocyanate polymer with polyether polyols	48 FR 55333 (12/12/83)	Do.
84-237	Generic name: Hydroxyalkylene-bis-[-trialkyl ammonium chloride]	48 FR 55333 (12/12/83)	Do.
84-238	Generic name: Alkenyltrialkylammonium phosphate	48 FR 55333 (12/12/83)	Do.
84-239	Generic name: Amine derivative of a fatty acid condensation polymer	48 FR 55333 (12/12/83)	Do.
84-240	Generic name: Trisubstituted benzoxazolium salt	48 FR 55333 (12/12/83)	Feb. 28, 1984.
84-241	Generic name: Trisubstituted benzoxazolium salt	48 FR 55333 (12/12/83)	Do.

II. 188 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity/generic name	FR citation	Expiration date
84-1	Generic name: Polyester of dicarboxylic acids and difunctional alcohols	48 FR 46852 (10/14/93)	Dec. 31, 1983
84-2	Generic name: Amine salt of a modified carboxyl terminated polyester urethane polymer	48 FR 46852 (10/14/83)	Da.
84-3	Generic name: Modified magnesium fluorogermanate	48 FR 46852 (10/14/83)	Do.
84-4	Generic name: Tannins, methylamino methylated	48 FR 46852 (10/14/83)	Do.
84-5	Generic name: Aliphatic polyester, cyclohexane diisocyanato based polyurethane	48 FR 46853 (10/14/83)	Do.
84-6	Generic name: Polyurethane based on TDI and a polycarbonate	48 FR 46853 (10/14/83)	Do.
84-7	Generic name: N,N,N',N'-tetraglycidyl-1,3-bisaminomethyl cyclohexane	48 FR 46853 (10/14/83)	Jan. 1, 1984.
84-8	Generic name: Polyfunctional copolymer of styrene with alkyl acrylate and substituted alkyl methacrylates	48 FR 46853 (10/14/83)	Do.
84-9	Generic name: Polyester from vegetable oil fatty acids, alkane diol, alkanoic anhydride and carbomonocyclic acids	48 FR 46853 (10/14/83)	Do.
84-10	Generic name: Polymer of N,N'-biscycloamnio-alkylene diamine and an alkanoic acid	48 FR 46853 (10/14/83)	Jan. 2, 1984.
84-11	Generic name: Alkylated cycloalkanone, bis[(4-azidophenyl)methylene]-	48 FR 46853 (10/14/83)	Jan. 3, 1984.
84-12	Generic name: Aliphatic polycarbonate urethane	48 FR 46853 (10/14/83)	Do.
84-13	Generic name: Disubstituted benzene	48 FR 46853 (10/14/83)	Do.
84-14	Generic name: Polyurethane prepolymer resin	48 FR 46864 (10/21/83)	Jan. 4, 1984.
84-15	Generic name: Substituted heterocyclic metal complex	48 FR 46864 (10/21/83)	Do.
84-16	Generic name: Epoxy urethane	48 FR 46864 (10/21/83)	Jan. 8, 1984.
84-17	Generic name: Substituted heterocyclic metal complex	48 FR 46864 (10/21/83)	Do.
84-18	1 (1,1 dimethylethoxy)-propan-2-ol	48 FR 46864 (10/21/83)	Do.
84-19	Generic name: Tolylene diisocyanate polymer with acrylated glycols	48 FR 46864 (10/21/83)	Do.
84-20	Generic name: Methylene bis(4-isocyanatocyclo-hexane)polymer with acrylated glycols	48 FR 46864 (10/21/83)	Do.

II. 188 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-21	Generic name: Polybutanediol acrylate	48 FR 46864 (10/21/83)	Do.
84-22	Generic name: Isophorone diisocyanate polymer with acrylated diols	48 FR 46864 (10/21/83)	Do.
84-23	Generic name: 1,4-cyclohexylene diisocyanate polymer with acrylated diols	48 FR 46864 (10/21/83)	Do.
84-24	Generic name: Methylene-bis(cyclohexyl isocyanate)polymer with acrylated diols	48 FR 46865 (10/21/83)	Do.
84-25	Generic name: Titanium alcohol complex	48 FR 46865 (10/21/83)	Jan. 9, 1984.
84-26	Generic name: Alkoxy functional polydimethyl-siloxane	48 FR 46865 (10/21/83)	Do.
84-27	Generic name: Polyol carboxylate ester	48 FR 46865 (10/21/83)	Do.
84-28	Generic name: Flexibilized dicyclopentadiene modified unsaturated polyester resin	48 FR 46865 (10/21/83)	Do.
84-29	Generic name: Ethylene terpolymer	48 FR 46865 (10/21/83)	Do.
84-30	Generic name: Modified polyethylene ionomer	48 FR 46865 (10/21/83)	Do.
84-31	Generic name: Modified polyethylene ionomer	48 FR 46865 (10/21/83)	Do.
84-32	Generic name: Aminomethylene phosphonic acid	48 FR 46865 (10/21/83)	Do.
84-33	Generic name: Phosphorus containing aminosilane	48 FR 46865 (10/21/83)	Do.
84-34	Generic name: Aliphatic polycarbonate diol	48 FR 46865 (10/21/83)	Do.
84-35	Generic name: (Substituted-phenyl) (heterocycle-substituted alkyl) ketone	48 FR 46865 (10/21/83)	Do.
84-36	Generic name: Substituted heterocyclic metal complex	48 FR 46866 (10/21/83)	Jan. 10, 1984.
84-37	Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-[2-amino-2-methyl)ethoxy-, ether with 1,2,3-propanetriol (3:1)	48 FR 46866 (10/21/83)	Do.
84-38	Generic name: Oil modified polyester	48 FR 46866 (10/21/83)	Do.
84-39	Generic name: Oil free polyester	48 FR 46866 (10/21/83)	Do.
84-40	Generic name: Oil modified polyester	48 FR 46866 (10/21/83)	Do.
84-41	Generic name: Metal complex with amine fatty acid salt	48 FR 46866 (10/21/83)	Jan. 9, 1984.
84-42	Generic name: Substituted benzene	48 FR 50951 (11/4/83)	Jan. 11, 1984.
84-43	Generic name: Fatty acid mercaptan acrylic copolymer	48 FR 50952 (11/4/83)	Do.
84-44	Generic name: Acrylic copolymer	48 FR 50952 (11/4/83)	Do.
84-45	Generic name: Acrylic urethane polymer	48 FR 50952 (11/4/83)	Do.
84-46	Generic name: Acrylic urethane polymer	48 FR 50952 (11/4/83)	Do.
84-47	Generic name: Ester urethane copolymer	48 FR 50952 (11/4/83)	Do.
84-48	Generic name: Acrylic styrene copolymer	48 FR 50952 (11/4/83)	Do.
84-49	Generic name: Formaldehyde reaction product with phenol and diamine	48 FR 50952 (11/4/83)	Do.
84-50	Generic name: Substituted heterocyclic metal complex	48 FR 50952 (11/4/83)	Do.
84-51	Generic name: Substituted heterocyclic metal complex	48 FR 50952 (11/4/83)	Do.
84-52	Generic name: Vinylpyrrolidone copolymer	48 FR 50952 (11/4/83)	Do.
84-53	Generic name: Vinylpyrrolidone copolymer	48 FR 50952 (11/4/83)	Do.
84-54	Generic name: Drying oil modified alkyd	48 FR 50952 (11/4/83)	Jan. 14, 1984.
84-55	Generic name: Ethoxylated nonylphenol urethane derivative	48 FR 50952 (11/4/83)	Do.
84-56	Generic name: Polyester resin	48 FR 50953 (11/4/83)	Do.
84-57	Generic name: Transition metal complex	48 FR 50953 (11/4/83)	Do.
84-58	Generic name: Cycloaliphatic amines	48 FR 50953 (11/4/83)	Do.
84-59	Generic name: Copolyester polymer	48 FR 50953 (11/4/83)	Do.
84-60	Generic name: Copolyester polymer	48 FR 50953 (11/4/83)	Do.
84-61	Generic name: Copolyester polymer	48 FR 50953 (11/4/83)	Do.
84-62	Generic name: Copolyester polymer	48 FR 50953 (11/4/83)	Do.
84-63	Generic name: Substituted-phenyl-N-substituted-amino monochlorotriazinylamino substituted-sulfophenylazo-benzylidenehydrazino sulfobenzoate-copper salts, potassium salt.	48 FR 50953 (11/4/83)	Do.
84-64	Generic name: Substituted-phenylamino monochloro-triazinylamino sulfophenylazo-substituted disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt.	48 FR 50953 (11/4/83)	Do.
84-65	Generic name: Substituted anthraquinone aryl sulphamate	48 FR 50953 (11/4/83)	Do.
84-66	Generic name: Substituted phenol-formaldehyde condensate	48 FR 50953 (11/4/83)	Do.
84-67	Generic name: Substituted aromatic azo pyridinium salt	48 FR 50953 (11/4/83)	Do.
84-68	Generic name: Substituted anthraquinone aryl amine	48 FR 50953 (11/4/83)	Do.
84-69	Generic name: Substituted anthraquinone ammonium salt	48 FR 50953 (11/4/83)	Do.
84-70	Generic name: Substituted methimine indolium acetic acid salt	48 FR 50953 (11/4/83)	Do.
84-71	Generic name: Substituted pyridinium chloride	48 FR 50954 (11/4/83)	Jan. 15, 1984.
84-72	Generic name: Modified acrylate ester resin	48 FR 50954 (11/4/83)	Do.
84-74	Generic name: Unsaturated organic compounds with isocyanates	48 FR 50954 (11/4/83)	Do.
84-75	Generic name: Copolymer of unsaturated organic compounds with polyols and isocyanates	48 FR 50954 (11/4/83)	Do.
84-76	Generic name: Vinyl acetate—ethylene copolymer	48 FR 50954 (11/4/83)	Do.
84-77	Generic name: Substituted heterocycle, diester with alkanedioic acid	48 FR 50954 (11/4/83)	Do.
84-78	Generic name: Substituted benzaldehyde	48 FR 50954 (11/4/83)	Do.
84-79	Generic name: Glycol/phthalate polyester resin	48 FR 50954 (11/4/83)	Do.
84-80	Cellulose, acetate, [(1-oxo-2-propenyl)amino] methyl ether	48 FR 50954 (11/4/83)	Do.
84-81	Cellulose, acetate butanoate, [(1-oxo-2-propenyl)amino] methyl ether	48 FR 50954 (11/4/83)	Do.
84-82	Generic name: Azo triazolium salt	48 FR 50954 (11/4/83)	Do.
84-83	Generic name: Azo triazolium salt	48 FR 50955 (11/4/83)	Do.
84-84	Generic name: Azo benzothiazolium salt	48 FR 50955 (11/4/83)	Do.
84-85	Generic name: Azo benzothiazolium salt	48 FR 50955 (11/4/83)	Do.
84-86	Generic name: Heterocyclic azo substituted aromatic compound	48 FR 50955 (11/4/83)	Do.
84-87	Generic name: Ethylene interpolymer	48 FR 50955 (11/4/83)	Jan. 16, 1984.
84-88	Generic name: Acrylic resin	48 FR 50955 (11/4/83)	Do.
84-89	Generic name: Acrylic resin	48 FR 50955 (11/4/83)	Do.
84-90	Generic name: Azo triazolium salt	48 FR 50955 (11/4/83)	Do.
84-91	Generic name: Azo triazolium salt	48 FR 50955 (11/4/83)	Do.
84-92	Generic name: Polymer of 1,2-propanediol, 1,6-hexanedioic acid and tetra substituted benzene dicarboxylic acid derivative	48 FR 50955 (11/4/83)	Do.
84-93	Generic name: Substituted-1H-isoindol-1-one	48 FR 50955 (11/4/83)	Do.
84-94	Generic name: Cresol formaldehyde polymer	48 FR 50955 (11/4/83)	Do.
84-95	Generic name: Thermoplastic polyurethane	48 FR 50945 (11/4/83)	Jan. 18, 1984.
84-96	Generic name: Polyurethane polymer	48 FR 50945 (11/4/83)	Do.
84-97	Generic name: Ethanol, 2-amino-hydrobromide	48 FR 50945 (11/4/83)	Do.
84-98	Generic name: Alkoxy polyol terpolymer	48 FR 50945 (11/4/83)	Do.
84-99	Generic name: Hydroxyalkyl ether	48 FR 50945 (11/4/83)	Do.
84-100	Generic name: Ester of substituted, unsaturated acid	48 FR 50945 (11/4/83)	Do.
84-101	Generic name: Ester of substituted, unsaturated acid	48 FR 50945 (11/4/83)	Do.
84-102	Generic name: Substituted aromatic	48 FR 50945 (11/4/83)	Do.
84-103	Generic name: Modified polyacrylate polymer	48 FR 50945 (11/4/83)	Do.
84-104	Generic name: Starch grafted polyacrylate polymer	48 FR 50945 (11/4/83)	Do.
84-105	Generic name: Halogenated alkene	48 FR 50945 (11/4/83)	Do.
84-106	Generic name: Halogenated alkane	48 FR 50945 (11/4/83)	Do.
84-107	Generic name: Halogenated alkane	48 FR 50945 (11/4/83)	Do.
84-108	Generic name: Trisubstituted heterocyclic disubstituted monocycle	48 FR 50945 (11/4/83)	Do.
84-109	Generic name: Substituted-substituted-oxadiazine	48 FR 50946 (11/4/83)	Do.

II. 188 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-110	Generic name: Polyurea	48 FR 50946 (11/4/83)	Do.
84-111	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-112	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-113	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-114	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-115	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-116	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-117	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-118	Generic name: Aliphatic polycarbonate urethane	48 FR 50946 (11/4/83)	Do.
84-119	Generic name: Aliphatic polycarbonate urethane	48 FR 50946 (11/4/83)	Do.
84-120	Generic name: Modified halogenated hydrocarbon	48 FR 50946 (11/4/83)	Do.
84-121	Generic name: Substituted heterocyclic metal	48 FR 50946 (11/4/83)	Do.
84-122	Generic name: Substituted-benzene sulfonic acid, sodium salt	48 FR 50946 (11/4/83)	Do.
84-123	Generic name: Naphthaquinone-(1,2)-diazide-(1)-sulfonic-(5)-acid ester	48 FR 50947 (11/4/83)	Jan. 21, 1984.
84-124	Invalid		
84-125	Generic name: 2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-6-substituted, potassium salt	48 FR 50947 (11/4/83)	Do.
84-126	Generic name: Substituted naphthalene diazonium sulfate	48 FR 50947 (11/4/83)	Do.
84-127	Generic name: Polyurethane prepolymer resin	48 FR 50947 (11/4/83)	Do.
84-128	Generic name: Alkyleneamine methylene phosphonic acid	48 FR 50947 (11/4/83)	Do.
84-129	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-130	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-131	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-132	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-133	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-134	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-135	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-136	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-137	Generic name: Fluorocarbon ionic polymer	48 FR 50947 (11/4/83)	Do.
84-138	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-139	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-140	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-141	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-142	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-143	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-144	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-145	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-146	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-147	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-148	Generic name: Fluorocarbon ionic polymer	48 FR 50948 (11/4/83)	Do.
84-149	Generic name: Polyalkylene glycol ether	48 FR 50948 (11/4/83)	Do.
84-150	Generic name: Aminomethylene phosphonic acid	48 FR 50948 (11/4/83)	Do.
84-151	Lithium aluminum hydroxide	48 FR 50948 (11/4/83)	Do.
84-152	Hydroxy bromide	48 FR 50948 (11/4/83)	Do.
84-153	Hydroxy chloride	48 FR 50949 (11/4/83)	Do.
84-154	Lithium aluminum hydroxy stearate	48 FR 50949 (11/4/83)	Do.
84-155	Palmitate	48 FR 50949 (11/4/83)	Do.
84-156	Myristate	48 FR 50949 (11/4/83)	Do.
84-157	Laurate	48 FR 50949 (11/4/83)	Do.
84-158	Generic name: Modified epoxy resin	48 FR 50949 (11/4/83)	Do.
84-159	Generic name: Rubber modified epoxy resin	48 FR 50949 (11/4/83)	Do.
84-160	Generic name: Rubber modified epoxy resin	48 FR 50949 (11/4/83)	Do.
84-161	Reaction of: Diethylene triamine, Cardura E, Cardura glycidyl ether, urea	48 FR 50949 (11/4/83)	Jan. 22, 1984.
84-162	Generic name: Modified epoxy resin	48 FR 50949 (11/4/83)	Do.
84-163	Generic name: Substituted triazine	48 FR 50949 (11/4/83)	Do.
84-164	Generic name: Fluorine substituted dioxolane	48 FR 50949 (11/4/83)	Do.
84-165	Generic name: Carbonyl-fluorine substituted dioxolane	48 FR 50949 (11/4/83)	Do.
84-166	Generic name: Fluorine substituted polydioxolane	48 FR 50949 (11/4/83)	Do.
84-167	Generic name: Fluorine substituted dioxan-2-one	48 FR 50950 (11/4/83)	Do.
84-168	Generic name: Oxo-fluorine substituted dioxolane	48 FR 50950 (11/4/83)	Do.
84-169	Generic name: Acrylate ester blocked polyurethane	48 FR 50950 (11/4/83)	Do.
84-170	Generic name: Acrylate blocked polyurethane	48 FR 50950 (11/4/83)	Do.
84-171	Generic name: Functional polyurethane	48 FR 50950 (11/4/83)	Do.
84-172	Generic name: Functional acrylic copolymer	48 FR 50950 (11/4/83)	Do.
84-173	Generic name: Titanium (4+) mixed alcohol complex	48 FR 50950 (11/4/83)	Do.
84-174	Generic name: Titanium (4+) mixed alcohol complex	48 FR 50950 (11/4/83)	Do.
84-175	N-dodecylthio-2-propanol	48 FR 50950 (11/4/83)	Do.
84-176	Generic name: Aliphatic triol ester	48 FR 50950 (11/4/83)	Do.
84-177	Generic name: Ester of substituted cyclohexene	48 FR 50950 (11/4/83)	Do.
84-178	Generic name: Ester of substituted cyclohexene	48 FR 50950 (11/4/83)	Do.
84-179	Generic name: Substituted-phenyl-N-substituted-amino monochlorotriazinylamino substituted-sulfophenylazo-benzylidenehydrazino sulfobenzoate-copper sulfate, sodium salt.	48 FR 50950 (11/4/83)	Jan. 24, 1984.
84-180	Generic name: Polyether acrylate ester	48 FR 50951 (11/4/83)	Do.
84-181	Generic name: Aliphatic acrylate ester	48 FR 50951 (11/4/83)	Do.
84-182	Generic name: Polyether acrylate	48 FR 50951 (11/4/83)	Do.
84-183	Generic name: Aliphatic ester methacrylate	48 FR 50951 (11/4/83)	Do.
84-184	Generic name: Aliphatic ester methacrylate	48 FR 50951 (11/4/83)	Do.
84-185	Generic name: Perhaloolefin	48 FR 50951 (11/4/83)	Do.
84-186	Generic name: (Polyurethane from polyhydroxyalkyls and an aromatic diisocyanate)	48 FR 50951 (11/4/83)	Do.
84-187	Yttrium aluminum gallium oxide	48 FR 525041 (11/18/83)	Jan. 25, 1984.
84-188	Generic name: Aryl alkyl alkanedione	48 FR 525041 (11/18/83)	Do.
84-189	Generic name: Aminoplast resin	48 FR 525041 (11/18/83)	Do.
84-190	Generic name: Chromophore substituted polyoxyalkylene	48 FR 525041(11/18/83)	Jan. 28, 1984.

III. 72 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does not Signify That the Chemical Had Been Added to the Inventory.)

PMN No.	Identity/generic name	FR citation	Expiration date
83-768	Generic name: Disubstituted heterocycle	48 FR 24968 (6/3/83)	Nov. 8, 1983.
83-906	Generic name: Brominated aryl alkyl ether	48 FR 32383 (7/15/83)	Nov. 16, 1983.
83-984	Generic name: Saturated natural fatty acid choline chloride	48 FR 35713 (8/5/83)	Nov. 24, 1983.
83-1021	Generic name: Hydroxy functional acrylic copolymer	48 FR 36649 (8/12/83)	Nov. 1, 1983.
83-1022	Generic name: Saturated polyester	48 FR 36649 (8/12/83)	Do.
83-1024	Generic name: Polyether urethane-methacrylate blocked	48 FR 37699 (8/19/83)	Nov. 2, 1983.
83-1025	Generic name: Amino disubstituted sulfoamoyl carbomonocycle	48 FR 37699 (8/19/83)	Do.
83-1027	Haloalkyl diphosphorohalidic acid	48 FR 37699 (8/19/83)	Do.
83-1028	Generic name: Polyester resin	48 FR 37699 (8/19/83)	Nov. 6, 1983.
83-1030	Generic name: Hydroxy functional acrylic copolymer	48 FR 37699 (8/19/83)	Do.
83-1031	Generic name: Oil modified polyester	48 FR 37699 (8/19/83)	Do.
83-1032	Generic name: Substituted alkyl cyclic amine	48 FR 37700 (8/19/83)	Nov. 7, 1983.
83-1034	Generic name: Polyoxyalkylene acetate ester	48 FR 37700 (8/19/83)	Nov. 8, 1983.
83-1035	Generic name: Substituted polyoxyalkylene aniline	48 FR 37700 (8/19/83)	Do.
83-1036	Generic name: Chromophore, substituted polyoxyalkylene	48 FR 37700 (8/19/83)	Do.
83-1037	Generic name: Chromophore substituted polyoxyalkylene	48 FR 37700 (8/19/83)	Do.
83-1038	Generic name: Acrylamide polymer	48 FR 37700 (8/19/83)	Do.
83-1039	Generic name: Cycloalkylamine salt	48 FR 37700 (8/19/83)	Do.
83-1040	Generic name: Thioalkyl substituted nitrogen heterocycle	48 FR 37700 (8/19/83)	Do.
83-1041	Generic name: Siloxanes and silicones, dimethyl, methyl (acetamido alkyl) trimethyl endblocked	48 FR 37700 (8/19/83)	Do.
83-1043	Generic name: Hydrogen <2-[2-[a-[2-hydroxy-3, 5-substituted phenyl azo]-arylhy=drazino]4-substitutedaryl]cuprate, sodium salt.	48 FR 37700 (8/19/83)	Do.
83-1044	Generic name: Hydrogen <2-[a-[2-hydroxy-3,5-substituted phenylazo]-arylhydrazino]-5-substitutedaryl]cuprate, sodium salt	48 FR 37700 (8/19/83)	Do.
83-1045	Generic name: 1,3-naphthalenedisulfonic acid, 4-amino-5-hydroxy-6-arylazo	48 FR 37700 (8/19/83)	Do.
83-1046	Generic name: 1,5-naphthalenedisulfonic acid, 3-((3-arylazo)arylazo)	48 FR 37700 (8/19/83)	Do.
83-1047	Polymer of benzophenone tetracarboxylic dianhydride, methylene dianiline, bicyclo (2,2,1)-5-hepten-2,3 dicarboxylic anhydride	48 FR 38890 (8/26/83)	Nov. 9, 1983.
83-1049	Generic name: Alkoxy polyalkyleneoxy alkyl trialkoxy silane	48 FR 38890 (8/26/83)	Do.
83-1050	Generic name: Cationic acrylamide copolymer	48 FR 38890 (8/26/83)	Nov. 12, 1983.
83-1051	Thiomolybdic acid, diammonium salt	48 FR 38890 (8/26/83)	Do.
83-1052	Polymer of: tannin, formaldehyde, monoethanol-amine, hydrochloric acid	48 FR 38890 (8/26/83)	Do.
83-1053	Generic name: Epoxy resin	48 FR 38890 (8/26/83)	Nov. 13, 1983.
83-1054	Generic name: Substituted polyether polyurethane	48 FR 38890 (8/26/83)	Do.
83-1055	Generic name: Trisubstituted heteromonocycle	48 FR 38890 (8/26/83)	Do.
83-1056	Generic name: Trisubstituted heteromonocycle	48 FR 38890 (8/26/83)	Do.
83-1058	Generic name: Methylated alkene-yne	48 FR 38890 (8/26/83)	Do.
83-1059	Generic name: Amine salt of perfluoroalkylamido carboxylate	48 FR 38891 (8/26/83)	Nov. 14, 1983.
83-1060	Generic name: Polyamide of tall oil, diethylene-triamine, and polybasic acid	48 FR 38891 (8/26/83)	Nov. 15, 1983.
83-1061	Generic name: Tetracarboxylic compound	48 FR 38891 (8/26/83)	Do.
83-1063	Generic name: Reaction product of melamine, formaldehyde, and polyol	48 FR 39689 (9/1/83)	Nov. 19, 1983.
83-1064	Generic name: Cyanoacetate ester	48 FR 39689 (9/1/83)	Do.
83-1065	Generic name: Cyanoacrylate ester	48 FR 39689 (9/1/83)	Do.
83-1066	Magnesium aluminum hydroxy phosphate-monobasic form	48 FR 39689 (9/1/83)	Nov. 20, 1983.
83-1067	Magnesium aluminum hydroxy phosphate-dibasic form	48 FR 39689 (9/1/83)	Do.
83-1068	Magnesium aluminum hydroxy phosphate-tribasic form	48 FR 39690 (9/1/83)	Do.
83-1069	Generic name: Ethylene, polymer with mixed alpha olefins	48 FR 39690 (9/1/83)	Do.
83-1070	Generic name: Ethylene, polymer with mixed alpha olefins	48 FR 39690 (9/1/83)	Do.
83-1071	Generic name: Ethylene, polymer with mixed alpha olefins	48 FR 39690 (9/1/83)	Do.
83-1072	Generic name: Ethylene, polymer with mixed alpha olefins	48 FR 39690 (9/1/83)	Do.
83-1073	Generic name: Ethylene, polymer with mixed alpha olefins	48 FR 39690 (9/1/83)	Do.
83-1074	Generic name: Ethylene, polymer with mixed alpha olefins	48 FR 39690 (9/1/83)	Do.
83-1075	Generic name: Reaction products of triglycerides and polyethylene glycol	48 FR 39690 (9/1/83)	Do.
83-1076	Generic name: Polyester urethane-isocyanate terminated	48 FR 39690 (9/1/83)	Do.
83-1077	Generic name: Polyester urethane-isocyanate terminated	48 FR 39690 (9/1/83)	Do.
83-1078	Generic name: Unsaturated polyester	48 FR 39690 (9/1/83)	Do.
83-1079	2-(3-heptyloxy) acetic acid	48 FR 39690 (9/1/83)	Do.
83-1080	Generic name: Silylated silica gel	48 FR 39690 (9/1/83)	Do.
83-1081	Generic name: Quaternary ammonium chloride	48 FR 39690 (9/1/83)	Do.
83-1082	Docosyl methacrylate	48 FR 39691 (9/1/83)	Nov. 21, 1983.
83-1083	Generic name: Modified polyether polyurethane from substituted alkanepolyols and an aromatic diisocyanate	48 FR 39691 (9/1/83)	Do.
83-1084	Generic name: Hydrocarbon novolac	48 FR 39691 (9/1/83)	Nov. 22, 1983.
83-1085	Generic name: Substituted phenylacetamide	48 FR 39691 (9/1/83)	Do.
83-1086	Generic name: Aliphatic unsaturated copolyester	48 FR 40782 (9/9/83)	Nov. 23, 1983.
83-1087	Generic name: Sodium poly[1-oxyalkyl-1-amino-2-(tert-butyl-2-sulfonate)-1-oxoalkyl-1-amino (N,N-dimethane)]	48 FR 40782 (9/9/83)	Do.
83-1088	Generic name: Polyester from an alkanediol, alkanoic acid and a carbomonocyclic anhydride	48 FR 40782 (9/9/83)	Do.
83-1089	Generic name: Unsaturated polyester with halogenated polyol	48 FR 40782 (9/9/83)	Do.
83-1090	Generic name: Mono and polycarbocyclic poly (ester-amide)	48 FR 40782 (9/9/83)	Do.
83-1091	Generic name: Reaction product of: mixed aliphatic and amino aliphatic alcohols and dimer diisocyanate and 1,1'-methylenebis[4-isocyanate]-cyclohexane.	48 FR 40782 (9/9/83)	Nov. 26, 1983.
83-1094	Withdrawn		
83-1095	Generic name: Amine salt of alkylnaphthalene sulfonic acid	48 FR 40783 (9/9/83)	Nov. 29, 1983.
83-1096	Withdrawn		
83-1097	Generic name: (2-(∝ (3-(4-amino-6-chloro-1,3,5-triazin-2-ylimino)-2-hydroxy-5-sulfophenylazo) substituted methinohydrazono)-4-sulfobenzoate-(0,0')(4-)) copper (II) acid, disodium.	48 FR 41638 (9/16/83)	Nov. 30, 1983.
83-1098	Generic name: μ-(2,2'-bis(∝-(2-carboxy-5-sulfophenylhydrazono)substituted methinoazo)-4,4'-disulfo-6,6'-(6-chloro-1,3,5-triazin-2,4-diyldiimino)di-1-phenolato-(0,0',0'',0''') (8-)) dicopper(II) acid, tetrasodium.	48 FR 41638 (9/16/83)	Do.
83-1099	Polymer of: tall oil, pentacrythritol, isophthalic acid, benzoic acid, styrene, methyl methacrylate	48 FR 41638 (9/16/83)	Do.
83-1100	Generic name: Heteromonocyclic substituted diester	48 FR 41638 (9/16/83)	Do.
83-1101	Generic name: Heteromonocyclic substituted diester	48 FR 41638 (9/16/83)	Do.

IV. 60 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No.	Chemical identification	FR citation	Date of commencement
80-1	Generic name: 3-alkoxy (C_{16}-C_{18})-2-hydroxypropyl ester of dimer/trimer acids (fatty ester)	45 FR 3468 (1/21/80)	May 17, 1980.
80-44	Generic name: Alpha alkene copolymer with alpha alkene	45 FR 23500 (4/7/80)	Aug. 12, 1980.
80-158	Polymer of: epoxy resin, maleic anhydride, butanol, styrene, and methacrylic acid	45 FR 51265 (8/1/80)	Nov. 11, 1983.
81-165	Generic name: Siliconized alkyd resin	46 FR 24992 (5/4/81)	Nov. 2, 1983.

IV. 60 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Chemical identification	FR citation	Date of commencement
81-187	Generic name: Cycloaliphatic polyester modified with a polyether glycol	46 FR 28005 (5/22/81)	Nov. 10, 1983.
81-222	Generic name: Oligomer of alkanedioic acid, dimer fatty acids, substituted and unsubstituted alkanediols, and benzene dicarboxylic acids.	46 FR 31345 (6/15/81)	Oct. 26, 1983.
81-250	Generic name: Disubstitutedbenzene amine	46 FR 32498 (6/23/81)	Oct. 25, 1983.
81-606	Generic name: Substituted-(2-hydroxy-benzophenone oxy)propane	46 FR 60056 (12/8/81)	Oct. 11, 1983.
81-645	Generic name: Organic salts of tertiary aliphatic amines	47 FR 337 (1/5/82)	Mar. 23, 1982.
81-646	Generic name: Organic salts of tertiary aliphatic amines	47 FR 337 (1/5/82)	Do.
81-647	Generic name: Organic salts of tertiary aliphatic amines	47 FR 337 (1/5/82)	Do.
82-256	Generic name: Heterocyclic-methoxyphenylazo substance	47 FR 16404 (4/16/82)	Oct. 24, 1983.
82-656	Generic name: Polymer of disubstituted benzenes and disubstituted alkane	47 FR 41167 (9/17/82)	On or about Dec. 16, 1982.
82-658	Generic name: Substituted pyrazine salt	47 FR 42152 (9/24/82)	Oct. 22, 1983.
83-239	Generic name: Polyester polyurethane from a diisocyanate and an alkanediol and alkanoic acid and anhydride	47 FR 53783 (11/29/82)	Nov. 3, 1983.
83-240	Generic name: Reaction product of an inorganic acid, with the reaction product of carboxylic acid and alkanolamine	47 FR 53783 (11/29/82)	Nov. 1, 1983.
83-243	Generic name: Methyl-oxyethyl-methylene imidazolium deriv. of copper phthalocyanine methoxyacetate	47 FR 53783 (11/29/82)	Nov. 4, 1983.
83-325	Generic name: Polyester polyurethane from carbomonocyclic anhydride, alkanediols and diisocyanates	48 FR 72 (1/3/83)	Oct. 24, 1983.
83-335	((Substituted phenyl)azo)naphthalene sulfonic acid, sodium salt	48 FR 73 (1/3/83)	Sept. 9, 1983.
83-399	Polymer of dimethyl ester of 4,4'-(hydroxy-methylene) bis-1,2-benzenedicarboxylic acid with 4,4'-oxydianiline	48 FR 5304 (2/4/83)	Nov. 9, 1983.
83-475	Generic name: Chlorendic anhydride based alkyd polymer	48 FR 7301 (2/18/83)	Oct. 31, 1983.
83-506	Generic name: Modified acrylic polymer	48 FR 9367 (3/4/83)	Nov. 3, 1983.
83-527	Generic name: Sulfonaphtholazonaphthol, chromium complex	48 FR 10470 (3/11/83)	July 19, 1983.
83-546	Generic name: Substituted phenolazo, substituted pyrazolone	48 FR 11501 (3/18/83)	Sept. 26, 1983.
83-547	Generic name: Substituted phenolazo, substituted pyrazolone	48 FR 11501 (3/18/83)	Sept. 26, 1983.
83-572	Generic name: Polyester poly carboxylate salt	48 FR 14035 (4/1/83)	Sept. 9, 1983.
83-623	Generic name: [Bis(alkylphenamino)-fluoran] [(phenimidazolyl)bis methylene] deriv., phosphate	48 FR 16332 (4/15/83)	Sept. 28, 1983.
83-625	Generic name: Polyamine adduct	48 FR 16332 (4/15/83)	July 11, 1983.
83-627	Generic name: Substituted diyne urethane	48 FR 17385 (4/22/83)	Nov. 11, 1983.
83-685	Generic name: [(Substituted phenyl)hydrazono] substituted oxoheteromonocycle	48 FR 21371 (5/12/83)	Oct. 2, 1983.
83-691	Generic name: Trisubstituted benzothiazole salt	48 FR 21371 (5/12/83)	Nov. 1983.
83-697	Generic name: Fatty acid alkyd based polymer	48 FR 21372 (5/12/83)	Oct. 6, 1983.
83-708	Generic name: Chromophore substituted poly (oxyalkylene)	48 FR 22793 (5/20/83)	Nov. 18, 1983.
83-712	Generic name: Polyhydroxyaromatic amine sulfonate salt	48 FR 22794 (5/20/83)	Jan. 1, 1984.
83-730	Oxo-hexyl acetate	48 FR 23904 (5/27/83)	Week of Nov. 14, 1983.
83-752	Generic name: Benzothiazole, N-substituted-2-substituted	48 FR 23905 (5/27/83)	Oct. 28, 1983.
83-796	Generic name: Blocked polyurethane prepolymer	48 FR 26885 (6/10/83)	Week of Nov. 14, 1983.
83-805	Generic name: Saturated polyester resin	48 FR 26885 (6/10/83)	Nov. 3, 1983.
83-817	Generic name: Disperse blue azo dye	48 FR 29049 (6/24/83)	Oct. 11, 1983.
83-826	Generic name: Aliphatic sulfonate salt	48 FR 29055 (6/24/83)	Dec. 1, 1983.
83-832	Generic name: Prepolymerized halogenated magnesium, zirconium, aluminum oxo-titanate	48 FR 29055 (6/24/83)	Oct. 24, 1983.
83-871	Generic name: [Alkoxyalkyloxadiazol-nitrophen-azo]-[Bis alkylamino-methpyridinenitril]	48 FR 31461 (7/8/83)	Oct. 12, 1983.
83-917	Generic name: Substituted (cyanophenyl-thiazyl) tetraazo dimethoxybenzene	48 FR 32383 (7/15/83)	Oct. 14, 1983.
83-930	Generic name: Modified phenol/formaldehyde resin	48 FR 33532 (7/22/83)	Oct. 28, 1983.
83-950	Generic name: Carboxylated arylalkene alkadiene copolymer	48 FR 33534 (7/22/83)	Oct. 18, 1983.
83-959	Generic name: Cresol-formaldehyde resin	48 FR 33534 (7/22/83)	Do.
83-962	Generic name: Acrylic unsaturated acid terpolymer	48 FR 33534 (7/22/83)	Oct. 11, 1983.
83-978	Generic name: Aromatic copolyester	48 FR 34507 (7/29/83)	Oct. 27, 1983.
83-980	Generic name: Cyanoacetate ester	48 FR 34507 (7/29/83)	Nov. 9, 19883.
83-981	Generic name: Quaternized alkyl amine	48 FR 34507 (7/29/83)	Oct. 30, 1983.
83-982	Generic name: Cyanoacrylate ester	48 FR 34507 (7/29/83)	Nov. 9, 1983.
83-999	Generic name: Substituted oxazoline	48 FR 35714 (8/5/83)	Nov. 16, 1983.
83-1010	Generic name: Aromatic, tertiary amine containing polyether polyurethane prepolymer	48 FR 36648 (8/12/83)	Week of Nov. 28 or Dec. 5, 1983.
83-1014	Generic name: Hydroxy functional acrylic copolymer	48 FR 36648 (8/12/83)	Nov. 7, 1983.
83-1034	Generic name: Polyoxyalkylene acetate ester	48 FR 37700 (8/19/83)	Nov. 18, 1983.
83-1035	Generic name: Substituted polyoxyalkylene	48 FR 37700 (8/19/83)	Do.
83-1036	Generic name: Chromophore substituted polyoxy-alkylene	48 FR 37700 (8/19/83)	Do.
83-1037	Generic name: Chromophore substituted polyoxy-alkylene	48 FR 37700 (8/19/83)	Do.
83-1060	Generic name: Polyamide of tall oil, diethylene-triamine, and polybasic acid	48 FR 38891 (8/26/83)	Nov. 22, 1983.
83-1063	Generic name: Modified polyether polyurethane from substituted alkanepolyols and an aromatic diisocyanate	48 FR 39691 (9/1/83)	Week of Nov. 28, 1983.

V. 56 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identity/generic name	FR citation	Date suspended
80-146	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-147	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
82-80	Generic name: Zinc, O,O-bis alkylphosphoro dithioate	47 FR 5932 (2/9/82)	Apr. 15, 1982.
82-387	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters	47 FR 25401 (6/11/82)	July 30, 1982.
82-388	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters, zinc salt	47 FR 25401 (6/11/82)	Do.
83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10/18/82)	Oct. 22, 1982.
83-110	Generic name: Saturated acid diester	47 FR 52223 (11/19/82)	Jan. 26, 1983.
83-115	Generic name: Naphthalenedisulfonic acid, disodium salt, ((2-((sodium sulfooxyethyl) sulfonyl)aryl)azo), and monochlorotriazinyl amino, substituted, copper complex.	47 FR 52224 (11/19/82)	Apr. 1, 1983.
83-333	Generic name: Reaction product of polycycle-sulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.	48 FR 73 (1/3/83)	Mar. 14, 1983.
83-401	Generic name: Naphthalenetrisulfonic acid, chlorortriazinylamino-methoxymethylphenylazo-	48 FR 5304 (2/4/83)	Aug. 18, 1983.
83-418	Generic name: Benzenedisulfonic acid, chloro-triazinylaminodimethylphenylazo-sulfo-naphthaleneazo-	48 FR 5306 (2/4/83)	Aug. 18, 1983.

V. 56 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
83-434	Generic name: Unsaturated aliphatic	48 FR 6397 (2/11/83)	Apr. 20, 1983.
83-461	Generic name: Substituted alkoxy silane	48 FR 7300 (2/18/83)	Apr. 25, 1983.
83-479	Generic name: Monomo substituted aromatic	48 FR 7301 (2/18/83)	May 2, 1983.
83-534	Generic name: Substituted mono azo aromatic	48 FR 17385 (4/22/83)	July 5, 1983.
83-669	Generic name: Chromium complex of substituted phenolazosulfonaphthol with naphtholazosulfo-naphthol	48 FR 20490 (5/6/83)	Aug. 5, 1983.
83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sulfonaphtholazo-sulfophenylpyrazolone	48 FR 20491 (5/6/83)	Do.
83-755	4-hydroxy-6-phenylaminonaphthalene-2-sulfonic acid	48 FR 24967 (6/3/83)	Aug. 17, 1983.
83-770	Generic name: Cobalt complex of a substituted phenolazonaphthol	48 FR 24968 (6/3/83)	Aug. 15, 1983.
83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimidphenol with sulfonaphthylazosulfonaphthol	48 FR 24968 (6/3/83)	Do.
83-785	Generic name: Substituted heteromonocycle sulfonylphenyl azo substituted naphthalene-sulfonic acid, salt	48 FR 26884 (6/10/83)	Aug. 24, 1983.
83-820	Generic name: Disubstituted heterocyclic azo disubstituted benzene	48 FR 29049 (6/24/83)	Sept. 26, 1983.
83-821	Generic name: Trisubstituted phenyl azo disubstituted heterocycle	48 FR 29049 (6/24/83)	Do.
83-822	Generic name: Trisubstituted aniline	48 FR 29049 (6/24/83)	Do.
83-831	Generic name: Diazo solvent red dye	48 FR 29055 (6/24/83)	Sept. 9, 1983.
83-845	Generic name: Tetrasodium salt of μ-[2-(2-hydroxy-3-nitro-5-sulfo-phenylazo)-2'-(2-hydroxy-5- substituted-3-sulfophenylazo)-3,3'-disulfo-6,6'-iminodi-1-naphtholate-(0,0',0'',0''')] (8⁻)dicopper(II)acid.	48 FR 30434 (7/1/83)	Sept. 16, 1983.
83-860	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30435 (7/1/83)	Sept. 21, 1983.
83-875	4-(2-cyano-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	48 FR 31462 (7/8/83)	Do.
83-876	4-(2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31462 (7/8/83)	Do.
83-997	Generic name: 6-diethylamino-2-(substituted) spiro(xanthene-9,3'-phthalide)	48 FR 35713 (8/5/83)	Oct. 20, 1983.
83-998	Generic name: 6-dibutylamino-2-(substituted) spiro(xanthene-9,3'-phthalide)	48 FR 35714 (8/5/83)	Do.
83-1006	Generic name: (Amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, salts with sodium and potassium.	48 FR 36645 (8/12/83)	Oct. 14, 1983.
83-1007	Generic name: (Substituted)-(substituted)-hydroxy-naphthalenesulfonic acid, sodium salts	48 FR 36648 (8/12/83)	Oct. 14, 1983.
83-1012	Generic name: Bis(sulfophenylchlorotriazine-aminosulfophenylazo) hydroxyaminodisulfo-naphthalene	48 FR 36648 (8/12/83)	Oct. 24, 1983.
83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo)phenyl]derivative	48 FR 36649 (8/12/83)	Do.
83-1023	Generic name: Alkyl aryl phosphine	48 FR 36649 (8/12/83)	Oct. 20, 1983.
83-1026	Generic name: Disubstitutedsulfamoylcarbomono-cycle azo substituted naphthalene sulfonic acid, sodium salt	48 FR 37699 (8/19/83)	Oct. 27, 1983.
83-1029	Generic name: Substituted heterocycle	48 FR 37699 (8/19/83)	Nov. 3, 1983.
83-1042	Acridine, 9-phenyl	48 FR 37700 (8/19/83)	Oct. 17, 1983.
83-1048	Generic name: Polyether polyurethane	48 FR 38890 (8/26/83)	Oct. 27, 1983.
83-1057	Generic name: 1,1-di(alkylsubstituted)hydrazine	48 FR 38890 (8/26/83)	Nov. 4, 1983.
83-1062	Generic name: Polycarboxylic acid	48 FR 39689 (9/1/83)	Nov. 19, 1983.
83-1092	Generic name: Mixed castor amide with diethylene triamine	48 FR 40783 (9/9/83)	Oct. 11, 1983.
83-1093	Generic name: Mixed castor amide with amino ethyl ethanol amine	48 FR 40783 (9/9/83)	Oct. 11, 1983.
83-1157	Generic name: Substituted oxirane	48 FR 41642 (9/16/83)	Nov. 29, 1983.
83-1162	Generic name: Substituted pyridine	48 FR 41643 (9/16/83)	Do.
83-1163	Generic name: Substituted pyridine	48 FR 41643 (9/16/83)	Do.
83-1222	Generic name: Substituted alkyl halide	48 FR 43399 (9/23/83)	Do.
83-1227	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
83-1228	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
83-1229	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
83-1267	9H-thioxanthen-9-one, 2,4-diethyl-	48 FR 43402 (9/23/83)	Nov. 28, 1983.
83-1268	9H-thioxanthen-9-one, 2,4-dimethyl-	48 FR 43402 (9/23/83)	Do.
83-1269	Methanone, (4-methoxy-3-methylphenyl)	48 FR 43402 (9/23/83)	Do.
83-1270	9H-thioxanthen-9-one, 4-chloro-	48 FR 43402 (9/23/83)	Do.
84-73	Generic name: Polyester polycarboxylate salt	48 FR 50954 (11/4/83)	Nov. 30, 1983.

[FR Doc. 83-34798 Filed 12-30-83; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL 2500-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 USC 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Research and Development Programs

- Title: Applications for Reference and Equivalent Method Determinations (EPA 0559).

Abstract: Manufacturers of automatic air monitoring instruments may request EPA approval of these instruments for use by air pollution monitoring agencies. Requests must contain performance data so that EPA can determine if the instruments can accurately measure for compliance with the National Ambient Air Quality Standards.

Respondents: Manufacturers of automatic air monitoring instruments.

- Title: EPA Performance Audit Program for Evaluation of Ambient and Source Air Measurements (EPA 0865).

Abstract: EPA sends unlabeled samples to air monitoring agencies for analysis in order to check the accuracy of the agencies' monitoring instruments and methods. The agencies submit the results to EPA on these standard forms. When the analyses are inaccurate, EPA provides technical assistance to improve monitoring capabilities.

Respondents: Owners/operators of air monitoring agencies.

Comments on all parts of this notice should be sent to:

David Bowers (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460; and

Vartkes Broussalian, Wayne Leiss or Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: December 22, 1983.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 83-34809 Filed 12-30-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Martime Commission, Washington, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Committee regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T-4154.

Title: The Port of Portland and Johnson ScanStar Lease Agreement.

Parties: The Port of Portland and Johnson ScanStar.

Synopsis: Agreement No. T-4154 provides that in consideration of Johnson ScanStar providing every vessel direct service rather than every other vessel direct service at the Port of Portland, the Port will provide Johnson ScanStar with reduction to its tariff rates for wharfage and dockage.

Filing Party: Milton A. Mowat, Manager, Traffic and Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, Oregon 97208.

Agreement No.: T-4155.

Title: Georgia Ports Authority and Zim American-Israeli Shipping Corporation, Lease Agreement for Terminal Premises.

Parties: Georgia Ports Authority (Port) and Zim American-Israeli Shipping Corporation (Zim).

Synopsis: Agreement No. T-4155 provides for the lease of paved premises by the Port to Zim, located at berths Nos. 56 and 57 within the confines of the Port's Garden City Terminal, Chatham County, Georgia. The premises will be used for the storage and handling of containers, trailers and chassis. The agreement will run for a period of three years, and it will replace Agreement No. T-4054, as amended.

Filing Party: Robert W. Goeth, Assistant Executive Director, Georgia Ports Authority, P.O. Box 2406, Savannah, Georgia 31402.

Agreement No.: T-4156.

Title: City of Los Angeles and Indies Terminal Company, Non-exclusive Preferential Lease Agreement.

Parties: City of Los Angeles (City) and Indies Terminal Company (ITC).

Synopsis: Agreement No. T-4156 provides that City will lease to ITC 4,650 linear feet comprising Berths 216-225 and 90 acres of backland located within the Port of Los Angles. The premises will be used by ITC for the loading and unloading of its vessels, and terminal purposes incidental thereto. The agreement will run for 5 years. The City will construct two container berths and erect second and third container cranes at the facility.

Filing Party: Raymond P. Bender, Assistant City Attorney, City of Los Angeles, Harbor Division, P.O. Box 151, San Pedro, California 90731-0151.

Agreement No.: 10066-4.

Title: U.S. Atlantic and Pacific/Colombia Equal Access Agreement.

Parties: Coordinated Caribbean Transport, Inc., Delta Steamship Lines, Inc., Flota Mercante Grancolombiana, S.A.

Synopsis: Agreement No. 10066-4 would amend the basic agreement to: (1) Extend the agreement for an additional three-year term ending February 21, 1987; (2) add CCT as a signatory to the agreement, and (3) eliminate the present cargo reporting requirements.

Filing Party: William H. Fort, Esquire, Kominers, Fort, Schlefer & Boyer, 1776 F Street, Northwest, Washington, D.C. 20006.

Agreement No.: 10494

Title: Barber West Africa Line and Societe Ivoirienne de Transport Maritime Space Charter Agreement.

Parties: Barber West Africa Line (BWAL), Societe Ivoirienne de Transport Maritime (SITRAM).

Synopsis: Agreement No. 10494 would establish a non-exclusive space charter agreement between the parties for a term of three years under which SITRAM could charter space from BWAL in the west-bound trade from the Ivory Coast to the United States.

Filing Party: John A. DeVierno, Esquire, Billig, Sher & Jones, P.C., 2033 K Street, NW., Washington, D.C. 20006.

Dated: December 23, 1983.

By Order of the Federal Martime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-34817 Filed 12-30-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corporation, et al.; Proposed de Novo Nonbank Activities by Bank Holding Companies

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Libery Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York (mortgage banking and related lending and insurance activities; Texas): To engage through its subsidiary Chase Home Mortgage Corporation in the making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by real estate including but not limited to, first and second mortgage loans secured by mortgages on one-to-four family residential properties, servicing loans and other extensions of credit for any person, selling mortgage loans in the secondary market, and offering mortgage term life insurance, accident and health insurance and disability insurance directly related to such lending and servicing activities. These activities would be conducted from an office in Grand Prairie, Texas, serving the State of Texas. Comments on this application must be received not later than January 23, 1984.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation,* Baltimore, Maryland (commercial lending operations and related activities; northeastern United States): To engage through its subsidiary, Maryland National Industrial Finance Corporation, in the following activities: engaging generally in commercial lending operations, including but not limited to financing of accounts receivable, inventories, and other types of secured and unsecured loans to commercial enterprises; servicing commercial loans for affiliated or non-affiliated individuals, partnerships, corporations or other entities; and acting as advisor or broker in commercial lending transactions. These activities would be conducted from an office in Princeton, New Jersery, serving the north-eastern United States. Comments on this application must be received not later than January 20, 1984.

2. *NCNB Corporation,* Charlotte, North Carolina, (consumer finance and insurance activities, sale of money orders; Florida): To engage, through its subsidiary, TranSouth Financial Corporation of Florida, in making direct loans for consumer and other purposes, purchasing retail installment notes and contracts, selling at retail money orders having a face value of not more than $1,000, and acting as agent for the sale of credit life, credit accident and health and physical damage insurance directly related to its extensions of credit; and through its subsidiary, TranSouth Mortgage Corporation of Florida, in making direct loans for consumer and other purposes under the general usury statues, purchasing retail installment notes and contracts, making direct loans to dealers for the financing of inventory (floor planning) and working capital purposes and acting as agent for the sale of credit life, credit accident and health and physical damage insurance directly related to its extensions of credit. All of the aforementioned types of credit-related insurance activities are permissible under sections 4(c)(8) (A) and (D) of the Bank Holding Company Act of 1956, as amended by the Garn-St Germain Depository Institutions Act of 1982. These activities would be conducted from a relocated common office in Panama City, Florida, serving an area consisting of a 25 mile radius from said office. Comments on this application must be received not later than January 20, 1984.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mid-America Bancorp,* Louisville, Kentucky (financing activities; Ohio): To engage *de novo* through its subsidiary, Mid-America Financial Services, Inc., (d.b.a. America Consumer Finance Company) in the activities of making consumer loans and second mortgage loans. These activities will be conducted from two offices located in Columbus, Ohio, and three offices located in Cincinnati, Ohio, serving Cincinnati, Ohio and Columbus, Ohio. Comments on this application must be received not later than January 13, 1984.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation,* San Francisco, California (travelers check activities; *de novo* office; New York): To engage, through its indirect subsidiary, BancAmerica Financial Services Corporation of Albany, a New York corporation, in the activity of selling travelers checks. This activity will be conducted from a *de novo* office located at the John F. Kennedy International Airport, Jamaica, New York, serving the entire State of New York. Comments on this application must be received not later than January 23, 1984.

2. *BankAmerica Corporation,* San Francisco, California (making loans and other extensions of credit; Florida): To engage, through its proposed indirect subsidiary, Overseas Finance Corporation, a proposed Delaware corporation, in the activities of making loans and other extensions of credit to domestic and overseas borrowers, including foreign governments and their agencies and instrumentalities. Such activities will include, but not be limited to, issuing letters of credit and accepting drafts. These activities will be conducted from a *de novo* office located in Coral Gables, Florida, serving all fifty states, the District of Columbia, and all foreign countries. Comments on this application must be received not later than January 23, 1984.

3. *BankAmerica Corporation,* San Francisco, California (mortgage banking, servicing activities and equity financing: California): To engage, through its direct subsidiary, BA Mortgage and International Realty Corporation, a Delaware corporation, in the activities of making or acquiring for its own account or for the account of others, loans or other extensions of credit such as would be made or acquired by a morgage company, servicing such loans and other extensions of credit for itself and others, and arranging commercial real estate equity financing. These activities will be conducted from a *de novo* office located in Los Angeles, California, serving the entire State of California. Comments on this application must be received not later than January 18, 1984.

Board of Governors of the Federal Reserve System, December 27, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34732 Filed 12-30-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services—Childhood Immunization Availability of Funds for Fiscal Year 1984

The Centers for Disease Control announces the availability of funds for Fiscal Year 1984 for Project Grants for Preventive Health Services—Childhood Immunization, Catalog of Federal Domestic Assistance Number 13.268. This grant program is authorized by section 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

The objectives of this grant program are to reduce morbidity and mortality due to vaccine-preventable diseases of childhood; to maintain interruption of indigenous measles transmission; to maintain 90 percent immunization levels for school children under age 15 against measles, poliomyelitis, diphtheria, tetanus, and rubella; to maintain 95

percent immunization levels for school enterers and 90 percent immunization levels for children enrolled in licensed day-care centers against measles, poliomyelitis, diphtheria, tetanus, pertussis, rubella, and mumps; and to develop, test, and implement systems for use in the States to ensure that 90 percent or more of all children complete basic immunizations by age 2.

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

Approximately $30,482,000 will be available in Fiscal Year 1984 to award 63 continuation grants with the average award expected to be $479,000, ranging from $10,000 to $2,063,000. Grants are usually funded for 12 months in a 3- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1984 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974. Program guidelines, information on application and review procedures, deadlines, the consequences of late submission, and other materials may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: December 21, 1983.

William C. Watson, Jr.,

Acting Director.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827.

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561.

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637.

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Towers, Suite 1007, Atlanta, Georgia 30323, (404) 221–2316.

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60666, (312) 353–1385.

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879.

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291.

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 837–6163.

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810.

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, MS. 402, Seattle, Washington, 98121, (206) 442–0430.

[FR Doc. 83-34701 Filed 12-30-83; 8:45 am]

BILLING CODE 4160-16-M

Project Grants for Venereal Disease Control Availability of Funds for Fiscal Year 1984

The Centers for Disease Control announces the availability of funds for Fiscal Year 1984 for Project Grants for Venereal Disease Control, Catalog of Federal Domestic Assistance Number 13.977. This grant program is authorized by section 318 (42 U.S.C. 247c) of the Public Health Service Act, as amended.

The objective of this grant program is to reduce morbidity and mortality from venereal disease by preventing cases and complications. Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

Approximately $42,510,000 to $43,510,000 will be available in Fiscal Year 1984 to award 64 continuation grants to supplement programs to control venereal disease and prevent its complications. The average award in Fiscal Year 1984 is expected to be $610,000 ranging from $26,900 to $3,050,400. Grants are usually funded for 12 months in a 3- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1984 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974. Program guidelines, information on application and review procedures, deadlines, the consequences of late submission, and other materials may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: December 21, 1983.

William C. Watson, Jr.,

Acting Director.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827.

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York, 10278, (212) 264–2561.

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637.

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Towers, Suite, 1007, Atlanta, Georgia 30323, (404) 221–2316.

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60666, (312) 353–1385.

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879.

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291.

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 837–6163.

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810.

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, MS. 402, Seattle, Washington 98121, (206) 442-0430.

[FR Doc. 83-34793 Filed 12-30-83; 8:45 am]
BILLING CODE 4160-18-M

Project Grants for Venereal Disease Research, Demonstrations, and Public Information and Education Availability of Funds for Fiscal Year 1984

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1984 for Project Grants for Venereal Disease Research, Demonstrations, and Public Information and Education, Catalog of Federal Domestic Assistance Number 13.978. This grant program is authorized by section 318(b) (42 U.S.C. 247c(b)) of the Public Health Service Act, as amended.

The objectives of this grant program are to develop, improve, and evaluate methods for the prevention and control of sexually transmitted diseases (STD) through demonstrations and applied research; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to support particularly deserving STD public information and education programs. Because of the limited funds available for this grant program, applications related to Acquired Immunodeficiency Syndrome will not be considered under this announcement. Any State, political subdivisions of States, and other public or nonprofit private entities are eligible to apply for a grant.

Approximately $2 million to $3 million will be available in Fiscal Year 1984 to award 4 continuation grants and 10 to 25 new grants, with the average award expected to be $80,000, ranging from approximately $10,000 to $200,000. Initial grants are usually funded for 12 months in a 1- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Applications received in any of the three areas listed below will receive priority consideration for funding in Fiscal Year 1984:

I. Sexually transmitted disease epidemiologic and/or clinical research. Applications for mathematical modeling in sexually transmitted diseases will also be considered in this category.

II. Demonstration activities in the areas of:

A. Chlamydia control efforts, particularly those designed to:

1. Investigate the feasibility of modifying existing disease control activities to include control of sexually transmitted chlamydial infections.

2. Emphasize activities directed toward the prevention and reduction of chlamydial disease complications.

3. Establish linkages between existing laboratory, clinical, and outreach components.

B. Medical school-health department liaison activities to develop STD curricula and implement the developed STD curricula into the medical school instructional program. This activity requires a significant STD training component within the medical school and a liaison relationship between the faculty members and the local STD/VD program and its clinic(s).

C. Community hospital, medical school, and/or school of public health joint liaison efforts with health departments to establish innovative, expanded surveillance efforts for such areas as congenital syphilis, neonatal herpes, and gonococcal/nongonococcal pelvic inflammatory disease.

III. Public information and education efforts, particularly in the following areas:

A. Clinic-based patient education efforts to improve future disease prevention potential and/or improve future health-seeking behaviors on the part of infected patients.

B. Community education efforts directed toward selected subgroups of pregnant females (to reduce congenital syphilis and neonatal herpes) and homosexuals.

C. Community education efforts directed toward school-based populations, particularly in the pilot testing and evaluation of the CDC-developed STD curriculum.

D. A national, toll free, telephone "hotline" operation to provide the public with current STD information and direct people to local sources of public and private quality clinical assessment.

Competing applications must include a description of the following:

1. The setting and circumstances for which project grant support is being requested, including:

a. The immediate and long-range objectives of the project in specific and measurable terms.

b. The activities which will be undertaken to accomplish the objectives, including the timing of these activities.

c. The anticipated application of findings to the national venereal disease control effort.

d. Any other information which will support the request for grant assistance.

2. The relationship between the planned activities and the project objectives. The application must describe in detail how the applicant intends to proceed, particularly if the project is unusually complex and several activities are interdependent or unprecedented.

3. A comprehensive and realistic plan which the applicant will use to evaluate the project. The plan must include periodic assessment of any possible impact, both positive and negative, that the proposed project might have upon the established venereal disease control program in the locality or localities in which the project will be undertaken.

An application for a noncompeting continuation grant must be submitted for each funding period. This continuation application must include the following:

1. A budget and justification for the grant funds requested.

2. A summary of the progress achieved during the previous budget period.

3. A description of any changes in the information shown in the project application.

Grant applications will be reviewed and evaluated according to the following criteria:

1. Is there adequate evidence that the proposed project is needed and that the outcome has potential to directly benefit the national venereal disease control effort?

2. Are the project objectives specific, measurable, realistic, and time-phased?

3. Is the method of operation logical and clearly related to project objectives, and does it describe how the applicant intends to proceed particularly with activities which are complex, interrelated, or unprecedented?

4. Does the method of operation include an assessment of any possible impact, both positive and negative, that the conduct of the proposed initiative might have upon the established venereal disease control program in the locality or localities in which the project will be undertaken?

5. Does the proposal include a comprehensive and realistic plan for the evaluation of the project, and specify the measures and instruments of measurement to be used?

6. Is the budget request reasonable and consistent with the intended use of grant funds?

7. If the applicant intends only to evaluate an existing disease prevention and control approach, are the objectives substantially different from those which could be met by routine program evaluation?

The original and one copy of the application must be submitted to the address in 1.a. below on or before 4:30 p.m. (e.s.t.) on Thursday, March 1, 1984. Applicants may meet the deadline by either delivering or mailing the application on or before that date, provided the following conditions are met:

1. *Mailed applications.* Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date by Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 107A, Atlanta, Georgia 30305, or

b. Sent by first class mail, postmarked on or before the deadline date, and received by the granting agency in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or use U.S. Postal Service express mail, or certified or registered mail, and obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received at the place specified in paragraph 1.a. above before close of business on or before the deadline date (4:30 p.m. e.s.t. Thursday, March 1, 1984).

3. *Late applications.* Applications which do not meet the criteria in either paragraph 1. or 2. above are considered late applications and will not be considered in the current competition.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974.

Information on application procedures, copies of application forms, copies of application guidelines, and other material may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control at the address in paragraph 1.a. above, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Dr. Stephen Margolis, Division of Venereal Disease Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–2551, or FTS 236–2551.

Dated: December 21, 1983.

William C. Watson, Jr.,

Acting Director.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827.

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561.

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637.

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Towers, Suite 1007, Atlanta, Georgia 30323, (404) 221–2316.

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60666, (312) 353–1385.

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879.

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291.

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 837–6163.

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810.

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, MS. 402, Seattle, Washington 98121, (206) 442–0430.

[FR Doc. 83-34792 Filed 12-30-83; 8:45 am]
BILLING CODE 4160-8-M

Food and Drug Administration

Central Soya Co., Inc.; Cooper 40% Super-T for Pigs Medicated (Tylosin Phosphate); Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Central Soya Co., Inc., providing for use of Cooper 40% Super-T For Pigs Medicated (a 2-gram-per-pound tylosin phosphate premix) in making complete swine feeds. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–443–4093.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., 1300 Fort Wayne Bank Bldg., P.O. Box 1400, Fort Wayne, IN 46801, is the sponsor of NADA 96–779, originally sponsored by the O.A. Cooper Co., Humboldt, NE 68376. The O.A. Cooper Co. and the NADA are now owned by Central Soya Co., Inc. The NADA provides for use of a 2-gram-per-pound tylosin premix to make complete swine feeds used for increased rate of weight gain and improved feed efficiency.

The application was originally approved November 4, 1974 (39 FR 38897). By letter of March 2, 1983, Central Soya Co., Inc., informed FDA of the change of sponsor and requested withdrawal of approval of the NADA because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115, *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 96–779 and all supplements for Cooper 40% Super-T is hereby withdrawn, effective January 13, 1984.

In a document published elsewhere in this issue of the Federal Register, the regulations are amended accordingly.

Dated: December 22, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-34779 Filed 12-30-83; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 81N-0396; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) amends a notice

of opportunity for hearing which proposed to withdraw approval of the intire new drug applications (NDA's) for Dimetane Expectorant, Dimetane Expectorant-DC, and Actifed-C Expectorant. As amended, the proposal applies to the NDA's only as they pertain to the old formulations of the products. FDA announces the conditions for marketing the reformulated and renamed products for the indications for which they are regarded as effective.

EFFECTIVE DATES: January 3, 1984.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N–0396, and directed to the attention of the appropriate office named below:

Supplements to full new drug applications (identify with NDA number): Division of Surgical-Dental Drug Products (HFN–160), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN–520), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20957.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFN–501), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, National Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** ot a May 25, 1982 (47 FR 22609), FDA revoked the temporary exemption from the time limits for completing certain phases of the Drug Efficacy Study Implemention (DESI) program that had been granted for Dimetane Expectorant, dimetane Expectorant-DC, and Actifed-C Expectorant. these three oral prescription products are offered for the relief of symptoms of cough, cold, or allergy. FDA reclassified the three products as lacking substantial evidence of effectiveness, proposed to withdraw approval of the following new drug applications for the products in their entirety, and offered an opportunity for a hearing on the proposal. Hearing requests were submitted for the three products.

1. Dimetane Expectorant (NDA 11–694) contaning 2 milligrams (mg) brompheniramine maleate, 5 mg phenylephrine hydrochloride, 5 mg phenylpropanolamine hydrochloride, and 100 mg guaifenesin: A. H. Robins Co., 1407 Cummings Dr., Richamond, VA 23220. A. H. Robins Co. has proposed to supplement NDA 11–694 to provide for a reformulation that changes the name from "Dimetane Expectorant" to "Dimetane-DM Cough Syrup" and contains 2 mg brompheniramine maleate, 30 mg pseudoephedrine hydrochloride, and 10 mg destromethorphan hydrobromide.

2. Dimetane Expectorant-DC (NDA 11–694) containing 10 mg codeine phosphate, 2 mg brompheniramine maleate, 5 mg phenylephrine hydrochloride, 5 mg phenylpropanolameine hydrochloride, and 100 mg guaifenesin; A. H. Robins Co. A. H. Robins Co. has proposed to supplement NDA 11–694 to provide for a reformulation that changes the name from "Dimetane Expectorant-DC" to Dimetane-DC Cough Syrup" and contains 2 mg brompheniramine raleate, 12.5 mg phenylpropanolamine hydrochloride, and 10 mg codeine phosphate.

3. Actifed-C Expectorant (NDA 12–575) containing 10 mg codeine phosphate, 2 mg triprolodine hydrochloride, 30 mg pseudoephedrine hydrochloride, and 100 mg quaifenesin; Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709. Burroughs Wellcome Co. has supplemented NDA 12–575 to provide for a reformulation that changes the name from "Actifed-C Expectorant" to "Actifed-C Cough Syrup" and contains 10 mg codeine phosphate, 1.25 mg triprolidine hydrochloride, and 30 mg pseudoephedrine hydrochloride.

Hearing request are still pending on the product formulations indentified as Dimetane Expectorant, Dimetane Expectorant-DC, and Actifed-C Expectorant. These products will be the subjects of a future **Federal Register** notice.

FDA now amends the May 25, 1982 notide: The proposal to withdraw approval of NDA's 11–694 and 12–575 does not apply to those NDA's as supplemented to provide for reformulations described above. Each of the components (except triprolidine hydrochloride) or the reformulations were considered to be safe and effective by the over-the-counter (OTC) drug review panel for cough, cold, allergy, bronchodilator, and antiasthmatic (CCABA) drugs (41 FR 38339). Triprolidine hydrochloride, which was not reviewed by the OTC drug review panel, was classified by FDA as an effective antihistamine, on March 19, 1973 (DESI 6303: 38 FR 7265). The OTC drug review panel for CCABA drugs concluded that combinations containing an antihistamine, an antitussive, and a nasal decongestant, each present in amounts within the effective dosage range, are safe and effective (41 FR 38326).

The notice is also amended to include the following conditions for approval and marketing of the reformulated products.

A. *Effectiveness classification.* FDA has reviewed all available evidence and concludes that the drug products, as reformulated, are effective for the indications in the labeling conditions below. The drug products lack substantial evidence of effectiveness in their old formulations, and for other labeled indications. This notice does not prevent FDA, in any future OTC drug monograph, from including any of the ingredients listed above, and requiring labeling different from that approved for prescription use.

B. *Conditions for approval and marketing.* FDA is prepared to approve abbreviated new drug applications for the formulations now regarded as effective and supplements to the previously approved new drug applications under conditions described herein.

1. *Form of drug.* The preparation is in a syrup form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

For relief of coughs and upper respiratory symptoms, including nasal congestions, associated with allergy or the common cold.

3. *Marketing status of "reformulated" products.* Approval of an abbreviated new drug application (21 CFR 314.2, previously 314.1(f) (revised and recodified January 21, 1983; 48 FR 2751)) or of a supplement to an approved or effective new drug application must be obtained before marketing such

products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application or a supplement for reformulation after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. Marketing the drug products before approval of a new drug application or a supplement will subject those products, and the person who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the National Center for Drugs and Biologics (see 21 CFR 5.70, 5.82, and 47 FR 26913 published in the Federal Register of June 22, 1982).

Dated: December 22, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-34781 Filed 12-30-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0230; DESI No. 1786]

Isordil With Phenobarbital Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those parts of new drug application (NDA) 12–093 pertaining to Isordil with Phenobarbital Tablets containing isosorbide dinitrate and phenobarbital. FDA is withdrawing approval because the combination drug product lacks substantial evidence of effectiveness. The product has been used in the treatment of angina pectoris, but is no longer marketed.

EFFECTIVE DATE: February 2, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 1786 and directed to be Division of Drug Labeling Compliance (HFN–310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margery C. Erickson, National Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register on August 29, 1973 (38 FR 23349), and amended in December 9, 1975 (40 FR 57377), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications for Isordil with Phenobarbital Tablets and certain other combination drugs containing an organic nitrate. The basis of the proposal was that the products lack substantial evidence of effectiveness. In response to the notices, American Home Products Corp. (AMHO), 685 3d Ave., New York, NY 10017, and its subsidiary, Ives Laboratories, Inc. (Ives), filed a hearing request for Isordil with Phenobarbital Tablets.

AMHO and Ives have since withdrawn their request for a hearing. Accordingly, approval of the following new drug application is now being withdrawn:

Those parts of NDA 12–093 pertaining to Isordil with Phenobarbital Tablets containing isosorbide dinitrate and phenobarbital; Ives Laboratories, Inc., 685 3d Ave., New York, NY 10017.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

This notice does not apply to be following products which are the subject of pending hearing requests. These hearing requests are under review, and will be the subject of a future Federal Register notice.

Peritrate with Phenobarbital SA Tablets (NDA 12–266) containing pentaerythritol tetranitrate and phenobarbital; Parke-Davis, Division of Warner-Lambert, Inc., 201 Tabor Rd., Morris Plains, NJ 07950.

Corovas Tymcaps (no NDA) containing pentaerythritol tetranitrate and secobarbital; Amfre-Grant, Inc., 520 South Dean St., Englewood, NJ 07631.

Antora-B T.D. Capsules (no NDA) containing pentaerythritol tetranitrate and secobarbital; Mayrand, Inc., 1026 East Lindsey St., Greensboro, NC 27420.

Mannitol Hexanitrate with Phenobarbital and Mannitol Hexanitrate with Reserpine (no NDA's); Lemmon Pharmacal Co., Sellerville, PA 18960.

The Director of the National Cener for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds, on the basis of new information before him with respect to the drug product evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the combination product Isordil with Phenobarbital will have the effect it purports or is represented to have under the conditions of use perscribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 12–093 pertaining to Isordil with Phenobarbital Tablets and all amendments and supplements for that product in withdrawn effective February 2, 1984. Shipment in interstate commerce of the above product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: December 23, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-34782 Filed 12-30-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Newark District Office, chaired by Matthew H. Lewis, District Director. The topic to be discussed is drug use and the elderly.

Date: Wednesday, January 4, 10 a.m.

Address: Elizabeth Public Library, 11 South Broad St., 4th Floor Auditorium, Elizabeth, NJ 07201.

For Further Information Contact: Lillie Dortch-Wright, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018; 201–645–3265.

Kansas City District Office, chaired by James A. Adamson, District Director. The topic to be discussed is drug use and the elderly.

Date: Friday, January 13, 9:30 a.m. to 12 m.

Address: Federal Office Bldg., Rms. 147 and 148, 601 East 12th St., Kansas City, MO 64016.

For Further Information Contact: Julia S. Hewgley, Consumer Affairs Officer, Food and Drug Administration, 1009 Cherry St., Kansas City, MO 64106; 816–374–3817.

Boston District Office, chaired by Frederick R. Carlson, District Director. The topic to be discussed is drug use and the elderly.

Date: Friday, February 3, 9:30 a.m to 12 m.
Address: Government Center, JFK Bldg., Rm. 2003, Boston, MA 02203.
For Further Information Contact: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 585 Commercial St., Boston, MA 02109; 617–223–5857.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 23, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-34762 Filed 12-30-83; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Analgesic-Associated Kidney Disease; Conference

Notice is hereby given of the NIH Consensus Development Conference on "Analgesic-Associated Kidney Disease," sponsored by the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, and the NIH Office of Medical Applications of Research. The conference will be held February 27–29, 1984, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

Research has shown that the ingestion of large doses of some pain-relieving drugs, primarily phenacetin, is associated with the development of kidney disease and eventual failure of the kidneys. Since this problem was first reported in the 1950s, analgesic-associated kidney disease has become recognizes as a significant, costly, and potentially preventable and treatable public health problem. This consensus conference is being held because of the risk to the public of analgesic abuse and the critical need to advance medical understanding and control of this problem.

The key questions to be addressed at the conference include: Can analgesics, alone or in combination, cause kidney disease and chronic kidney failure? What are the scope and characteristics of the problem of kidney disease caused by excessive use of analgesics in the United States and in other countries? What causes analgesic-associated kidney disease? What factors increase the risk of its occurrence? Can it be prevented? What treatment strategies are appropriate? What are the directions for future research?

This consensus conference will bring together biomedical investigators, clinicians, other health professionals, and representatives of the public. Following two days of presentations by medical experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and formulate a draft statement responding to the key conference questions. On the final day of the meeting, the Consensus Panel Chairman Roscoe R. Robinson, M.D., Vanderbilt University Medical Center, Nashville, Tennessee, will read this preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Mrs. Michele Dillon, Prospect Associates, Suite 401, 2115 East Jefferson Street, Rockville, Maryland 20852, (301) 468–6555

Dated: December 22, 1983.

James B. Wyngaarden,

Director, HIH.

[FR Doc. 83-34742 Filed 12-30-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-83-1327]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Grievance Procedure Requirements—Informal Settlement of Grievance
Office: Public and Indian Housing
Form Number: None
Frequency of submission: Recordkeeping
Affected public: Individuals or Households and State or Local Governments
Estimated burden hours: 129,000
Status: New
Contact: Edward C. Whipple, HUD, (202) 426–0744, Robert Neal, OMB, (202) 395–7316.

Proposal: Admission—Verification Procedure
Office: Public and Indian Housing
Form Number: None
Frequency of submission: Recordkeeping
Affected public: Individuals or Households and State or Local Governments
Estimated burden hours: 1,500,000
Status: New
Contact: Edward C. Whipple, HUD, (202) 426–0744, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 28, 1983.

Lee Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34770 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1321]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal; OMB Desk Officer; Office of Management and Budget; New Executive Office Building; Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Tenant Participation in Multifamify Housing Projects
Office: Housing
Form number: None
Frequency of submission: On occasion
Affected public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated burden hours: 16,480
Status: New
Contact: James J. Tahash, HUD (202) 755-5654 Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 13, 1983.

Lee Hamilton, Director,

Office of Information Policies and Systems.

[FR Doc. 83-34777 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. 83-1320]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 415 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Commuity Development Block Grant Entitlement Housing Assistance Plan
Office: Community Planning and Development
Form number: HUD-7091 and HUD-7092
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 31,600
Status: Reinstatement
Contact: James R. Broughman, HUD, (202) 755-9267; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: November 28, 1983.

Lee Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34778 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1326]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer of the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Custodial Agreements
Office: Government National Mortgage Association
Form number: HUD-1722, HUD-11726, HUD-1729, and HUD-1732
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 137
Status: New
Contact: Patricia Gifford, HUD (202) 755-5550, Robert Neal, OMB (202) 395-7316.

Proposal: Permanent Note
Office: Public and Indian Housing
Form number: HUD-52250
Frequency of submission: On Occasion
Affected public: State or Local Governments and Non-Profit Institutions
Estimated burden hours: 3,335
Status: New
Contact: Theodore R. Daniels, HUD (202) 755-6444, Robert Neal, OMB (202) 395-7316.

Proposal: Survey of New Mobile Home Placements
Office: Policy Development and Research
Form number: C-MH-9A and C-MH-9B
Frequency of submission: Monthly
Affected public: Businesses or Other For-Profit and Small Businesses or Organizations
Estimated burden hours: 4,000
Status: Extension
Contact: Connie Casey, HUD (202) 755-5060, Robert Neal, OMB (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 19, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34771 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1325]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is decribed as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Improvement Assistance Program (CIAP): Project Implementation Schedule
Office: Public and Indian Housing
Form number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 2,000
Status: New
Contact: Pris Buckler, HUD, (202) 755-5595, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 7, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34772 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1324]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency from number, if applicable; (4) how frequently information submissions will be required; (5) what numbers of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatment of an information collection requirement; and (8) the names and telephone numbers of ar agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the above address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Procurement Policies and Procedures Handbook
Office: Administration
Form number: HUD Handbook 2210.3, Rev 2
Frequency of submission: On Occasion
Affected public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations
Estimated burden hours: 146,800
Status: Revision
Contact: Edward L. Girovasi, Jr., HUD, (202) 755-5294; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1983.

Lea Hamilton,

Director Office of Information Policies and Systems.

[FR Doc. 83-34773 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1323]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Modernization Project Amendment to Consolidated Annual Contributions Contract
Office: Public and Indian Housing
Form number: HUD-53008 and HUD-53009
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 400
Status: New
Contact: Pris Buckler, HUD, (202) 755-5595, Robert Neal, OMB, (202) 395-7316.

Proposal: Procedure for Obtaining Certificates of Insurance for Development and Modernization Projects
Office: Public and Indian Housing
Form number: None
Frequency of submission: Recordkeeping
Affected public: State or Local Governments
Estimated burden hours: 223

Status: Extension
Contact: Bruce Vincent, HUD, (202) 426–1383, Robert Neal, OMB, (202) 395–7316.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Survey Instrument
Office: Public and Indian Housing
Form number: None
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 9,600
Status: Extension
Contact: Mark Isaacs, HUD, (202) 755–6640, Robert Neal, OMB, (202) 395–7316.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Consultation
Office: Public and Indian Housing
Form number: None
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 4,800
Status: Extension
Contact: Pris Buckler, HUD, (202) 755–5595, Robert Neal, OMB, (202) 395–7316.

Proposal: Public Housing—Contract Administration
Office: Public and Indian Housing
Form number: HUD–5371, HUD–5373, HUD–51000a, and HUD–51000b
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 8,040
Status: Revision
Contact: Pris Buckler, HUD, (202) 755–5595, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 12, 1983.

Les Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34774 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. 83-1322]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information of OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Description of Materials
Office: Housing
Form number: HUD–92005
Frequency of submission: On Occasion
Affected public: Businesses or Other For Profit
Estimated burden hours: 50,000
Status: Reinstatement
Contact: Alvin Stevenson, HUD, (202) 755–6700, Robert Neal, OMB, (202) 395–7316.

Proposal: Petition for Rulemaking
Office: General Counsel
Form number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations
Estimated burden hours: 2
Status: New
Contact: William R. Granik, HUD, (202) 755–7085, Robert Neal, OMB, (202) 395–7316.

Proposal: Schedule of Pooled Mortgages—Single Family Loans
Office: Government National Mortgage Association
Form number: HUD–11706
Frequency of submission: On Occasion
Affected public: Businesses or Other For profit
Estimated burden hours: 6,200
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755–5550, Robert Neal, OMB, (202) 395–7316.

Proposal: Management Documents for Multifamily Housing Projects
Office: Housing
Form number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households, Businesses or Other For profit, and Non-Profit Institutions.
Estimated burden hours: 9,016
Status: New
Contact: Judy Lemeshewsky, HUD (202) 755–6870, Robert Neal, OMB, (202) 395–7316.

Proposal: Retention of Documents—Mortgagee Letters 81–14 and 82–12
Office: Housing
Form number: None
Frequency of submission: On Occasion
Affected public: Businesses or Other For Profit
Estimated burden hours: 1
Status: New
Contact: Ann M. Sudduth, HUD, (202) 755–6672, Robert Neal, OMB, (202) 395–7316.

Proposal: Prospectus
Office: Government National Mortgage Association
Form number: HUD–1712, HUD–11712–II, HUD–1717, HUD–11717–II, HUD–1724, HUD–11728, HUD–11728–II, HUD–1731, HUD–1734, HUD–1747, and HUD–11747–II
Frequency of submission: On Occasion
Affected public: Businesses or Other For Profit
Estimated burden hours: 1,514
Status: New

Contact: Patricia Gifford, HUD, (202) 755–5550, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 12, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34776 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. NI-117]

Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared under HUD programs as described in the appendix: Villages at Castle Rock, Castle Rock, Colorado. This notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the area to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the Federal Register a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the Federal Register, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C., December 20, 1983.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix—EIS on the Villages at Castle Rock, Town of Castle Rock, Colorado

The Department of Housing and Urban Development (HUD) Denver Regional Office intends to prepare an EIS on The Villages at Castle Rock, in the Town of Castle Rock, Colorado. The Department hereby solicits comments and information for consideration in this EIS.

Description: Thw Town of Castle Rock is located 35 miles south of Denver, Colorado on Interstate I–35. The proposed development, consisting of approximately 7,000 acres, is located approximately two (2) miles east of the Town's center extending both north and south of State Highway 86. The project's legal description is Township 8, South Range 66 West, Sections 6, 7, 8, 9, and 17; Township 7, South Range 66 West, Sections 20, 21, 22, 29, 30, 31, and 32; and Township 8, South Range 67 West, Section 1. Approximately 20,000 single-family, townhouses, condominiums and multifamily dwelling units will be constructed in this development as well as neighborhood and integrated businesses and park and recreational land uses. The project is being reviewed for acceptability under Section 203(b) of Title II of the National Housing Act of 1934, as amended. When fully developed over a ten-year period the subdivision will provide housing for approximately 60,000 persons.

Need: An EIS is proposed due to HUD threshold requirements in accordance with housing program environmental regulations and probable impact on the community of Castle Rock.

Alternatives: The alternatives are HUD participation in the development as proposed by the developer, participation in the development with modifications, or reject the proposed development.

Scoping: A general scoping meeting will not be held. HUD will request information from appropriate government agencies and service organizations. Responses to this notice will help determine potentially significant environmental issues and consequently will assist in identifying policy areas that the EIS should address.

Comments: Comments should be sent within 21 days following publication of this Notice in the Federal Register to: Mr. Robert J. Matuschek, Regional Director of CPD, Attn. Mr. Howard S. Kutzer, Department of Housing and Urban Development, 1405 Curtis Street, Denver, Colorado 80202.

[FR Doc. 83-34775 Filed 12-30-83; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M-59923]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M–59923, Exchange of public and private lands in Phillips County, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian

T. 29 N., R. 28 E.,
Sec. 25, N½/2NE¼, SW¼SW¼.
T. 28 N., R. 29 E.,
Sec. 2, Lots 3 & 4, S½NW¼;
Sec. 3, Lots 1 & 2, S½NE¼, SE¼;
Sec. 10, NE¼.
T. 29 N., R. 29 E.,
Sec. 18, Lot 2, 3 & 4, SW¼NE¼, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 28, SW¼;
Sec. 30, Lot 1, NE¼, NE¼NW¼;
Sec. 33, NW¼.
T. 29 N., R. 31 E.,
Sec. 5, S½SW¼, SE¼;
Sec. 6, Lots 1, 2, 3, 5–12 S½SE¼.
T. 30 N., R. 32 E.,
Sec. 33, SE¼NW¼, NE¼SW¼, S½SW¼.
Containing 2,548.97 acres of public land.

In exchange for these lands, the United States will acquire the following described lands:

Principal Meridian, Montana

T. 31 N., R. 29 E.,
Sec. 3, Lots 2, 3, 4, SW¼NW¼;
Sec. 4, Lot 1;
Sec. 5, Lot 2, 3, 4, SE¼NW¼, NE¼SW¼.
T. 32 N., R. 29 E.,
Sec. 27, W½SW¼;
Sec. 28, SW¼NE¼, SE¼NW¼, SE¼
Sec. 31, Lot 1 (S½N½, S½), 2, 3, & 4, E½W½, E½;
Sec. 32, SW¼NE¼, NW¼NW¼, S½NW¼, N½S½, SW¼SW¼;
Sec. 33, SW¼, NE¼SE¼, W½SE¼;
Sec. 34, N½SW¼, W½SE¼.
Containing 2,159.65 acres of private lands.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comment to the Bureau of Land Management, Lewistown District Office, Airport Road, Lewistown, Montana 59457. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange will be available for review at the Bureau of Land Management, Phillips Resource Area Office, 501 So. 2nd St. E., Malta, Montana 59538.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from settlement, sale, location, and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of oil and gas in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

4. Value equalization by cash payments or acreage adjustment.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

Dated: December 12, 1983.

David E. Little,

Acting District Manager.

[FR Doc. 83–34736 Filed 12–30–83; 8:45 am]

BILLING CODE 4310–DN–M

Oregon; Designation of Research Natural Areas, Outstanding Natural Areas and Areas of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation of 35 special management areas in the Eugene, Roseburg and Salem Districts.

SUMMARY: Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(c)(3)) and 43 CFR Parts 1610, 8223 and 8351.2, I have designated lands in the following ares for special management direction. These designations were developed with public involvement in the Eugene (district-wide), Roseburg (district-wide), Westside Salem and Eastside Salem Management Framework Plans, Timber Management Evironmental Impact Statements, and Timber Management Records of Decision. These documents are available for inspection at the respective District Offices. The decisions provided for appropriate levels of management restrictions or exclusions from timber management activities and associated land use allocations. Each area has unique management requirements, however all will be managed to maintain generally undisturbed conditions. Research Natural Areas and Outstanding Natural Area uses are restricted to protest opportunities for observational activities associated with research and education or recreation. Buffer or caution zones around some areas have been designated to allow timber harvest and other activities provided primary zone values are not jeopardized.

Areas with high recreational use potential may have management plans which include construction of trailhead parking facilities, on-site interpretive facilities and appropriate measures to reduce hazards to the public. All primary zones are closed to off-road vehicles.

DATE: These decisions were included in the September 9, 1983 Westside Salem and September 30, 1983 Eastside Salem Eugene and Roseburg Timber Management Plan Records of Decisions and became final 30 days after publication.

ADDRESSES: Questions on specific management plans, research opportunities or development/protection plans should be addressed to the responsible District noted in the heading of each area. Addresses are: Joseph C. Dose, Salem District Manager, 1717 Fabry Rd., SE, P.O. Box 3227, Salem OR 97302; Melvin D. Clauson, Eugene District Manager, 1255 Pearl St., P.O. Box 10225, Eugene, OR 97401; and James E. Hart, Roseburg District Manager, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

SUPPLEMENTARY INFORMATION:

Big Canyon Outstanding Natural Area, an Area of Critical Environmental Concern

280 acres of BLM-administered land in T. 2 N., R. 3 W., Sec. 5, W.M., Washington County, Salem District

This area is designated to preserve the diversity of plant communities and the high scenic value of Big Canyon, and to provide for educational and recreational use. The main fork of Big Canyon has nearly vertical walls rising to 150 feet above a canyon floor that is only 20 to 30 feet wide. The area has outstanding scenic qualities and has attracted sightseers for many years. The main stream drainage contains an unusually large variety of plant species, including a remnant stand of old-growth Douglas-fir that is more than 400 years old. This combination of old-growth forest with its associated ecosystem situated within a steep canyon is very uncommon. Professional educators use the area to study its important botanical values.

The area contains a "primary zone" covering the main fork of Big Canyon Creek and a "caution zone" encompassing adjacent BLM-administered land. Management of the primary zone will be directed toward maintaining relatively undisturbed conditions, acquiring legal public access, constructing a trailhead parking facility, providing suitable interpretive facilities, and acquiring title to or scenic easements on private lands south of Big Canyon. Management of the caution zone will permit timber harvest and other activities, provided these are carried out in such a manner that the botanical and scenic values of the primary zone are not jeopardized.

The Butte Research Natural Area, an Area of Critical Environmental Concern

40 acres of BLM-administered land in T. 4 S., R. 5 W., Sec. 19, W.M., Yamhill County, Salem District

This area is designated to preserve it's botanical values for research and educational purposes. The Butte fills the "ecotone between the Willamette Valley and Coastal Range" RNA cell and contains a wide range of distinctly defined microsites. Plants typical of both the Valley and Coast Range are represented, as are three different age classes of Douglas-fir. The west side of the area is a fine example of valley succession in a late serial phase, the south end is a dry meadow with oak, the north end is rocky and dry, and the central part contains a thick carpet of lush wet-site herbs. The Butte is a protectable example of a natural habitat that is rapidly disappearing.

The area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and educational programs. All roads passing through the ACEC will be permanently closed or gated.

Little Sink Research Natural Area, and Area of Critical Environmental Concern

80 aces of BLM-administered land in T. 8 S., R. 6 W., Sec. W.M., Polk County, Salem District

This area is designated to preserve it's natural ecosystem for research and educational purposes. Little Sink was established as a Federal Research Natural Area in 1973. It is an example of a foothill Douglas-fir forest occupying an area of marine siltstone which has undergone considerable landsliding. Frequent mass soil movement has produced slump benches, scarps, basins and several ponds. Great biotic diversity within a relatively small area makes this RNA unique. It fills the "permanent slump pond on Willamette Valley margin" RNA cell. Three distinct plant communities and many microhabitats have been identified. The RNA also provides excellent habitat for wildlife including waterfowl, some of which nest in the area. Little Sink RNA is presently used for research and education. It has

been extensively studied by ecologists from Western Oregon State College and Willamette University. Many of its specialized microhabitats need further study and offer opportunities to investigate such topics as soil-vegetation changes following mass soil movements and the effects of landslides on animal populations.

The area has already been withdrawn from mineral entry and closed to off-road vehicle use and the discharge of firearms. Management will continue to maintain relatively undisturbed conditions, restricting use to essentially observational activities associated with research and education.

Saddleback Mountain Research Natural Area, an Area of Critical Environmental Concern

135 aces of BLM-administered land in T. 7 S., R. 9 W., Sec. 3 and 4, W.M., Lincoln County, Salem District

This area is designated to preserve the last remaining old-growth Pacific silver fir—western hemlock stand in public ownership in the Oregon Coast Range. The stand is the sole candidate to fill this particular RNA terrestrial cell. The ACEC consists of a 29-acre RNA to be preserved for research and educational purposes, and an additional 106 acres adjacent to it to serve as a protective buffer for the RNA. Besides Pacific silver fir and western hemlock, the RNA contains noble fir and Douglas-fir. The western hemlock and Pacific silver fir are approximatelly 400 years old, and some of the Douglas-fir is 600 years old. The Pacific silver fir is a relict population near the southern extent of its distribution in the Coast Range. This population has been reproductively isolated for centuries and could be quite distinct genetically. The noble fir has also been isolated, probably for the same length of time, and may also be genetically unique.

The 29-acre RNA will be managed to maintain generlly undistrubed conditions, with use restricted to essentilly observational activities associated with research and educational programs. Salvage of windthrown timber and some other activities will be permitted in the adjacent 106-acre buffer area, provided these activities do not jeoparidize the botanical values of the RNA.

Lost Praire Area of Critical Evironmental Concern

60 aces of BLM-administered land in T. 7 S., R. 9 W., Sec 2, W.M., Lincoln Country, Salem District

This area is designated to preserve it's diversity of plant species for research and educational purposes and to preserve its habitat diversity for wildlife. This area is one of the few natural high elevation sphagnum peat bogs in western Oregon. Considered rare, the "prairie" is a continuous soggy-wet expanse of sphagnum moss with a meadow-like covering of sedge, herbs and wildflowers, one of which (*Anemone oregana* var. *felix*) is a candidate for Federal listing as a threatened species. "Islands" of beargrass, huckleberry and western white pine are scattered throughout the bog. The highest islands and edge areas support stands of western redcedar and western hemlock with a Pacific rhododendron understory. The bog, pond, snag and riparian habitat in this small area, with its diversity of plants and aminals, makes Lost Prairie a unique ecosystem. It offers nesting and feeding areas for a number of amphibians, wetland birds and wildlife such as deer and elk.

The area will be managed to allow natural regeneration and maintain natural conditions, with use restricted to essentially observational activities associated with research and educational programs. Management criteria and recovery plan techniques will be developed for *Anemone oregana* var. *felix* in its Oregon range.

Rickreall Ridge Area of Critical Environmental Concern

175 acres of BLM-administered land in T. 7 S., R. 7 W., Sec. 27, 33 and 34, W.M., Polk County, Salem District

This area is designated to preserve it's ecological values for research and educational purposes. Rickreall Ridge is distinctive in supporting a wide variety of plant species within a relatively small area. Several Willamette Valley species reach their upper elevational limits here, and typical Coast Range plants can be found here also. The area harbors some plants and animals that are more characteristic of southwestern Oregon and appears to be a refuge for species that had spread northward during a past warmer and drier climatic period. Several studies are presently being conducted on Rickreall Ridge by researchers from Western Oregon State College.

The ACEC consists of a "primary zone" of 80 acres surrounded by a 95-acre "caution zone." The primary zone will be managed to allow natural revegetation and maintain natural conditions, with use restricted to essentially observational activities associated with research and educational programs. Timber harvest and other activities will be permitted within the caution zone, providing they are carried out in such a manner that the ecological values of the primary zone are not jeopardized.

Little Grass Mountain Outstanding Natural Area, an Area of Critical Environmental Concern

42 acres of BLM-administered land in T. 9 S., R. 7 W., Sec. 31, W.M., Polk County, Salem District

This area is designated to protect it's botanical, wildlife and scenic values and provide for public visitation. The relatively undisturbed natural setting atop this peak is recognized for its open grass/fern bald complex, a feature found atop only a few other peaks in Oregon's Coast Range. The complex has widely dispersed pockets of conifers within it and is bordered by unaltered conifer forest. The area is noted for its attractive spring and early summer vegetation colors and its stark visual contrasts of vegetation types. The summit provides excellent panoramic views of the Coast Range, Willamette Valley and Cascade Range. Oregon State lands adjacent to the ACEC are presently managed as important summer range habitat for recently introduced elk. The ACEC complements this important habitat.

The area will be managed to maintain relatively undisturbed conditions. Actions will include construction of a trailhead parking facility development of on-site interpretive facilities, closure to off-road vehicle use and acquisition of legal public access.

Yaquina Head Outstanding Natural Area, an Area of Critical Environmental Concern

80 acres of BLM-administered land in T. 10 S., R. 11 W., Sec. 28 and 30, W.M., Lincoln County, Salem District

This area is designated to protect its scenic, wildlife and botanical values for public education and enjoyment and to reduce critical safety hazards. Yaquina Head is a rocky coastal headland that is one of the outstanding natural and scenic features of the Oregon coast. In recognition of its special values, the United States Congress passed Pub. L. 96–199 establishing the Yaquina Head Outstanding Natural Area on March 5, 1980. The Oregon Coastal Conservation and Development Commission describes Yaquina Head as a resource having potential for exceptional coastal experience and a landscape of statewide and/or national concern.

The area is covered by a complex mixture of herb- and shrub-dominated plant communities supported by a unique variety of micro-habitats. Two plant species within the ACEC are

considered uncommon and of special interest. These are Alaska rein orchid (*Habenaria greenei*) and sea kale (*Crambe maritima*). Botanists generally agree that the Alaska rein orchid is threatened by coastal development and urbanization. The sea kale, a native species of coastal Europe, is extremely rare in North America and may have been introduced by one of the early sailing ships.

Steep cliffs and remote rock outcrops around the headland provide crucial nesting sites for several species of marine birds. These rocks also provide resting areas for numerous other migrating and coastal wintering birds including the endangered brown pelican.

The ACEC's near-vertical cliffs and steep-walled quarry areas create hazardous conditions for visitors. Existing trails and fences frequently direct people toward, rather than away from, hazards. With an estimated 125,000 people annually visiting the headland during the primary recreation use season, the problem is critical.

The area will be managed to conserve natural values, rehabilitate existing quarry areas, provide visitor facilities, and reduce hazards by installing appropriate fencing, guardrails and signs. To ensure that the ACEC's values are not jeopardized, cooperative agreements will be developed with other government agencies having direct management responsibilities affecting the area.

Valley of the Giants Outstanding Natural Area, an Area of Critical Environmental Concern

47 acres of BLM-administered land in T. 7 S., R. 8 W., Sec. 19 and 30, W.M., Polk County, Salem District

This area is designated to preserve a stand of 400- to 600-year-old Douglas-fir and hemlock trees and provide for public visitation. Valley of the Giants was established as an Outstanding Natural Area in 1976. Many of the Douglas-fir in this area are over 20 feet in circumference, and three of them are over 30 feet. The largest, blown down in a windstorm in 1981, was more than 35 feet in circumference and was believed to be the second largest Douglas-fir in Oregon. The exceptionally large size of the trees has generated considerable concern for their protection. The area also provides habitat for may species of wildlife, including the northern spotted owl.

Management of the area will be directed toward maintaining relatively undisturbed conditions, acquiring legal public access, improving the trailhead parking facility, improving the existing trail system, providing interpretative facilities and closing the area to off-road vehicle use.

High Peak-Moon Creek Research Natural Area, an Area of Critical Environmental Concern

1,525 acres of BLM-administered land in T. 2 S., R. 8 W., Sec. 32 and 33; T. 3S., R. 8 W., Sec. 3–6, 8 and 9, W.M., Tillamook County, Salem District

This area is designated to preserve a stand of old-growth western hemlock and Douglas-fir, the last major concentration of western hemlock zone old-growth from 10 miles south of Mt. Hebo to the north end of the old Tillamook Burn. Some of the Douglas-fir is over 500 years old and very large. The stand is representative of typical Douglas-fir/western hemlock/swordfern communities, which are becoming increasing rare in the Coast Range.

The area contains young-growth coastal Douglas-fir stands in a wide range of aspects, slopes and elevations, which fill the "Douglas-fir/swordfern community, 100 to 150 years old" RNA cell. The southwest portion of the ACEC includes streams dominated by red alder and bigleaf maple, with old-growth Douglas-fir, western hemlock and western redcedar growing higher up on the streambanks. This area fills the "riparian hardwoods-streamside forest on third to fifth order stream at low elevation" RNA cell. The ACEC also contains scattered populations of weak bluegrass (*Poa marcida*), a candidate for Federal listing as a threatened species.

The ACEC will be managed to maintain generally undisturbed conditions, with use restricted primarily to observational activities associated with research and educational programs.

Elk Creek Bald Eagle Area of Critical Environmental Concern

1,655 acres of BLM-administered land in T. 3 S., R. 7 W., Sec. 8, 9, 16, 17, 20, 21 and 28, W.M., Tillamook County, Salem District

This area is designated to protect nesting and roosting habitat for a pair of bald eagles, Federally listed as threatened. Eagles have nested in this vicinity since 1970, successfully fledging young in 8 of the last 10 years. This is the only active nest site in the Salem District.

The ACEC contains a 356-acre "primary zone" surrounded by "secondary" and "tertiary" zones. The primary zone will be managed to maintain undisturbed conditions year-round. Human entry will be limited and low level aircraft operation will be restricted from January 1 through August 15. In the secondary and tertiary zones, undisturbed conditions will be maintained and low level aircraft operation will be restricted from January 1 through August 15.

Sheridan Park Area of Critical Environmental Concern

305 acres of BLM-administered land in T. 3 S., R. 6 W., Sec. 20, 29 and 30, W.M., Tillamook and Yamhill Counties, Salem District

This area is designated to preserve enough habitat for weak bluegrass (*Poa marcida*) to ensure its continued survival in the Sheridan Peak-Bald Mountain area. *Poa marcida* has been recommended for inclusion on the Federal list of threatened species. It occurs in concentrated patches and in widely scattered locations throughout this ACEC. Very few sites of the plant are known elsewhere in Oregon. The BLM has carried on a research project on the species since 1979, focusing on the Sheridan Peak-Bald Mountain area because of the quantity of populations in that area and the diversity of the micro-habitats in which they occur.

A 160-acre "primary zone" within the ACEC containing concentrated *Poa marcida* populations will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities. An additional 145-acre "secondary zone" will be managed for multiple resource activities, including timber harvest, within a research framework whereby the effects of these activities on *Poa marcida* will be studied. *Poa marcida* study plots established by BLM botanists in the secondary zone will be protected until ongoing studies are completed. Individual *Poa marcida* plants in the secondary zone will be protected on a case-by-case basis where practical and where such protection would not preclude timber harvest.

Nestucca River Area of Critical Environmental Concern

5,280 acres of BLM-administered land in T. 3 S., R. 6 W., Sec. 7, 17–19; T. 3 S., R. 7 W., Sec. 12, 13, 21–29 and 32–35; T. 4 S., R. 7 W., Sec. 5, W.M., Tillamook County, Salem District

This area is designated to protect, and in some cases enhance, it's important scenic, fisheries, wildlife and botanical values, while providing for recreational use and harvest of its timber resources. The scenic quality of the area is designated Class A with a high visual sensitivity level. Seen from the Nestucca River Access Road, the river corridor exhibits a thick, largely unaltered coniferous canopy covering steep

canyon walls. The river flows over a rocky bottom exposing white water and rock outcrops along the river and a wide variety of vegetation including Douglas-fir, hemlock, red alder, bigleaf maple, vine maple and scattered cedar. That portion of the Nestucca River within the ACEC has been proposed as a State Scenic River and is also a potential candidate for a component of the National Wild and Scenic Rivers program.

The river supports five species of game fish which are valuable commercial and recreational resources. It is the primary spawning grounds for steelhead, coho and chinook salmon. During 1978–1980, the river produced the second highest populations of steelhead in the State. Bald eagles, on the Federal list of threatened species, forage and roost along the river. The ACEC also contains key habitat for the northern spotted owl, a State listed threatened species.

The ACEC contains five plant species of special interest. These are fringed pinesap (*Pleuricospora fimbsiolata*), gnome plants (*Hemitomes cogestum*), calypso orchids (*Calypso bulbosa*), phantom orchids (*Eburophyton austiniae*) and weak bluegrass (*Poa marcida*). Weak bluegrass is a candidate for Federal listing as a threatened species, while fringed pinesap and gnome plants are under review for State and Federal listing. The calypso orchids and phatom orchids are being monitored in accordance with guidelines of the Oregon State Natural Heritage Program.

The ACEC contains a 1,160-acre "primary zone" along the river surrounded by a 4,120-acre "caution zone." Management of the primary zone will be directed toward protecting and enhancing fish and wildlife habitat, preserving scenic values, upgrading existing recreation sites, rehabilitating existing rock quarries, constructing recreation trails, and prohibiting the use of motorized vehicles off of designated access roads. The caution zone will be managed for multiple resource use including timber harvesting, but measures will be taken to reduce conflicts with nearby fisheries, scenic and recreational values. Recreational use of motorized vehicles in the caution zone will be limited to designated access roads.

Mary's Peak Outstanding Natural Area, an Area of Critical Environmental Concern

105 acres of BLM-administered land (four separate parcels) in T. 12 S., R. 7 W., Sec. 20, 28 and 29, W. M. Benton County, Salem District

This area is designated to protect portions of a meadow and a unique rock garden containing xeric and subalpine plant species. Located on the highest point of the Oregon Coast Range, the area fosters plant species usually found only at higher elevations and latitudes, along with species commonly of the Willamette Valley and sites east of the Cascade Range. Noble fir stands adjacent to the meadow are within the southern-most range of their natural distribution within the Coast Range. Commanding panoramic views are available from several summit viewpoints. The area's proximity to and accessibility from population centers make it an important and popular sightseeing area. The four parcels in the ACEC are located within the boundaries of a U.S. Forest Service Scenic-Botanical Special Interest Area (SBA). Several special values were identified as criteria for designation of the SBA, all of which exist on the BLM parcels. Preservation of the values and integrity of the SBA depends in large part on BLM management.

The ACEC will be managed to maintain relatively undisturbed conditions. A cooperative agreement with the U.S. Forest Service will be developed to ensure that mutual management objectives are met.

Grass Mountain Research Natural Area, an Area of Critical Environmental Concern

730 acres of BLM-adminstered land in T. 13 S., R. 8 W., Sec. 17, 20, 21 and 29, W. M., Benton County, Salem District

This area is designated to preserve the botanical values which fill four RNA cells. The area includes a grass bald complex and 75- to 100-year-old noble fir and Douglas-fir forests. The grass balds and the presence of noble fir near the southern extent of its range are of significance to the scientific community as is the presence of an old burn site with Douglas-fir regrowth 25 to 50 years old. The area is a favorable site for conducting research and educational programs involving the structure and succession of various plant communities, four of which have been identified in the grass balds alone. It fills the RNA terrestrial cells described as "grass bald on Coast Range Mountain," "rock garden community on Coast Range Mountain," "Douglas-fir 25 to 50 years old on old burn site," and "headwaters of high elevation stream with noble fir or Pacific silver fir forest."

The area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and education. All roads extending into the ACEC will be permanently closed or gated.

Williams Lake Area of Critical Environmental Concern

90 acres of BLM-administered land in T. 5 S., R. 4 E., Sec. 26, W. M., Clackamas County, Salem District

This area is designated to protect the Williams Lake and bog ecosystem, the best example within the District of a Cascadian massive seep-formed lake undergoing peat bog/quaking bog succession. Plant communities at the bog have specialized, adapting to the geographic and hydrographic systems which have formed the lake. The water for the lake is provided solely by an extensive series of seeps 50 to over 125 feet wide and reaching to within 150 feet of the ridgetop surrounding the lake. Specialized micro-habitats for plants of special interest are found on the wet seep slopes for *Isopyrum halii*, the bog fringes for *Parnassia fimbriata*, and small seep drainages for *Lycopodium inundatum*. *Lycopodium inundatum* is a State-listed threatened species. The interrelationships between present plant communities, the geology and hydrography, and the surrounding forests from which the seeps flow form a rare habitat complex with significant botanical values.

The ACEC contains a "primary zone" including the lake and slopes draining to it, and an adjacent "caution zone" which provides a buffer against windthrow. The primary zone will be managed to maintain generally undisturbed conditions. The caution zone will be managed for multiple resource use including timber harvest, provided such activities are conducted in such a manner that primary zone values are not jeopardized. No more than 10 percent of the timber in the caution zone will be harvested per decade.

Soosap Meadows Area Critical Environmental Concern

400 acres of BLM-administered land in T. 5 S., R. 4 E., Sec. 36; T. 6 S., R. 4 E., Sec. 1; T. 6 S., R. 5 E., Sec. 6, W.M., Clackamas County, Salem District

This area is designated to protect the only large, undisturbed expanse of natural Cascadian subalpine meadows in the District. These pristine meadows at the headwaters of Dead Horse Canyon are in a bowl-shaped area, the result of a glacial moraine which originally prevented runoff from flowing down the drainage. Through time, streams have cut through the moraine and have left behind a unique and

diverse remnant of natural subalpine habitat. The undisturbed ecology has fostered populations of three plants of special interest: *Parnassia fimbriata, Hemitomes congestum* and *Isopyrum halli. Hemitomes congestum* is being reviewed for State and Federal listing as a threatened species.

The ACEC contains a "primary zone" encompassing the meadow area, surrounded by a "caution zone." The primary zone will be managed to maintain relatively undisturbed conditions, with use restricted to essentially observational activities associated with research and education. The caution zone will be managed for multiple resource use including timber harvest, provided such activities are conducted in such a manner that primary zone values are not jeopardized. No more than 10 percent of the timber in the caution zone will be harvested per decade.

Sandy River Gorge Outstanding Natural Area, an Area of Critical Environmental Concern

400 acres of BLM-administered land (three parcels) in T. 1 S., R. 4 E., Secs. 23 and 25, W.M., Multnomah and Clackamas Counties, Salem District

This area is designated to preserve it's scenic, botanical and other natural values for public education and enjoyment. The ACEC is within the Sandy River State Scenic Waterway, and approximately 85 percent of it is visible from the river. The 6½-mile segment of roadless river gorge containing the BLM-administered parcels is in a near-pristine condition with few adverse visual intrusions. The nearly vertical walls of the gorge rise to over 400 feet in elevation and support a wide variety of plant communities. Ancient river terraces add an integral component to the river environment's fragile setting and outstanding scenic qualities.

Five river terraces on two of the ACEC parcels harbor an exceptionally rare example of low elevation, old-growth Douglas-fir forest. Some of the conifers are reportedly over 500 years old. Covering approximately 170 acres on both sides of the river, this remnant old-growth stand is the only known example of its kind in northwestern Oregon.

The ACEC will be managed to maintain relatively undisturbed conditions. BLM will cooperate with public agencies and adjacent landowners in developing the Oregon State proposed Sandy River Gorge Trail and will provide interpretive facilities along the trail. Motorized vehicle use will be limited to the surfaced road on the upper terrace of the ACEC.

Columbia River Gorge Area of Critical Environmental Concern

900 acres of BLM-administered land (four parcels) in T. 1 N., R. 4 E., Secs. 29 and 30; T. 1 N., R. 5 E., Secs. 13, 14, 21, 22, 27, 28, 29 and 32, W.M., Multnomah County, Salem District

This area is designated to assist the Oregon State Columbia River Gorge Commission in preserving the scenic, recreational and natural resource values of the gorge. Precipitous basaltic cliffs, some with majestic waterfalls over 400 feet high, basaltic outcrops, steep slopes and tributary drainages displaying highly diverse and colorful vegetation combine to establish the gorge as one of the most scenic areas in the State. The ACEC parcels are designated Scenic Quality Class A with a high visual sensitivity level. All four parcels adjoin State park- or U.S. Forest Service-administered lands and are vital to the preservation of the resource values associated with all publicly-owned lands in the gorge.

The ACEC parcels share in harboring over 200 plant species, including unusual populations of aspen, Sitka alder and scrub white oak. Long-bearded hawkweed (*Hieracium longeberbe*) and Howell's reedgrass (*Calamagrostis howellii*), plants on the State list of threatened and endangered species, are found at one location in the ACEC.

The area will be managed to maintain relatively undisturbed conditions. The BLM will cooperate with other public agencies in developing the Columbia River Gorge trail and will assist in maintaining the existing trail system. Motorized vehicle use will be limited to presently maintained roads, and no new roads will be developed outside existing rights-of-way.

Table Rock Area of Critical Environmental Concern

6,000 acres of BLM-administered land in T. 7 S., R. 3 E., Sec. 12–14; T. 7 S., R. 4 E., Sec. 7–10, 15–22, 27 and 28, W.M., Clackamas County, Salem District

This area is designated to protect its scenic, cultural and botanical values for public education and enjoyment. The area represents one of the last remnants of undeveloped forest lands within the Molalla River drainage. It contains numerous high quality resource values within a relatively small area. The varied topography of the area with its geological stratifications, high relief features and vegetative variety combine to creat spectacular panoramas and large areas of unaltered foreground views. The ACEC contains an outstanding diversity of plant species, resulting from the presence of four distinct vegetation zones within a short vertical sequence of geologic features. Specialized micro-habitats within the ACEC support Gorman's aster (*Aster gormanii*), a candidate for the Federal list of threatened species, and fringed pinesap *(pleuricospora fimbriolata)* which is under review for State and Federal listing. An 8½-mile trail, extending the length of the ACEC's main ridgelines, is a segment of a once more extensive trail system used from prehistoric times until the present day. The trail has been determined eligible for inclusion in the National Register of Historic Places. A portion of the ACEC, consisting of approximately 1, 745 acres, is being designated an Outstanding Natural Area.

The ACEC contains a "primary zone" and an adjacent "caution zone." The primary zone, encompassing the trail and Outstanding Natural Area, will be managed to maintain relatively undisturbed conditions with use restricted to essentially observational activities. The trail and trailhead parking facilities will be improved, and maintained roads will be gated to restrict public motor vehicle use within the primary zone. The caution zone will be managed for multiple resource use, including timber harvest, with consideration for the resource values of the primary zone. To protect scenic values, no more than 10 percent of the timber in the caution zone will be harvested per decade. The size of clearcuts observable from key observation points along the trail will be limited to 15 acres, and no new rock quarries will be developed in locations observable from these key observation points. Timber will be harvested with aerial methods when feasible.

Middle Santiam Terrace Area of Critical Environmental Concern

80 acres of BLM-administered land in T. 12 S., R.4 E., Sec. 19, W.M., Linn County, Salem District

This area is designated to protect an outstanding example of an old (400+years) western hemlock and Douglas-fir climax forest ecology. The area represents a forest type described as "moist, temperate river terrace forest with Douglas-fir, western hemlock, western redcedar and associated hardwoods" and has been recommended for protection by Oregon State University scientists for over 10 years. The high consistency of old western hemlock in this stand indicates that this ecosystem has been developing

for a very long time, perhaps 800 to 1,000 years, and is now approaching a dynamic equilibrium.

The area will be managed to maintain relatively undisturbed conditions, with use restricted to essentially observational activities associated with research and education. The road passing through the ACEC will be closed or gated.

Carolyn's Crown Research Natural Area, an Area of Critical Environmental Concern

260 acres of BLM-administered land in T. 11 S., R. 3 E., Sec. 8, 9 and 17, W.M., Linn County, Salem District

This area is designated to protect a rare example of very old Douglas-fir, western redcedar and western hemlock forest. The high proportion of western redcedar in the stand and the extreme age of the canopy trees (400 to 600 years old) are of particular significance. Botanically interesting is the almost complete lack of Douglas-fir in the understory. The topography and vegetation of the area has been strongly influenced by glacial activity during the last ice age. The ACEC fills the terrestrial RNA cell described as near-climax old-growth Douglas-fir, western redcedar and western hemlock forest in a glaciated cirque with glaciation phase plant ecology. Three plants of special interest are found in the drainages, including Anderson's shield fern *(Polystichum andersonii),* Hall's isopyrum (*Isopyrum halii),* and Washington lilies (*Lolium washingtonianum).* Northern spotted owls, on the State threatened species list, inhabit the older forest within the ACEC.

The area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and education. The area will be closed to off-road vehicle use.

Fox Hollow Research Natural Area, an Area of Critical Environmental Concern

160 acres of BLM-administered lands in T. 19 S., R. 4 W., Sec. 9., W.M., Lane County, Eugene District

This area is designated to preserve its botanical values for research and education. The site is the only identified area with a "dry-site Douglas-fir forest exhibiting contrasting vegetational patterns on north and south aspect slopes in a Willamette Valley foothill setting." Designation is necessary to preserve an undisturbed example of a major ecosystem type of great significance.

The area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and education. The area is closed to off-road vehicle use.

Camas Swale Research Natural Area, an Area of Critical Environmental Concern

280 acres of BLM-administered lands in T. 19 S., R. 4 W., Sec. 25, W.M., Lane County, Eugene District

This area is designated to preserve its botanical values for research and education. The site's importance is its combination of a dry-site Douglas-fir forest in a Willamette Valley setting, dry meadow plant communities and examples of forest/meadow succession. The area has been considered for years as an established integral part of the Pacific Northwest RNA system.

The area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and educational programs. The area is closed to off road vehicle use.

Mohawk Research Natural Area, an Area of Critical Environmental Concern

290 acres of BLM-administered lands in T. 16 S., R. 2 W., Sec. 19, W.M., Lane County, Eugene District

This area is designated to preserve its botanical values for research and education. The site has been identified as an important cell in the Federal RNA program: A Douglas-fir/Western hemlock forest on Willamette Valley foothills. The three age classes of Douglas-fir; the distinct differences between plant communities present and those to the east, south and west; and the presence of the wet sedge/alder meadow in the center of the tract are also notable.

The area will be managed to maintain essentially disturbed conditions, with use restricted to essentially observational activities associated with research and education. The area is closed to off-road vehicle use.

Upper Elk Meadows Research Natural Area, an Area of Critical Environmental Concern

200 acres of BLM-administered lands in T. 23 S., R. 2 W., Sec. 35, W.M., Douglas County, Eugene District

This area is designated to preserve its botanical and wildlife values for research and education. This open, wet meadow is a biological crossroads where valley and mountain, Coast and Cascade Range species have intermingled. Over 200 species of vascular plants have been identified on the site, including two which are candidates for listing as Treatened by the U.S. Fish and Wildlife Service. Unusual associations of plant communities provide unique extension of wildlife habitat usually found in higher elevations of the Cascade Range.

The area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and education. The area is closed to off-road vehicle use.

Lake Creek Falls, an Area of Critical Environmental Concern

3 acres of BLM-administered lands in T. 16 S., R. 7 W., Sec. 19, W.M., Lane County, Eugene District

This area is designated to reduce a natural hazard that has caused several injuries and deaths. Several thousand visitors are attracted each year to this natural site and its scenic waterfall, algae-covered rockslide and large swimming pools. Natural cliff and overhanging trees invite daredevil diving into pools concealing sharp boulders. Slippery walking conditions and unstable log jams also present hazards. In addition, visitors must hike to the site along a narrow, curving highway.

The area will be managed to reduce hazards to recreationists, with measures to increase safety both at the site and on the route approaching the site.

Horse Rock Ridge, an Area of Critical Environmental Concern

190 acres of BLM-administered lands in T. 15 S., R. 2 W., Sec. 1, W.M., Lane County, Eugene District

This area is designated to preserve outstanding botanical, scenic, wildlife and cultural values. Although its soils are thin and dry, this large, grassy bald supports a diversity of flora in unique mixture of lowland and alpine types. The prominent geological feature of Horse Rock offers panoramic views of the Coastal Range to the west and the higher peaks of the mid-Cascade Range to the east. Combined with significant cultural resource and wildlife habitat values, this site offers unique recreational and educational opportunities.

The area has been designated as closed to off-road-vehicle use. It will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with non-consumptive recreation, research and education.

Long Tom, an Area of Critical Environmental Concern

8 acres of BLM-administered lands in T. 16 S., R. 5 W., Sec. 33, W.M., Lane County, Eugene District

This area is designated to preserve botanical and wildlife values. The site is an example of the pre-settlement Willamette Valley oak and grassland matrix that has all but disappeared due to agricultural and urban development. The site supports nearly 100 species of vascular plants, most of which are native, and critical habitat for four plants. One plant is a candidate species for listing as Endangered by the U.S. Fish and Wildlife Service. The area also provides unique habitat for a vertebrate community within a relict floristic type.

This area will be managed to maintain generally undisturbed conditions, with use restricted to essentially observational activities associated with research and education. The area is closed to off-road vehicle use.

North Umpqua River Recreation and Scenic Area, an Area of Critical Environmental Concern

1,620 acres of BLM-administered land in a corridor from approximately 1 mile below Rock Creek upstream to the USFS boundary (approx. ½ mile wide and seven miles long). T. 26 S., R. 3 W., Sec. 1, 11; T. 26 S., R. 2 W., Secs. 7, 13, 14, 17, 21, 22, 23, 24, W.M., Douglas County, Roseburg District

This area is designated to preserve and enhance its recreation opportunities, scenic quality, fish and wildlife habitat, natural systems and processes (particularly riparian and old growth ecosystems). The area is nationally recognized for its steelhead and salmon fishery and contains well established scenic values. It was considered for designation as a State scenic waterway in 1980, and has been recommended for inclusion in national wild, scenic or recreational rivers system through 1980 bill H.R. 8096. It includes important habitat for anadromous and resident fish species, as well as riparian habitat. It is within a State of Oregon designated scenic area and contains some of the highest scenic values in the District. It contains existing and potential recreation sites and trails. Further details will be developed in a specific management plan, currently being prepared.

Brad's Creek Wildlife Area, an Area of Critical Environmental Concern

137 acres of BLM-administered land in T. 23 S., R. 7 W., Sec. 15, W.M., Douglas County, Roseburg District

This area is designated to protect the habitat of a federal threatened species. The area is valuable for its prime habitat involving an old growth forest community suitable in structure for both nesting, rearing and hiding cover of bald eagle and other cavity dwelling wildlife. The area is in close proximity to a slow water section of the Umpqua River, created by a natural dam in river bedrock, which provides a high value forage area for eagles. Anadromous fish serve as a primary food source (shad, steelhead, salmon) for the eagles. Further management details will be addressed in a Habitat Management Plan, scheduled for completion in 1985.

Golden Bar Wildlife Area, an Area of Critical Environmental Concern

217 acres of BLM-administered land in T. 25 S., R. 7 W., Sec. 9, 10, 15, 17, W.M., Douglas County, Roseburg District

This area is designated to protect the habitat of a federal threatened species. The area contains an old growth forest community suitable in structure for nesting, rearing and hiding cover for bald eagle, osprey and other cavity dwelling wildlife. It is in close proximity to a slack water section of the Umpqua River, which provides high value forage area for eagle. Anadromous fish serve as a primary food source (shad, steelhead, salmon). Further mangement details will be addressed in a Habitat Management Plan, scheduled for completion in 1985.

Tater Hill Landslide Research Natural Area, an Area of Critical Environmental Concern

169 acres of BLM-administered land in T. 29 S., R. 2 W., Sec. 6, 7; T. 29 S., R. 3 W., Sec. 1, W.M., Douglas County, Roseburg District

This designation is made to protect the natural systems and processes in an area of high geologic instability. The area involves an active landslide within a geologic setting comprised of pyroclastic volcanic rocks, primary basalt flows, small amounts of tuffaceous sediments and massive light colored ashflow tuffs. The area is highly unstable, includes fragile soils and provides an excellent example of mass wasting as well as unique botanical features. Several stages of terrestrial plant succession are represented, along with an aquatic environment, confined to one small slump pond, largely in an undisturbed environment.

Although not currently an identified cell in the Research Natural Area needs book, the Pacific Northwest RNA committee has recommended special cell designation for the area, based on their field review. Further details will be addressed in a specific management plan, scheduled for completion in early 1984.

North Myrtle Creek (Slideover) Research Natural Area, an Area of Critical Environmental Concern

240 acres of BLM-administered land in T. 28 S., R. 4 W., Sec. 33, W.M., Douglas County, Roseburg District

This designation is made to preserve its natural systems and processes for research and education. This area fills the coniferous forest mixture in the Umpqua River Valley RNA cell. A district staff report notes the area contains populations of (*Phacelia verna*) a candidate federal threatened plant species (*Viola ocellata*), a BLM listed sensitive plant species.

The area will be managed to maintain generally undisturbed conditions, with use restricted primarily to observational activities associated with research and educational programs. Further details will be included in a specific management plan, scheduled for completion in 1984.

Little River Rock Arch, an Outstanding Natural Area

15 acres of BLM-administered land in T. 27 S., R. 2 W., Sec. 6, W.M., Douglas County, Roseburg District

The area is characterized by several unusual rock pillars nearly 200 feet in height which form a natural bridge or arch. They are located in a steep timbered environment which supports a variety of vegetation and enhances the scenic quality surrounding the natural geologic feature.

Management of the area will be directed toward maintaining relatively undisturbed conditions to protect the scenic values and provide for public visitation. Further details will be included in a specific management plan for the area, scheduled for completion in early 1985.

Dated: December 16, 1983.

William G. Leavell,

Oregon State Director.

[FR Doc. 83-34734 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-33-M

Colorado; Filing of Plats of Survey

December 19, 1983.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of

Land Management, Denver, Colorado, effective 10:00 a.m., December 19, 1983.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the survey of the subdivision of certain sections in T. 42 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 713, was accepted November 30, 1983.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 32 and 34, T. 43 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 713, was accepted November 30, 1983.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The protraction diagram of the following described lands approved December 1, 1983, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective February 8, 1984.

Protraction Diagram No. 38, prepared to delineate the remaining unsurveyed public lands in T. 39 N., R. 13 W., New Mexico Principal Meridian, Colorado, was approved December 1, 1983.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 83-34747 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-JB-M

Elko District Grazing Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act and the Federal Land Policy and Management Act, notice is hereby given that the Elko District Grazing Advisory Board will meet on January 31, 1984. The meeting will start at 10:00 a.m. at the Ranch Inn, 852 Idaho Street, Elko, Nevada.

The agenda for the meeting will include: (1) Reorganization of the Board; (2) update on FY 1983 range improvement projects; (3) discussion of proposed FY 1984 range betterment funds and expenditures; (4) update on selective management criteria; (5) review of allotment management plans.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:30 p.m. and 2:00 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 2002 Idaho Street, Elko, Nevada 89801, by January 23, 1984. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Rodney Harris,

District Manager.

[FR Doc. 83-34746 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-NC-M

[4-20452-ILM]

Idaho Falls District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Meeting of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet February 1, 1984. Notice of this meeting is in accordance with Pub. L. 91-463, Pub. L. 94-579, Pub. L. 95-514 and 43 CFR Part 1780. The meeting will begin at 9 a.m. at the BLM District Office, 940 Lincoln Road in Idaho Falls.

The Council will discuss two topics:

1. The Medicine Lodge Resource Area's Resource Management Plan.

2. Proposed prescribed burns on the Edie Bench.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1 p.m. and 1:30 p.m., or may file written statements for the Council's consideration. Statements should address agenda items. Depending on the number of persons wanting to make oral statements, a per-person time limit may be established.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) at least 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Julia Corbett (202) 529-1020.

Dated: December 20, 1983.

O'dell A. Frandsen,

District Manager.

[FR Doc. 83-34707 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-BE-M

[I-19496]

Realty Action; Idaho Falls District; Exchange of Public Lands

The following described lands have been examined and determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Boise Meridian

T. 5 S., R. 39 E.,
Sec. 27; SE¼SE¼;
Sec. 34; NE¼NE¼;
T. 8 S., R. 46 E.,
Sec. 9; SW¼NE¼;
Sec. 20; NE¼NE¼; W½NE¼, W½SE¼;
Sec. 33; SE¼NW¼;
Sec. 34; W½SW¼.
T. 9 S., R. 46 E.,
Sec. 18; NE¼SE¼.

The above contains 480 acres.

In exchange for these lands, the Federal Government will acquire a tract of non-Federal land in Bonneville County from J.R. Simplot Company, described as follows:

Boise Meridian

T. 4 S., R. 43 E.,
Sec. 12; N½NW¼, W½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 13; NE¼, N½SE¼, SE¼SE¼, NE¼SW¼.
T. 4 S., R. 44 E.,
Sec. 18; lot 8;
Sec. 19; lot 1.

The above contains 681.94 acres.

The purpose of the exchange is to acquire the non-Federal land to consolidate the public lands in order to better manage it and provide long-term benefits to the government, i.e., grazing, wildlife habitat and general outdoor recreation. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with the Department of Fish and Game and the Bonneville and Caribou County Commissioners. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for water pipeline purpoes as have been granted to W. Gregg Draney under Serial Number I-20440.

3. Both parties will reserve their minerals; only surface ownership will be exchanged.

The publication of this notice of the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is descretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

The non-Federal lands described above are subject to prior Federal reserved minerals. The prior Federal interests are hereby segregated to the extent that such interest will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Idaho Falls District Manager, Bureau of Land Management at the above address.

Dated: December 21, 1983.

James Gabettas,

Acting District Manager.

[FR Doc. 83-34748 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-GG-M

[A-14965]

Realty Action—Direct Sale, Public Land in Graham County Arizona; Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of Notice of Realty Action.

SUMMARY: A Notice of Realty Action for a direct sale was published in the **Federal Register** on March 17, 1982 (47 FR 11569). The Notice authorized a direct sale of 10 acres to Matthew Gibson, the adjoining land owner, to resolve an unauthorized use. The 10 acres was described as the W½W½ NE¼NW¼, Section 21, T. 8. S., R. 26 E., Gila and Salt River Meridian. It has now been determined that a direct sale of 20 acres is necessary to resolve the unauthorized use. The 20 acres includes the prior 10 acres and is described as the W½NE¼NW¼, Section 21, T. 8 S., R. 26 E., Gila and Salt River Meridian. The land will be sold March 30, 1984, for $19,000, the appraised value. A new 45 day comment period is established.

DATE: Comments may be submitted within 45 days of the date of this publication.

ADDRESS: Comments should be sent to: District Manager, Bureau of Land Management, Safford District Office, 425 East 4th Street, Safford, Arizona 85546.

Any adverse comments will be evaluated by the District Manager, who may vacate or modify the realty action and issue a final determination. In the absence of any action by the District Manager, this amended realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland (602) 428-4040.

Dated: December 22, 1983.

Robert E. Jones

Acting District Manager.

[FR Doc. 83-34739 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-02-M

[W-86388]

Realty Action; Proposed Noncompetitive Sale of Public Lands in Albany County, Wyoming

December 20, 1983.

The following described lands have been found suitable for disposal and are proposed for sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than fair market value.

Legal description	Acreage
T. 17 N., R. 74 W., 6th P.M. Wyo.; Sec. 14; SE¼NE¼, NW¼, NE¼SW¼, N½SE¼, SE¼SE¼	360.00

The land is being sold noncompetitively to Wales Wenberg. The purpose of this sale is to facilitate land-use planning in the area and to enhance land-use compatibility with adjoining lands. This parcel is a small isolated tract which is difficult to manage as part of the public lands. It is unsuitable for management by another federal agency. There are no significant resource values which would be affected by this disposal. The proposed sale is consistent with Bureau Planning and is compatible with County Plans. The public interest would be served by making this land available for public sale.

Patent for the land, if issued, would contain the following reservations to the United States.

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary may prescribe. "All minerals" is defined as, but not limited to, metaliferous and non-metaliferous locatable minerals, leasable minerals such as oil, gas, coal, sodium, potassium, and geothermal resources, and salable minerals such as sand and gravel. However, upon filing of an application under 34 CFR 2720, the State Director may convey the mineral interest if all requirements of the law are met.

3. The land would be sold subject to valid existing rights of record on the date of conveyance.

4. The sale would be subject to oil and gas lease W-62359.

Detailed information concerning the proposed sale, including the planning documents, and the land report/environmental assessment, is available for review at the Bureau of Land Management, Rawlins District Office, 1300 North Third Street, Rawlins, Wyoming 82301. The proposed sale will not be held until 60 days after the date of this notice.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Rawlins District Manager, Bureau of Land Management, Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

David J. Walter,

District Manager.

[FR Doc. 83-34738 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-22-M

[W-86390]

Realty Action; Proposed Sale of Public Lands in Carbon County, Wyoming

December 21, 1983.

The following described lands have been found suitable for disposal and are proposed for sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than fair market value.

Legal description	Acreage	Value
T. 15 N., R. 84 W., 6th P.M., Wyo.: Sec. 23: W½SW¼, SE¼SW¼; Sec. 26: NW¼NW¼; Sec. 27: NE¼NE¼...	200.0	$30,000

The lands are being proposed for sale, by sealed bid only, in order to facilitate land-use planning in the area and to enhance land-use compatibility with adjoining lands. This parcel is irregularly-shaped, isolated, and difficult to manage as part of the public lands. It is unsuitable for management by another federal agency. There are no significant resource values which would be affected by this disposal. The proposed sale is consistent with Bureau Planning and is compatible with County Plans. The public interest would be served by making this land available for public sale.

The land is located approximately 2 miles north of Encampment, Wyoming. In the past, the land was used as a rural aircraft landing strip. We recommend the land be inspected by prospective bidders prior to bid submission.

Patent, if issued, would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary may prescribe. "All minerals" is defined as, but not limited to, metaliferous and non-metaliferous locatable minerals, leasable minerals such as oil, gas, coal, sodium, potassium, and geothermal resources, and salable minerals such as sand gravel. However, upon filing of an application under 43 CFR Part 2720, the State Director may convey the mineral interest if all requirements of the law are met.

3. The land would be sold subject to valid existing rights of record on the date of conveyance.

The lands, if sold, would remain subject to Carbon County planning and zoning. The land has legal access via Carbon County Road 303.

Sealed bids must be submitted on or before 1:00 p.m., Tuesday, February 28, 1984, to the Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301. Sealed bids received after the hour specified will not be considered. The envelope must be marked in the lower left-hand corner as follows: "Bid W–86390, Sale to be held February 28, 1984."

No special form of sealed bid is required, but all bids must show the amount bid for the entire 200-acre parcel, the name and address of the bidder, and must be signed by the bidder or a person authorized to act for the bidder. Each sealed bid must be accompanied by a certified check, money order, bank draft, or cashier's check, made payable to the Department of the Interior—BLM for one-fifth of the amount of the bid. Federal law requires that bidders be U.S. Citizens or, in case of corporations, subject to the laws of any state of the United States. A statement over the bidder's signature with respect to citizenship must be included with the bid.

At 2:00 p.m., February 28, 1984, 1300 North Third Street, Rawlins, Wyoming, the authorized officer will open and read all the sealed bids. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The highest bid would be announced and the successful high bidder notified in writing. The successful bidder shall submit the remainder of the full bid price within 30 days of the sale. Failure to submit the full bid price shall result in forfeiture of the deposit. All bids would either be returned, accepted, or rejected in writing within 30 days of the sale date.

If the land does not sell at the February 28, 1984, sale or the high bidder defaults, the land would be reoffered by the above procedure at 2:00 p.m. on the last Thursday of each month at the Rawlins District Office, at the above address until the parcel is sold or the sale is otherwise terminated. Please contact the Rawlins District Office of the Bureau of Land Management (Phone: 307/324–7171) for further details.

Detailed information concerning the proposed sale, including the planning documents and the land report/environmental assessment is available for review at the Bureau of Land Management, Rawlins District Office, 1300 North Third Street, Rawlins, Wyoming.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Rawlins District Manager, Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

David J. Walter,

District Manager.

[FR Doc. 83-34750 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-22-M

Realty Action; Public Land Sale, Haskell County, Oklahoma

[NM–51738 (OK), NM–51740 (OK), and NM–51773 (OK)]

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of 1,170.75 Acres of Public Land in Haskell County, Oklahoma by sealed bid only.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value:

Indian Meridian

Tract 12

T. 8 N., R. 22 E.,
Sec. 14, NW¼, N½NW¼SW¼.
Sec. 15, SW¼, N½SE¼, S½SE¼NE¼, S½SE¼SW¼NE¼.
Sec. 16, S½SE¾.
Sec. 21, Townsite Addition No. 2, lots 38, 47, 48, 49, 50, 60, 61, 62, 63, and 64.
Sec. 22, Townsite Addition No. 2, lots 5, 6, 7, 8, 9, 18, 19, 28, 29, and 30.
Acres: 732.47.

Tract 12A

T. 8 N., R. 22 E.,
Sec. 22, Townsite Addition No. 3, lots 8, 9, 10, 11, 12, 13 and 14.
Acres: 39.71.

Tract 14

T. 8 N., R. 22 E.,
Sec. 23, Townsite Addition No. 3, lots 1, 2, and 3.
Sec. 24, SW¼, W½SE¼, SE¼SE¼.
Acres: 398.57.

The above described lands will be sold by sealed bid only through a competitive bid type sale. The sale will be held on Monday, March 12, 1984, and the sealed bids will be opened at 10:00 a.m., Bureau of Land Management (BLM) Conference Room, 200 N.W. Fifth Street, Room 548, Oklahoma City, Oklahoma, 73102. Particulars for this sale, including appraisals, reservations, and other specific items, will be made available to the public approximately 30 days before the scheduled sale date.

The subject lands are part of the remaining public land holdings in Oklahoma that are scattered throughout

42 counties (approximately 8,000 acres). The lands are being offered for sale since the BLM can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. Areas residents of McCurtain, Oklahoma favor the transfer of the lands into private ownership. The sale is consistent with the Bureau's planning for the lands involved and has been discussed with governmental units and local officials. The public interest would be served by offering the lands for sale.

The terms and conditions applicable to the sale are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

3. The sale will be subject to all valid existing rights.

4. For Tract 12 in Sections 14, 15, 16, 21, and 22; Tract 12A in Section 22; and Tract 14 in Section 23 and 24, patents are issued recognizing that the lands lie within a floodplain and as such the patentees or their successors are limited by Section 3(d) of Executive Order 11988 of May 24, 1977 from seeking compensation from the United States or its agencies in the event existing or future facilities on these lands are damaged by flood.

5. No preference right would be given to adjoining land owners. No bids will be accepted for less than the appraised price. Federal law requires that bidders be United States citizens or, in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompoany the bid.

Portions of the above described public lands contain wetlands. Patents to such lands will contain a wetland protection patent restriction. The type, location, and size of each wetland will appear in the restriction as well as the following:

In accordance with Section 209 of the FLPMA of 1976, 43 U.S.C. 1718 (1976) and Section 4 of Executive Order 11990 (1978), 3 Code of Federal Regulations 121 (1978), the patentee's use of the patented lands is restricted as follows:

1. Restrictions on use of wetlands contained in applicable federal, state, or local wetlands regulations are incorporated hereby as if set forth fully herein.

2. The patentee may not use the patented land, or authorize its use, in such a manner that would directly or indirectly result in an adverse alteration of the wetland characteristics or category of that portion of the lands identified above as wetlands.

These patent restrictions are binding upon the patentee and his successors, heirs, and assigns.

Sealed written bids will be considered only if received by the Bureau of Land Management, 200 N.W. Fifty Street, Room 548, Oklahoma City, Oklahoma, 73102 prior to 10:00 a.m., Monday, March 12, 1984. A separate written bid should be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of the Interior, Bureau of Land Management for at least twenty percent of the amount bid. The written sealed bids will be opened and publicly declared at the begining of each sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be by drawing. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

Parcels not sold on the assigned day of the sale will remain available for sale until sold or withdrawn. Sealed bids will be solicited on these parcels at no less than the appraised fair market value. The sale for these parcels will be held on the first Monday of each month.

DATE: For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

ADDRESS: Comments and suggestions should be sent to: District Manager, Tulsa District Office, Bureau of Land Management, 6136 East 32nd Place, Tulsa, Oklahoma 74135.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, (405) 231–5491.

Jim Sims,

District Manager.

[FR Doc. 83–34751 Filed 12–30–83; 8:45 am]

BILLING CODE 4310–FB–M

Wyoming; Availability of Rangeland Program Summary and Record of Decision for the Divide Grazing Environmental Impact Statement Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Rangeland Program Summary (RPS) and Record of Decision for the Divide Grazing Environmental Impact Statement (EIS) area.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared an RPS and Record of Decision for the Divide Grazing EIS area. Copies of this document are available at the Rawlins District Office.

DATE: April 30, 1984.

ADDRESS: Rawlins District Office, 1300 N. 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Bud Holbrook, Divide Area Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324–7171.

SUPPLEMENTARY INFORMATION: The Divide RPS and Record of Decision is a summary of the rangeland program for the Divide Grazing EIS area of the Rawlins District. BLM has adopted a grazing management policy that involves assignment of management priorities to groups of grazing allotments, within the context of BLM's existing planning system. BLM's rangeland management goals and objectives are: (1) Provide enough forage on a sustained-yield basis to satisfy at least the present demands of livestock and BLM population objective levels for wild horses; (2) maintain the ecological range condition at a level that would provide for an adequate, sustained yield of forage production; (3) maintain and improve terrestrial, aquatic and riparian ecosystems to provide wildlife (game and nongame species) with adequate amounts of forage and habitat to maintain Wyoming Game and Fish Department population objective levels.

Four possible actions were analyzed in the Divide Grazing EIS: the Proposed Action; the No Action alternative; the Enhance Watershed, Wildlife, and Soil Resources alternative; and the Enhanced Livestock Grazing alternative. The Proposed Action is BLM's preferred alternative and has been accepted as the basis for the District Manager's final planning decisions.

A monitoring program will be developed, in consultation with all affected parties in accordance with current BLM policy and procedures. Four monitoring parameters will be used to evaluate the effectiveness of management actions taken: trend, utilization, actual use, and climate.

Interested parties have until April 30, 1984, to express their views on the RPS. Comments should be submitted to: Bud

Holbrook, Divide Area Manager, BLM, P.O. Box 670, Rawlins, Wyoming 82301.

David J. Walter,

District Manager.

[FR Doc. 83-34737 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-22-M

Anchorage District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Anchorage District Advisory Council will meet on February 9, 1984 to consider proposed and pending regulations of the Bureau of Land Management regarding the levy of fees for recreation use on public lands and waters.

Any member of the public wishing to address the council should write Joette Storm, Public Affairs Officer, prior to the meeting, at the Anchorage District Office, 4700 East 72nd Avenue, Anchorage, AK 99507-2899, (907) 267-1200.

DATE: February 9, 1984, 9:00 a.m.-4:00 p.m.

Place: Anchorage District Office Training Room 4700 East 72nd Avenue, Anchorage, Alaska.

SUPPLEMENTARY INFORMATION:

Proposed Agenda

9:00—Call to order
9:10—Election of Officers
9:30—Update on current district programs
10:30—Break
10:45—Update continued
Noon—Lunch break
1:00—Recreation fee regulations
3:00—Public comment
4:00—Adjournment

Wayne A. Boden,

District Manager.

[FR Doc. 83-34741 Filed 12-30-83; 8:45 am]

BILLING CODE 4111-0118-M

Availability of the Southern Appalachian Federal Coal Production Region, Alabama, Final Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice correction.

SUMMARY: In the **Federal Register** of Wednesday, December 7, 1983 (48 FR 54902) the Bureau published a notice stating that the Final Southern Appalachian Regional Coal Environmental Impact Statement II had been prepared. Additionally, the notice was a call for submission to the Bureau of Land Management of qualified surface owner consents. Appendix A gave the legal descriptions of the federally owned coal rights in the delineated tracts.

Inexplicably, a 160-acre parcel in the north half of Section 12, T. 19S., R. 9W., in the Panther Branch Tract was not included in the description. This notice provides the correct legal description of the federally owned coal rights in the subject tract in its entirety.

FOR FURTHER INFORMATION CONTACT: Bob Todd, Team Leader, Southern Appalachian Regional Coal II EIS, of the Jackson District Office, Bureau of Land Management, Jackson Mall Office Center, Suite 3495, 300 Woodrow Wilson Drive, Jackson, Mississippi 39213.

Appendix A (corrected)

Legal Description of Federal coal in the Panther Branch Tract T. 19S., R. 9W., Huntsville, P.M.

Section 1, that part of SW¼NE¼, E½NW¼ south of Watermelon Road
Section 12, E½, E½W½
Containing approximately 639.09 acres in Tuscaloosa County, Alabama.

Denise Meredith,

Acting Eastern States Director.

[FR Doc. 83-34815 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service Plan of Development/Production; Vermilion Area, Offshore Louisiana

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Plan of Development/Production (POD/P).

SUMMARY: Notice is hereby given that Diamond Shamrock Exploration Company has submitted a POD/P describing the activities it proposes to conduct on Leases OCS-G 5026 and 3977, Blocks 45 and 57, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject POD/P was deemed submitted on December 12, 1983. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject POD/P is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the POD/P and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0873.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the POD/P and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the POD/P for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in POD/Ps available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 23, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 83-34753 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Gateway National Recreation Area; Meeting

AGENCY: National Park Service—Gateway Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice

of this meeting is required under the Federal Advisory Committee Act.

DATE: January 24, 1984, commencing at 3 p.m.

ADDRESS: Federal Hall, 26 Wall Street, Lower Level, New York, New York.

FOR FURTHER INFORMATION CONTACT: Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (212) 338-3578.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by Pub. L. 92-592, to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include; (1) Discussion, State of the Park; (2) Status, Development Concept Plans for: Floyd Bennett Field; Sandy Hook Fort Hancock; Riis Park/Fort Tilden; Fountain/Pennsylvania Avenue Landfill Sites; (3) Gateway Land Protection Plan; (4) Meeting schedule, 1984 and other items which may come before the Commission.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services for the deaf or hearing impaired will be needed, they should be requested within five working days before the meeting. Facilities and space to accommodated members of the public are limited, and persons will be accommodated on a first-come, first-served basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recreation Area, Building No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: December 13, 1983.

Chrysandra L. Walter,

Acting Superintendent, Gateway National Recreation Area.

[FR Doc. 83-34734 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-70-M

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as national natural landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to 62.4 (d)(1) of 36 CFR Part 62, written comments concerning the potential designations of these areas as national natural landmarks may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, Washington, D.C. 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Branch of Natural Landmarks, Interagency Resources Division, (202) 343-9525.

Dated: December 23, 1983.

Russell E. Dickenson,

Director.

Nebraska

Grant County

Nebraska Sands Hills—This 32,900-acre site, just south of Hyannis, is the largest sand dunes area in the Western Hemisphere. This site differs from other large dunes of the world because it is almost completely stabilized by vegetation.

Oregon

Wasco County

Lawrence Memorial Grasslands Preserve—This 378-acre site, 27 miles northeast of Madras, is an excellent illustration of the geologic formation known as "biscuit and scabland," formed in the Columbia Plateau during the Wisconsin glaciation. Also found here are excellent examples of widespread plant communities.

Washington

Grant County/Adams County

Saddle Mountain Landslide—This 1,600-acre easily visible site, 9 miles west of Othello, is an excellent example of an earthflow landslide and one of the largest on the Columbia Plateau. It occurred probably during the late Pleistocene when massive blocks of basalt broke loose from the Saddle Mountains.

Whitman County

Rose Creek Preserve—This 12-acre site, 10 miles northwest of Pullman, may be the only protected site of such integrity for scientific research of a rare phenomenon: quaking aspen and hawthorn stands replacing one another indefinitely.

Wyoming/Colorado

Albany County (WY)/Larimer County (CO)

Sand Creek—This 6,000-acre site, 20 miles southwest of Laramie, Wyoming, possesses the most spectacular examples of cross-bedded sandstone and "topple blocks" in North America. Excellent geomorphological, stratigraphical, sedimentological, paleontological, and botanical features abound.

Wyoming

Natrona County

Hell's Half Acre—This 1,200-acre site, 40 miles west of Casper, is an extraordinarily well-exposed and well-developed area of Lower Eocene badlands. Nowhere else is there a combination of such intricate microsculpture developed on such colorful rocks that can be viewed from a single vantage point. It is also an excellent example of angular unconformity.

Sweetwater County

Chain of Lakes—This 12,800-acre site is a part of the Chain Lakes Big Game Winter Refuge 50 miles northwest of Rawlins. It is an excellent illustration of the Great Divide Basin, a unique geomorphic feature where the Continental Divide splits south of the Wind River Range to surround a large internally drained basin.

[FR Doc. 83-34735 Filed 12-30-83; 8:45 am]

BILLING CODE 4310-10-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 23, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 16, 1984.

Carol Dubie,

Acting Chief of Registration, National Register.

ALABAMA

Cullman County

Cullman, *Ave Maria Grotto*, St. Bernard Abbey

CALIFORNIA

Santa Cruz County

Watsonville, *Madison House*, 335 East Lake

CONNECTICUT

Middlesex County

Middle Haddam, *Middle Haddam Historic District*, Moodus and Long Hill Rds.

New London County

Norwich, *Broad Street School*, 100 Broad St.

DISTRICT OF COLUMBIA

Church of the Ascension, 1215 Massachusetts Ave., NW
Union Trust Building, 740 15th St., NW
Wardman Park Annex and Arcade, 2600 Woodley Rd., NW

IOWA

Madison County

Macksburg, *Craven, J.D., Women's Relief Corps Hall*, South St.

Polk County

Des Moines, *West Chester*, 3520 Grand Ave.

LOUISIANA

Ascension Parish

Donaldsonville, *Donaldsville Historic District*, Roughly bounded by Bayou Lafourche, the Mississippi River levee, Jackson Ave., Marchand Dr., and Monroe and Church Sts.

MISSOURI

Moniteau County

California, *Gray-Wood Buildings*, 401–407 N. High St.
St. Louis (Independent City)
Beaumont Medical Building, 3714–26 Washington Ave.
Buildings at 2327–31 and 2333–35 Rutger Street, 2327–31 and 2333–35 Rutger St.
Dolman Row, 1424–1434 Dolman St.

NEW MEXICO

Sandoval County

Pueblo Tuerto,
Espinaso Ridge Pueblo,

RHODE ISLAND

Kent County

West Warwick, *Valley Queen Mill*, 200 Providence St.

Providence County

Pawtucket, *Montgomery, Nathaniel, House*, 178 High St.

SOUTH DAKOTA

Beadle County

Site 39BE14 (James River Basin Woodland Sites TR),
Site 39BE15 (James River Basin Woodland Sites TR),
Site 39BE23 (James River Basin Woodland Sites TR),
Site 39BE46 (James River Basin Woodland Sites TR),
Site 39BE48 (James River Basin Woodland Sites TR),
Site 39BE57 (James River Basin Woodland Sites TR),
Site 39BE84 (James River Basin Woodland Sites TR),
Site 39BE94 (James River Basin Woodland Sites TR),

Davison County

Site 39DV9 (James River Basin Woodland Sites TR),
Site 39DV24 (James River Basin Woodland Sites TR),

Hanson County

Site 39HS3 (James River Basin Woodland Sites TR),

Hutchinson County

Site 39HT14 (James River Basin Woodland Sites TR),
Site 39HT24 (James River Basin Woodland Sites TR),
Site 39HT27 (James River Basin Woodland Sites TR),
Site 39HT29 (James River Basin Woodland Sites TR),
Site 39HT30 and 39 HT202 (James River Basin Woodland Sites TR),

Sanborn County

Site 39SB15 (James River Basin Woodland Sites TR),
Site 39SB18 (James River Basin Woodland Sites TR),
Site 39SB31 (James River Basin Woodland Sites TR),

Spink County

Site 39SP2 (James River Basin Woodland Sites TR),
Site 39SP3 (James River Basin Woodland Sites TR),
Site 39SP12 (James River Basin Woodland Sites TR),
Site 39SP19 (James River Basin Woodland Sites TR),
Site 39SP24 (James River Basin Woodland Sites TR),
Site 39SP37 (James River Basin Woodland Sites TR),
Site 39SP46 (James River Basin Woodland Sites TR),

TEXAS

Bexar County

San Antonio, *San Antonio Missions National Historical Park*, 727 E. Durango

Dallas County

Dallas, *Viola Courts Apartments*, 4845 Swiss Ave.

Kendall County

Boerne, *Dienger, Joseph, Building*, 106 W. Blanco Rd.

Tarrant County

Fort Worth, *Blackstone Hotel*, 601 Main St.

[FR Doc. 83-34733 Filed 12-30-83; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

S. J. L. Drug Corp., d.b.a. Brunell's Family Pharmacy; Revocation of Registration

On July 14, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to S. J. L. Drug Corporation, d/b/a Brunell's Family Pharmacy (Respondent), 183 Pine Street, Lowell, Massachusetts 01851. The order sought to revoke Respondent's DEA Certificate of Registration, AS7519474. The statutory predicate under 21 U.S.C. § 824(a)(2) for the Order to Show Cause was that on March 31, 1983, Salvatore J. Lipomi, R.Ph., owner and managing pharmacist of S. J. L. Drug Corporation was convicted in the Middlesex County Superior Court, Commonwealth of Massachusetts of 34 counts of illegal distribution of controlled substances without an oral or written prescription from a practitioner in violation of Massachusetts General Laws Chapter 94C, a felony relating to controlled substances.

Respondent, through Lipomi, did not request a hearing under 21 CFR 1301.48(d) even though given the opportunity to do so. Lipomi submitted his written position on the issues raised by the Order to Show Cause. Accordingly, the Administrator finds that Lipomi waived the pharmacy's opportunity for a hearing under 21 CFR 1301.54(d) and enters this final order on the record as it appears, including Lipomi's submission. 21 CFR 1301.54(e).

On March 22, 1978, Cpl. William R. Sutherland, Narcotics Section, Department of Public Safety, Commonwealth of Massachusetts went to the Brunell's Family Pharmacy. Cpl. Sutherland examined Mr. Lipomi's filled Schedule II prescription file and found a number of prescriptions that appeared to be forged or altered. During a formal audit of the pharmacy that began on May 4, 1978, Mr. Lipomi stated that the pharmacy had been broken into numerous times from July 9, 1977 to May 3, 1978. He never notified DEA of the break-ins as required by state and Federal law.

One of these alleged thefts occurred in the evening of February 25, 1978, at which time two members of the Lowell Fire Department heard glass breaking at Brunell's Pharmacy. From across the street, they observed a subject enter the pharmacy and then emerge approximately 45–60 seconds later. They

did not see the subject carrying anything in his hands. Mr. Lipomi advised an officer of the Lowell Police Department that small quantities of Seconal, Tuinal and possibly 500 Valium were taken.

At the time of the audit on May 4, 1978, Mr. Lipomi furnished the officers a list of drugs that he claimed were taken during the February 25, 1978 break-in. The list included controlled substances such as Quaalude, Seconal, Percodan, Dilaudid and codeine. These drugs were not reported stolen to the Lowell Police Department or to DEA.

It is not likely that these drugs were actually stolen from Respondent pharmacy. The alleged thief was in the store for no more than 60 seconds. He was not carrying anything when he came out of the pharmacy. Mr. Lipomi disperses his Schedule II drugs throughout the pharmacy. The area behind the counter, at the time of the break-in, was not well lighted and it would have taken some time for a burglar to locate all of the drugs. The only logical inference that can be drawn is that Mr. Lipomi was using these alleged thefts to cover shortages in his inventory. These shortages apparently resulted from the illegal distribution of controlled substances without the oral or written prescriptions of a practitioner which resulted in Mr. Lipomi's conviction. The Administrator concludes that there is a statutory ground for revocation of Respondent's DEA registration. 21 U.S.C. 824(a)(2).

The Administrator further finds that on October 25, 1933, the Board of Registration in Pharmacy, Commonwealth of Massachusetts suspended the certificate of registration of Salvatore J. Lipomi for a period of four years. This action terminates Lipomi's authorization personally to possess, dispense or otherwise handle controlled substances in Massachusetts. While the suspension of a registrant's state authorization to handle controlled substances is an additional ground for revocation under 21 U.S.C. 824(a)(3), the action of the Board regarding Lipomi does not terminate the authorization of Brunell's Family Pharmacy to handle controlled substances. The Administrator must therefore look to the facts surrounding the conviction upon which to exercise his discretion in deciding whether to revoke this Certificate of Registration.

The Administrator is not convinced that Respondent pharmacy is capable of responsibly handling controlled substances given the past practices of Salvatore Lipomi, its managing owner and pharmacist.

Lipomi raised two grounds in opposition to the revocation in his submission. First, his conviction is on appeal to the Massachusetts Supreme Judicial Court and therefore not final. Second, the Supreme Judicial Court suppressed certain evidence seized during the audit of the pharmacy. These grounds are without merit.

As to the first ground, DEA has consistently held that a conviction is final for the purpose of 21 U.S.C. 824(a)(2) if there is a judgment of guilt, plea of guilty or nolo contendere, or some other indication that the individual is found guilty of a controlled substance related felony. *Faunce Drug Store,* Docket No. 82–3, 47 FR 30122 (July 12, 1982) citing *Berman* v. *United States*, 302 U.S. 211, 58 S.Ct. 164 (1937) and *Korematsu* v. *United States*, 319 U.S. 432, 63 S.Ct. 1124 (1943). See also *United States* v. *Rosenstengel*, 323 F. Supp. 499 (E.D. Mo. 1971), where the court gave the broadest meaning to the word "convicted" in interpreting 18 U.S.C. 1202(d) (relating to possession of firearms by convicted felons). The record in this case shows that the conviction of Salvatore Lipomi is complete for purposes of 21 U.S.C. 824(a)(2), his appeal notwithstanding.

The Administrator does not reach Lipomi's second point since there is ample evidence on which to base the exercise of his discretion without examining the material suppressed by the Massachusetts court. However, the Administrator notes that the Supreme Court has declined to extend the Fourth Amendment exclusionary rule to civil proceedings. *United States* v. *Janis*, 428 U.S. 433, 96 S.Ct. 3021 (1976). The Department of Justice policy follows this doctrine and permits use of evidence suppressed in an antecedent criminal matter in an administrative proceeding. *In re Emma Sandoval*, 17 I & N D. #2725 (BIA 1979). Therefore, Lipomi's second ground in opposition to revocation would not prevent the Administrator from considering suppressed evidence if he chose to do so.

Based upon these reasons, it is the decision of the Administrator to revoke the Certificate of Registration previously issued to Respondent and to deny any pending applications. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS7519474 previously issued to S. J. L. Drug Corporation d/b/a Brunell's Family Pharmacy, be, and it hereby is, revoked, and any pending applications for renewal of such registration are hereby denied.

Dated: December 23, 1983.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 83-36210 Filed 12-30-83; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington D.C. 20550. Telephone (202) 357–7934.

SUPPLEMENTARY INFORMATION: On November 17, 1983, the National Science Foundation published a notice in the **Federal Register** of a permit application received. On December 19, 1983 a permit was issued to: John L. Bengtson.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 83-34761 Filed 12-30-83; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Recommendation Responses From

Aviation—*Federal Aviation Administration: Nov. 9: A–83–1:* A notice will be published in the **Federal Register** of the FAA's intent to issue an advisory circular on the use of child restraints in aircraft, which will provide airlines and the general public with procedures to assure the safe use of DOT-approved seats in aircraft. *Nov. 21: A–80–53:* Extensive pitch axis modifications similar to those proposed in the Notice of Proposed Rulemaking on Learjet Model 24 series airplanes are not being considered for the Model 25 or 28/29. The puller/overspeed warning modification which was required as part of Airworthiness Directive 81–16–08 and AD 82–01–04, applicable to the Model 25 series, has been incorporated into the Learjet Model 28/29 production line. *Nov. 21: A–83–50 and 51:* Piper Aircraft Corporation will provide appropriate cautionary flight manual information, and possibly placards as well, for their various affected aircraft models regarding operation of the toe brakes and

their relationship to the parking brake. FAA plans to issue an Airworthiness Directive by mid-February 1984. *Nov. 21: A–83–56:* A Special Certification Review of the Mitsubishi MU–2 series aircraft has revealed four design areas that are possible contributing factors in MU–2 aircraft accidents. A Multiple Expert Opinion Team (MEOT) will be formed to review certain factors to determine the adequacy of crew complement, pilot ratings, and any other training or qualification process. A design review will be conducted of the fuel system, the landing gear warning system, the autopilot and trim system, and the icing protection system. Other systems may be included if service history or evaluation indicates a need for design review. *Nov. 28: A–79–7:* Issued Airworthiness Directive 79–12–02 on Jun. 21, 1979, requiring the inspection of the elevator stop bolts, verification of proper elevator travel, torquing of elevator stop bolt lock nuts, and painting or installation of a slip strip or torque seal. *Nov. 29: A–83–27 through 30:* Will review findings of special study of approaches for north entry into Washington National Airport. *Dec. 1: A–83–62:* Is drafting a Notice of Proposed Rulemaking to revise language in 14 CFR Parts 91 and 125 to be consistent with Parts 121 and 135 for users of aircraft who have voluntarily installed a CVR/FDR in their aircraft. *Dec. 1: A–76–51 and 52:* The SAE Inc., A–20 committee addressed the ignition/explosion mechanism involved with strobe light systems and incorporated an explosion containment requirement in Aerospace Standards 8017, "Minimum Performance Standard for Anticollision Light Systems." Issued Technical Standard Order TSO–C96, Anticollision Light System, on Jun. 22, 1982. *Dec. 2: A–83–34:* Will issue a special airworthiness alert to notify all the owners on record of the early Cessna 200 series airplanes of the recommendation to replace the throttle and mixture controls in accordance with Cessna Service Letter SE69–16. *Dec. 8: A–83–64 and 65:* Is reviewing with the manufacturer the problem associated with linkages to the fuel tank selector valve on certain Cessna airplanes. *Dec. 9: A–83–67, –68, and 69:* Is reviewing with the manufacturer the service history and design details relative to the Donaldson dry paper carburetor air filters. *Dec. 9: A–83–66:* Is reviewing with the manufacturer the problem associated with auxiliary fuel tank plugs on Maule M–4 and M–5 series airplanes. *Dec. 16: A–83–35 through 43:* Software for operational error detection is now in seven air route traffic control centers (ARTCC). Has created a Quality Assurance Division within the Air Traffic Service, recently conducted in-depth 4-week quality assurance evaluations at each ARTCC, and has stressed controller awareness of operational errors and the need for reporting these errors regardless of how small the separation infringement. Developing an operational error separation infringement classification system. Software modifications for the terminal Automated Radar Terminal System (ARTS) IIIA computers are in the design stage. *Dec. 16: A–83–63:* Based on information presented by the Canadian Department of Transportation, FAA does not recommend that a fleetwide survey of the Canadair CL–600 hydraulic system fluid be made. No modification to the hydraulic system is warranted. *Dec. 20: A–83–33:* Issued Notice of Proposed Rulemaking, Docket No. 83–NM–45–AD, on Jun. 24, 1983, that an Airworthiness Directive be issued to require accomplishment of Sundstrand Data Control Service Bulletin No. 23 concerning digital flight data recorder Model 573A.

State of Alaska Dept. of Transportation and Public Facilities: Dec. 9: A–80–97: Has improved the level of airport maintenance throughout the State, particularly in rural villages, and is continuing to upgrade maintenance levels to the extent permitted by our annual operating budget.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

December 28, 1983.

[FR Doc. 83–34730 Filed 12–30–83; 8:45 am]

BILLING CODE 4910–58–M

Availability of Recommendation Responses

Recommendation Responses from:

Highway—*National Highway Traffic Safety Administration: Dec. 12: H–83–53 through –59:* Recommendations concerning child motor vehicle passenger protection have been brought to the attention of appropriate officials of NHTSA for response.

American Association of Motor Vehicle Administrators: Nov. 9: H–83–31 through –33 and H–83–38: Agrees that AAMVA should coordinate development and implementation of nationwide programs for the safe transportation of hazardous materials on highways. Will seek funding from the NHTSA.

State of Maryland: Nov. 22: H–80–1: Had a 28-percent decline in alcohol-related highway fatalities from 1981 to 1982, and to date in 1983 has maintained and slightly improved upon this achievement. These saved lives are a more significant indicator of effectiveness in dealing with the drinking driver than conformity with an arbitrary and less effective definition of driving-while-intoxicated. *H–81–71:* The reconstructed I–95/495 interchange should be completed in 1990. *H–82–33:* Various State agencies, along with local government, railroad, and private safety organizations, participate in "Operation Lifesaver." An "Operation Lifesaver" committee has been established within the Safety Council of Maryland.

State of Iowa: Nov. 29: H–83–46 through –48 and H–83–39 through –41: Recommendations concerning schoolbus safety have been forwarded to Departments of Transportation and Public Instruction.

State of California: Nov. 3: H–83–39: A study of seatbelt usage in schoolbuses, conducted in 1975/76 by the Southwest Research Institute under California Highway Patrol contract No. C–208–75/76, concluded that seatbelts should not be installed in any category of bus. The costliness of implementing the recommendation must be weighed carefully against factual data and the benefits that can be expected. *H–83–40:* Regarding the transportation of children to and from school and school-related activities, State has such requirements. Regarding transportation to and from camps, day care centers, or similar locations, State requires an annual inspection of the maintenance facility or operational terminal of any person who at any time operates a bus to transport minors on organized outings. *H–83–41:* Regarding schoolbus driver seatbelt use, State already complies with recommendation.

State of Oregon: Nov. 10 H–83–39 through –41: Recommendations concerning schoolbus safety will be kept on file to be considered when developing bills to be introduced during the 1985 session of the Oregon legislature.

State of Connecticut: Nov. 8: H–83–39 through –41: When used for transportation of special education students, seat restraint systems are required by State regulation for 15-passenger non-schoolbuses. Drivers of schoolbuses are required to wear seatbelts.

State of Georgia: Nov. 18: H–83–39: The Georgia Association of Pupil Transportation believes that small schoolbuses with good structural integrity, that meet the static load test, do not need seatbelts for passengers. Some van conversions do not have such structural integrity. If study indicates these vehicles are unsafe, they should be banned rather than equipped with seatbelts. *H–83–40:* All public schoolbuses, regardless of size or capacity, are required to meet or surpass Federal Motor Vehicle Safety Standards and must comply with specifications mandated by the State Board of Education; this does not apply to nonpublic school transportation vehicles. *H–83–41:* Driver's seat is required to be equipped with a seatbelt which is to be used at all times when children are being transported on the bus. The importance of this law is being stressed in training program. *H–83–46:* All public schoolbuses are inspected annually and 235 schoolbuses are inspected monthly by Georgia State Patrol troopers who are selected for their mechanical ability and interest in schoolbus safety. Georgia law does not require inspection of nonpublic school transportation vehicles. *H–83–47:* Law prohibits driving a vehicle which is in an unsafe condition and not equipped properly. Occasional drivers should be as well-trained and as fully qualified as a regular driver. *H–83–48:* A fire extinguisher at the rear of the bus out of the immediate view and control of the driver could be misused by students, which could result in asphyxiation or eye injury.

State of New York: Nov. 18: H–83–39 through –41: Every motor vehicle having a seating capacity of not more than 12 school children, used for the transportation of children to and from public or private schools, must be equipped with seat safety belts. Vehicles are required to meet Federal standards. Vehicle safety inspections apply not only to vehicles being used in school service, but also vehicles being used for

transportation to and from day care centers, camps, etc. All vehicles being used for transporting children to and from school must be equipped with a seatbelt for the driver, and the driver is required to use it.

Dept. of Transportation, State of New York: Dec. 2: H–83–39 through –41: Would appreciate obtaining whatever information NTSB has available on seatbelts in schoolbuses to be reviewed by a School Bus Safety Advisory Committee.

Tennessee State Dept. of Education: Nov. 29: H–83–39 through –41 and H–83–46 through –48: Recommends: (1) That all Type II, Class A vehicles (10,000 lbs. GVW or less) be equipped with safety belts and that monitoring procedures be implemented to assure that both drivers and pupils are using this equipment; (2) that all Type II, Class A vehicles, when used to transport pupils to and from school, school-related events, camps, day care centers, meet all Federal standards applicable to small schoolbuses (Type B, 10,000 lbs. GVW or more); (3) that appropriate enforcement procedures be implemented to ensure that schoolbus drivers use the safety belts provided at all times when pupils are being transported; (4) that steps be taken to ensure that transportation supervisors, bus drivers, and schoolbus mechanics be employed in sufficient numbers to adequately supervise, operate and maintain schoolbuses to the end that all children are provided with safe, efficient, and economical transportation; (5) that all employees be subjected to appropriate screening, adequate training, and constant supervisory practices, and that the operation of schoolbus-type equipment on field trips and/or activity trips be entrusted to fully licensed, experienced, regular route bus drivers; (6) that all buses be fully repaired and thoroughly inspected prior to each trip and that a copy of the inspection report be presented to the district superintendent, school principal, or sponsoring agency official before the trip begins; (7) that each extracurricular trip bus be equipped with two fire extinguishers, that they be mounted in the front and rear of the bus, and that adequate instructions in the use of same be provided all on-board passengers and chaperones prior to departure.

State of Connecticut: Nov. 8: H–83–46 through –48: School bus inspectors are periodically given in-service training to insure compliance with policy and procedure and a uniform statewide inspection. All schoolbuses are required to have first-aid kits and fire extinguishers in the driver's compartment. Because of discipline and vandalism problems, does not feel that a fire extinguisher or other emergency equipment mounted in the rear of the bus would be very effective.

State of New York: Nov. 3: H–83–46 through –48: Schoolbus inspections are conducted by inspectors employed by the Dept. of Transportation who have no connection with the mechanical staff employed by school districts or school bus contractors. Inspections are required at least once every six months, and repair and maintenance records are examined each time a vehicle is offered for inspection. Will consider placing fire extinguishers at both the front and rear of schoolbuses. Drills on schoolbuses are required to be conducted at least three times during each school year, including practice and instruction in the location, use, and operation of the emergency door, fire extinguishers, first aid equipment and windows as a means of escape in case of fire or accident.

Department of California Highway Patrol: Dec. 9: H–83–46 through –48: Requires schoolbuses and school pupil activity buses to be inspected at least once each year by California Highway Patrol Motor Carrier Specialists, who must have had a minimum of five years' experience as heavy-duty journey level mechanics. They also audit inspection and maintenance records. Schoolbus and school pupil activity bus drivers are required to inspect their buses daily prior to operating and submit daily written reports. Requires schools to provide instruction to children transported from home to school concerning safe riding practices and emergency evacuation procedures; will consider amending regulations to include briefings to passengers on the use and location of emergency equipment before the start of an activity trip. Would need much more justification to mandate all schoolbuses to be equipped with two fire extinguishers, one at the front and one at the rear.

President of the Senate, Territory of Puerto Rico: Dec. 9: H–83–49 and –50: Referring recommendations concerning legislation to protect children traveling in motor vehicles to the Government Affairs Committee.

Senate of State of Louisiana: Dec. 6: H–83–49 and –50: Referring recommendations concerning legislation to protect children traveling in motor vehicles to the Committee on Transportation, Highways and Public Works.

Office of the Speaker, Wisconsin Legislature: Dec. 6: H–83–51: Referred recommendation concerning public information and education activities aimed at combating misuse of child safety seats to Dept. of Transportation.

State of Virginia: Dec. 12: H–83–51: Will bring the recommendations concerning public information and education activities aimed at combating misuse of child safety seats to the attention of the appropriate officials for their consideration.

Office of the Speaker, Michigan House of Representatives: Dec. 20: H–83–51: Office of Highway Safety Planning (Dept. of State Police) has: (1) Employed a full-time occupant restraint coordinator who conducts workshops for various groups, does television spots and public service announcements, and numerous other tasks relative to the correct usage of child restraints; (2) assembled a rental guide that gives readers pertinent information on where to rent safe car seats; and (3) developed brochures and pamphlets including "A Family Shopping Guide to Infant/Child Automobile Restraints" and "Loan a Seat for Safety: How to Establish and Operate an Infant and Child Restraint." The Department of State has developed brochures which include informaton about the State law, where a person can obtain a safety seat, and a guide to auto restraint systems.

Ohio Department of Highway Safety: Dec. 17: H–83–51: Began a media campaign and pilot project, "Make Sure They're Secure," in Sept. 1983 for public awareness and education specifically aimed at correcting misue of child safety seats.

State of Alabama: Dec. 20: H–83–51: Dept. of Public Safety has been instructed to include materials on the proper use of child seats under the auspice of its fiscal year 1984 Highway Safety Grant.

Senate Chamber, (Lieutenant Governor), State of Tennessee: Dec. 8: H–83–51: Referring recommendations concerning child motor vehicle passenger protection to Committee on Transportation.

State of Tennessee: Dec. 13: H–83–51: Referring recommendation concerning child motor vehicle passenger protection to State's Highway Safety Program for review.

State of Minnesota Dept. of Public Safety: Dec. 8: H–83–51: Employs a full-time Occupant Restraint Program Director to address the infant and child restraint use problem.

Speaker of the House of Representatives, State of Arkansas: Dec. 13: H–83–52: State does not mandate public awareness campaigns concerning use of child restraints.

State of Hawaii: Dec. 19: H–83–52: Dept. Of Transportation's Motor Vehicle Safety Office conducted a retraining workshop for operators of loaner programs and discussed installation and usage. The Child Transportation Coalition of Hawaii is working on a training program for police officers to motivate them to enforce the law and provide instruction to people they observe using child restraints incorrectly.

Chief Clerk of the Assembly, Nevada Legislature: Dec. 13: H–83–52: Will consider recommendation for public information and education activities specifically aimed at combating misuse of child safety seats during the 1985 legislative session.

Speaker, House of Delegates of Maryland: Dec. 8: H–83–52: General Assembly passed bill concerning child safety seats which states that the Depts. of Transportation and of Health and Mental Hygiene will implement the child safety seat program and foster compliance with this section through educational and promotional efforts.

Lieutenant Governor of Washington: Dec. 7: H–83–52: Will refer recommendation concerning public information and education activities specifically aimed at combating misuse of child safety seats to the proper Senate committees for consideration.

Speaker, House of Representatives, State of Hawaii: Dec. 22: H–83–52: Will consider recommendation concerning public information and education activities specifically aimed at combating misuse of child safety seats.

State of North Dakota: Dec. 20: H–83–52: Has an extensive public education program to ensure that the seat safety system is used according to the manufacturer's suggestions. The North Dakota Health Dept. and the Traffic Safety Division of the Highway Dept. have conducted eight regional training programs at day care centers, for Jayceettes, for all of the larger hospitals, county health nurses, and county extension offices. Letters and phone calls have been made to smaller hospitals and organizations and the film,

"The Perfect Gift," has been made available for showing at these gatherings.

Office of the Speaker, Ohio House of Representatives: Dec. 13: H–83–51: Acknowledges receipt of recommendation concerning public information and education activities specifically aimed at combating misuse of child safety seats.

"Strolee" of California: Dec. 12: H–83–60 and –61: Instruction sheets for child seats are under review for any possible revision to make them clearer and easier for the consumer to understand and use. They carry specific suggested height and weight usage for both the infant carrier position and child seating position. Some car seat models already carry the safety belt routing labels, and this is being incorporated to include all child restraint systems currently being manufactured.

Questor Juvenile Furniture Company: Dec. 14: H–83–60 and –61: Revision to instructions have been incorporated in all of its safety seats. Certain models include labels identifying the correct location and placement of the automobile lap belt. Other labels are attached to its child restraint devices in accordance with Federal Motor Vehicle Safety Standard 213 to illustrate proper installation of the devices in both front and rear automobile seating positions.

Collier-Keyworth Company: Dec. 19: H–83–60 and –61: Is attaching permanent labels to safety seats to identify correct safety belt routing points on its child restraint seats.

Kolcraft Products, Inc.: Dec. 8: H–83–60 and –61: Is reviewing the recommendations to review and revise instructions for use of child safety seats to improve their clarity, and to attach permanent labels to safety seats to identify correct safety belt routing points.

Century Products, Inc.: Dec. 7: H–83–60 and –61: Is reviewing the recommendations to review and revise instructions for use of child safety seats to improve their clarity, and to attach permanent labels to safety seats to identify correct safety belt routing points.

Note.—Single copies of these response letters are availble on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

December 28, 1983.

[FR Doc. 83-34040 Filed 12-30-83; 8:45 am]

BILLING CODE 4910-59-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautical Policy Review Committee; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), it is hereby determined that the establishment of the Aeronautical Policy Review Committee (APRC) is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, Office of Science and Technology Policy (OSTP), by the Presidential Science and Technology Advisory Organization Act of 1976 and other applicable laws. This determination follows consultation with the General Services Administration, pursuant to Section 9(a)(2) of the Federal Advisory Committee Act and GSA Interim Rule on Federal Advisory Committee Management (48 FR 19324, April 28, 1983).

1. *Name of Group:* Aeronautical Policy Review Committee.

2. *Purpose:* The purpose of the Aeronautical Policy Review Committee is to review for the Director, Office of Science and Technology Policy, the implementation of national aeronautical research and technology (R&T) policy. This is comprised of the recent Administration policy established as a result of the OSTP study on aeronautical R&T and by the goals and technical objectives of the National Aeronautics and Space Administration, the Department of Defense, Federal Aviation Administration, and the aeronautical industry. The Committee shall report annually the results of this review to the Director, OSTP. The Committee shall also advise on special aeronautical issues as directed by the Director, OSTP.

3. *Effective Date of Establishment and Duration:* The establishment of the Aeronautical Policy Review Committee is effective upon filing the charter with the Director, OSTP, and with the standing committees of Congress having legislative jurisdiction over the Office of Science and Technology Policy. The Committee will terminate on October 13, 1985, unless sooner extended.

4. *Membership:* Members of the Aeronautical Policy Review Committee shall be appointed by the Director, Office of Science and Technology Policy. That appointment shall be subject to review every 365 days unless earlier terminated. The Panel shall consist of no more than 17 members. The Director, OSTP, shall appoint a Chairman and Vice Chairman from the members of the Committee.

5. *Advisory Group Operation:* The Aeronautical Policy Review Committee shall operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the GSA Interim Rule on Federal Advisory Committee Management (48 FR 19324, April 28, 1983), and other directives and instructions issued in implementation of the Act.

Jerry D. Jennings,

Executive Director.

[FR Doc. 83-34755 Filed 12-30-83; 8:45 am]

BILLING CODE 3170-01-M

PENSION BENEFIT GUARANTY CORPORATION

Withdrawal of Pendency of Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: Libby, McNeill & Libby, Inc. (California Canners and Growers)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of withdrawal by PBGC of the notice of pendency of request.

SUMMARY: On May 10, 1983, the Pension Benefit Guaranty Corporation published a notice of pendency in the **Federal Register**, 48 FR 21031, soliciting public comment on a request PBGC had received from Libby, McNeill & Libby, Inc. ("Libby") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. The exemption request concerned a sale and lease of certain assets by Libby to California Canners and Growers ("Cal Can").

In response to the notice, PBGC received one comment, which provided information to the effect that the purchaser, Cal Can, had filed a petition under Chapter 11 of the Federal Code of Bankruptcy. The petition appears to have been filed after publication of the notice of pendency. Thereafter, pursuant to 29 CFR 2643.2(d), PBGC requested from Libby updated financial information on Cal Can, including details on the most recent financial developments concerning Cal Can. A representative of Libby has indicated that the information is not at this time available. Without this information, PBGC is unable to determine whether the exemption will significantly increase the financial risk to the plans (29 CFR 2643(a)(2)). Therefore, PBGC has concluded that it must withdraw from the public the notice of pendency on this matter. The effect of this notice is to advise interested persons that PBGC will take no further action on the request.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Attorney, Corporate Planning and Program Development Department (140), Pension Benefit

Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254–4862. [This is not a toll-free number.]

Issued at Washington, D.C., on December 23, 1983.

Charles C. Tharp,

Acting Executive Director,

Pension Benefit Guaranty Corporation.

[FR Doc. 83-34760 Filed 12-30-83; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-8029]

The Ryland Group, Inc.; Application To Withdraw From Listing and Registration

December 28, 1983.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of The Ryland Group, Inc. ("Company"), Common Stock, $1 Par Value, is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on November 22, 1983, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 19, 1984 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34833 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

[SR-NSCC-83-13; Rel. No. 20516]

Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corp.

December 28, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), the National Securities Clearing Corporation ("NSCC"), on November 28, 1983, filed with the Commission a proposed rule change that would modify NSCC's over-the-counter ("OTC") trade comparison system. The Commission is publishing this notice to solicit comments from persons interested in the proposed rule change.

The NSCC comparison process [1] for OTC transactions begins when NSCC members submit to NSCC trade data on the first day after trade date ("T+1"). This trade data includes: (1) Identification of the major side and minor side executing brokers and clearing members; and (2) the volume and value of the trade. On the night of T+1, NSCC validates and matches this trade data, arriving at a Contract List that is provided to NSCC members on the morning of T+2. These Contract Lists categorize trade data into compared, uncompared, and advisory items. When a member receives an advisory notice, which shows the trade data as submitted by a *contra* party, the member may agree to the trade by stamping the notice and returning it to NSCC on T+2 or T+3. After T+1, NSCC provides its members with supplemental comparison mechanisms other than the initial advisory process.[2]

For T+1 trade data, NSCC currently performs a two-step comparison process. First, NSCC attempts an exact match of the data submitted, comparing the clearing and executing brokers and the quantities and prices submitted by each side. If a transaction remains uncompared, NSCC then will summarize the trade data with respect to the quantity of shares traded for each clearing broker by each executing broker. When the clearing and executing broker information matches, NSCC will attempt to match quantities, either fully or partially. (For the supplemental trade services, *e.g.*, Withholds and Demand As-Ofs, NSCC currently performs only the first step.)

Under the NSCC proposal, an additional step would be added to the comparison process for all trade data. In this step, NSCC will ignore the major and minor executing broker data. Trades then will be compared based on the identities of the clearing broker.[3] When a trade is compared as a result of this step, NSCC will indicate that fact on the Contract Lists.[4]

NSCC indicates that the new comparison procedure will reduce the number of uncompared OTC trades. Under the proposal, NSCC now will be able to compare trades that previously would have been uncompared because of inaccurate executing broker data. NSCC states that some of its participants have developed informal agreements by which they automatically accept advisory notices. As a result of these arrangements, rather than correcting inaccurate executing broker data or other incorrect data, they use the advisory process to generate a contract.[5] Under the proposal, however, NSCC believes that participants will be able, for the first time, to know specifically from the notations on the Contract Lists that executing broker data did not match. Through that notation process, NSCC believes that it

[1] The NSCC Comparison process is described in Section II of NSCC's Procedures.

[2] Besides the first advisory process, supplemental comparison mechanisms include Withholds, Demand Withholds, As-Ofs, and Demand As-Ofs. *See* Section II of NSCC's Procedures for a detailed discussion of each mechanism.

[3] For example, suppose that, on T+1, Clearing Broker A submits data showing that Executing Broker X has three purchases of 100, 200, and 300 shares against Clearing Broker B and Executing Broker Y. Clearing Broker B submits data showing that Executing Broker Y had one sale of 600 shares to Executing Broker X, Clearing Broker A. In the first step NSCC would attempt an exact match of the data submitted, but this would result in an uncompared trade. In the second step, NSCC would summarize the quantity of shares traded by Executing Broker X (600) and find a matched trade with the data submitted by Clearing Broker B. Under the proposed rule change, for trades that do not match on executing broker data, but do match on clearing members and quantity of shares traded, NSCC will generate a comparison. Thus, if Clearing Broker A submits the same data as above, but Clearing Broker B submits a trade of 600 to Executing Broker F, Clearing Broker A, a compared trade would be generated.

[4] Asterisks will be inserted in place of executing broker data for T+1 trade data that is compared through this step. For supplemental trade services, supplemental contract lists will indicate whenever compared trades result from the third step.

[5] To ensure simplicity of use during high volume periods, advisory notices do not identify which data field is incorrect.

will be facilitating participants' identification of the incorrect data. Finally, NSCC notes that while executing broker data will not be essential to the comparison process, participants still will be obligated to submit to NSCC for comparison correct executing broker data.

NSCC states that the rule change effects a change in an existing NSCC service that does not adversely affect either the safekeeping of securities in NSCC's control or for which it is responsible. The proposed rule change has become effective under Section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder. At any time within sixty days of the filing of the proposal, the Commission can summarily abrogate the rule change if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

If you wish to comment on the proposal, please submit your written comments to the Commission within twenty-one days from the date this notice is published in the **Federal Register**. Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Please make sure that your comments refer to File No. SR–NSCC–83–13.

Copies of the filing, exhibits, and comments can be inspected at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing also are available at NSCC's principal office.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34834 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–20513; File No. SR–CBOE–83–61]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1983, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of Proposed Rule Change

Deletions are bracketed, there are no additions.

"Crossing" Orders

Rule 6.74 (a)(i) through (a)(iii) no change.

(b)(i) and (b)(ii) no change.

(iii) After providing an opportunity for such bids and offers to be made, the Floor Broker must, on behalf of the public customer, either bid above the highest bid in the market or offer below the lowest offer in the market, identify the order as being subject to facilitation, and disclose all terms and conditions of the public customer order. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer, the Floor Broker may cross all or any remaining part of the public customer order and the facilitation order at the public customer's bid or offer by announcing in public outcry that he is crossing and by stating the quantity and price(s). Once such bid or offer has been made, the public customer order has precedence over any other bid or offer in the crowd [at the same price], to trade immediately with the facilitation order.

(c) no change.

. . . Interpretations and Policies:

.01 through .03 no change.

[.04 Where a related transaction must be effected in another market, that transaction must be effected prior to effecting the options transaction.]

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Commission recently approved the Exchange's Proposed Rule Change, File No. SR–CBOE–83–04, which amended, among other things, Rule 6.74, the cross rule. Based upon experience with implementation of the revised provisions, the two modifications reflected in this new rule change appear appropriate.

Rule 6.74(b) establishes the procedure for a customer facilitation cross transaction. When the floor broker representing a facilitation order enters the crowd, he is to first ask for a market from the crowd. After the market is established, he then announces the terms of the facilitation order. For example, the floor broker asks for a market in an option series, and the best market announced in the crowd is 2 bid—2¼ offer. The floor broker announces a facilitation cross of 100 option contracts at 2⅛, the customer bidding 2⅛ and the firm offering at 2⅛. Under Rule 6.74, persons in the trading crowd and orders represented in the trading crowd can accept the customer's bid or offer, but cannot block the customer side of the order by changing the established market of 2 bid to 2⅛ or higher.

The last sentence of Rule 6.74(b)(iii) emphasizes that the customer side of the facilitation order cannot be blocked by revision in the trading crowd's market: "Once such bid or offer has been made, the public customer order has precedence over any other bid or offer in the crowd at the same price, to trade immediately with the facilitation order." However, placement of the phrase "at the same price" in that sentence has caused confusion. Contrary to the intent of the rule, some traders have inferred that this creates a second opportunity for a market quotation, which, if *better* than the customer side of the facilitation order, would halt the customer's facilitation order from being transacted. In the above illustration, this interpretation would permit blocking the customer bid of 2⅛ by moving the market up to 2¼ bid, under the argument that the rule provides that the customer order only has precedence "at the same price". Because this interpretation is contrary to the Exchange's intent, the rule is being interpreted as not permitting such a market revision to block the customer's order. Elimination of the phrase "at the same price" will clarify the rule's intent and codify the Exchange's current interpretation.

Interpretation .04 to Rule 6.74 was intended to avoid fixing the price of the stock portion of a stock-option transaction on the Exchange's trading floor. Initial experience has demonstrated that flexibility in executing such orders warrants elimination of this interpretation, and will avoid technical rule violations which are unrelated to the provision's purpose. In addition, the American

Stock Exchange option facilitation rule does not contain such a limiting provision. Accordingly, elimination of this provision is also in the interest of having consistent rules on the various options exchanges.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 23, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34831 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20514; File No. SR-CBOE-83-41, 42, 45-52, 54-60]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1983, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit CBOE to list and trade standardized put and call options on the following narrow-based (or "industry") indexes published by Standard & Poor's Corporation ("S&P"). The indexes are widely recognized and followed by the securities industry.

1. Financial
2. Transportation
3. Utilities
4. Aerospace
5. Drugs
6. Gold
7. Entertainment
8. Gaming
9. Retail Stores-Gen'l Mdse
10. Banks (NYC & Outside NYC)
11. Communication Equip/Mfrs.
12. Telephone
13. Air Transport
14. Computer & Business Equip. (Excl. IBM)
15. Automobiles
16. Restaurants
17. Steel

Options on the indexes will be traded within the general framework of Exchange rules for trading industry index options. Contract specifications are as follows; an index miltiplier of 100; 5 point exercise price intervals; if the Commission approves SR-CBOE-83-38 expiration will be in consecutive months, otherwise at three-month intervals in the March-June-September-December cycle.

Presently the Indexes are disseminated in various S&P publications. Before trading begins, CBOE will assure the index values are disseminated by various securities information vendors throughout the day. The final index values reported by S&P will be the closing index values as defined in Rule 24.1(g). The Exchange has designated S&P as the reporting authority as that term is defined in Rule 24.1(h).

A major use of the indexes is as a standard for comparison of the performance of individual stocks within each the index. Each stock in the index must represent a viable enterprise and must be representative of the industry group to which it is assigned. Its market price movements must in general be responsive to changes in the industry. Aggregate market value of the stock and its trading activity are important considerations in the selection process. Judgments as to the investment appeal of the stocks do not enter into the selection process.

Each stock in the Indexes are weighted by the number of shares outstanding, and the level of the Indexes at any time represents the quotient of the aggregate market value of their component stocks multiplied by the base index then divided by their aggregate market value (adjusted for certain capitalization changes) as of the base period when the indexes were established.

This proposed rules change covers a family of index options that CBOE will seek permission to trade. CBOE does not intend to begin trading every option as soon as authority is received for the option to be listed; new options will be introduced at a reasonable and orderly pace.

The statutory basis for the proposed rules change is Section 6(b)(5) of the Exchange Act in that these options will serve the public investors by enabling investors to hedge against risk associated with a particular industry. For example, an investor may believe that a particular stock will outperform its industry but is concerned that the price of that stock could decline as a result of factors affecting the industry as a whole. The investor could hedge against the industry component of risk by buying a put option on that industry group.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not create any burden on competition among exchanges that is not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date is it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 23, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34835 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements for OMB Review

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received on or before January 30, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

COPIES: Copies of the proposed surveys and forms, the requests for clearance (S.F. 83), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer:

Elizabeth M. Zaic, Small Business Administration, 1441 L St. NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653–8538.

OMB Reviewer:

J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–4814.

Forms Submitted for Review:

Title: Survey of Government Contractors to Assess Level of Subcontracting to Small Business
Frequency: One time, nonrecurring.
Description of Respondents: Prime contractors and subcontractors
Annual Responses: 1,875
Annual Burden Hours: 938
Type of Request: New

Title: SBDC Case Record Form
Form No.: SBA 1394
Frequency: Annually
Description of Respondents: Clients at time of counseling assistance
Annual Responses: 50,000
Annual Burden Hours: 22,000
Type of Request: New

Title: SBIR Mailing List and Confirmation Request
Form Nos.: SBA Form 1386
Frequency: On occasion
Description of Respondents: Small business concerns
Annual Responses: 60,000
Annual Burden Hours: 1,000
Type of Request: New

Dated: December 27, 1983.

Richard Vizachero,

Acting Chief, Paperwork Management Branch, Small Business Administration.

[FR Doc. 83-34838 Filed 12-30-83; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received on or before January 31, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

COPIES: Copies of the proposed forms, the requests for clearance (S.F. 83), supporting statements, instructions, transmittal letter, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer

Elizabeth M. Zaic, Small Business Administration, 1441 L St,. NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653–8538.

OMB Reviewer

J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

Forms Submitted for Review

Title: Disaster Loan Authorization and Agreement
Form Nos.: SBA 1366 and 1391
Frequency: On Occasion
Description of Respondents: Borrowers
Annual Responses: 14,500
Annual Burden Hours: 49,625
Type of Request: Revision

Dated: December 27, 1983.

Richard Vizachero,

Acting Chief, Paperwork Management Branch, Small Business Administration.

[FR Doc. 83-34154 Filed 12-30-83; 8:45 am]
BILLING CODE 8025-01-M

Senior Executive Service Performance Review Boards; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this Agency's Senior Executive Service Performance Review Boards for fiscal year 1984.

SUMMARY: Pub. L. 95-454 dated October 13, 1978, (Civil Service Reform Act of 1978) requires that Federal Agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Board (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

Primary Performance Review Board

Harry S. Carver, Comptroller
Donald R. Templeman, Assistant Administrator for Innovation, Research and Technology
Janice E. Wolfe, District Director, Washington District Office
James N. Thomson, Associate Administrator for Management Assistance
Stephen J. Hall, Regional Administrator, Seattle Regional Office
Richard L. Osbourn, Director of Personnel; Technical Advisor (Nonvoting Member)
George H. Robinson, Director of Equal Employment Opportunity and Compliance; EEO Advisor (Nonvoting Member)

Alternate Performance Review Board

The following executives will review the Senior Executive Service ratings of the members of the Primary PRB:

Charles Hertzberg, Deputy Associate Administrator for Financial Assistance
Donald Young, Deputy General Counsel
Carlos Suarez, Regional Administrator, Denver Regional Office

Inspector General Performance Review Board

A separate PRB consisting of members from Inspector General Offices in other agencies and a member of SBA's Senior Executive Service has been appointed to review appraisals of executives assigned to the Office of the Inspector General:

Donald Kirkendall, Assistant Inspector General for Audit, Department of Housing & Urban Development
Robert B. Webber, General Counsel
Robert Hudak, Assistant Inspector General for Management & Fraud Control, Department of Housing & Urban Development; Alternate
Donald Dougherty, Assistant Inspector General for Investigations, National Aeronautics & Space Administration; Alternate

James C. Sanders,

Administrator.

[FR Doc. 83-34839 Filed 12-31-83; 8:45 am]
BILLING CODE 8025-01-M

[Proposed License No. 02/02-0472]

Croyden Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an Application has been filed with Small Business Administration pursuant to Section 107.102 of the Regulations governing Small Investment Companies pursuant to § 107.102 of Revision 6 of the SBA Regulations [48 FR 45014 (September 30, 1983)] under the name of Croyden Capital Corp., Suite 2165, 45 Rockefeller Plaza, New York, New York 10020, for a license to operate as a small business investment company, under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and their shareholders are as follows:

Harry Freund, 45 Rockefeller Plaza, New York, New York 10020—Chairman of the Board & Director
Victor L. Hecht, 2019 Repley Lane, Merrick, New York 11566—President, Treasurer Director
Jay Goldsmith, 45 Rockefeller Plaza, New York, New York 10020—Vice Chairman, Secretary, Director
Don Cecil, 1114 Avenue of the Americas, New York, New York—Director
Singer Investments, S.A., London, England

All of the above may own in excess of 10 percent of the common stock.

Singer Investments, S.A. is a wholly owned subsidiary of Singer & Friedlander, Ltd., a merchant bank located in London, England.

At this time it is unknown who the other stockholders will be.

The Applicant will begin with capitalization of $1,050,000 which will be the source of both equity and debt financing to qualified small business concerns for expansion and working capital. The applicant does not intend to use the services of an investment adviser but will provide consulting services to its clients and other small concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management and owner, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this notice submit to SBA in writing relevant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-34837 Filed 12-30-83; 8:45 am]
BILLING CODE 8025-01-M

Small Business Investment Co; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is

anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State Usury ceilings. and to its forfeiture and penalty provisions.

Effective January 1, 1984, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 11.995% per annum.

Dated: December 27, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-34836 Filed 12-30-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 23, 1983.

On December 23, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Comptroller of the Currency

OMB Number: 1557–0100
Form Number: FFIEC 009
Type of Review: Revision
Title: Country Exposure Report
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Cathy Thomas,

Departmental Reports Management Office.

[FR Doc. 83-34806 Filed 12-30-83; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

December 23, 1983.

On December 23, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Office of the Secretary

OMB Number: None
Form Number: None
Type of Review: Existng Collection
Title: Financial Recordkeeping and Reporting of Currency and Foreign Transactons (ccmmonly referred to as the Bank Secrecy Act)

Internal Revenue Service

OMB Number: 1545–0008
Form Number: W–3cPR
Type of Review: Revision
Title: Wage and Tax Statement
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph A. Donahue,

Departmental Reports Management Office.

[FR Doc. 83-34805 Filed 12-30-83; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

December 21, 1983.

On December 21, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535–6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0291
Form Number: ATF Rec 5110/14
Type of Review: Existing Regulation
Title: Alcohol Fuel Plants—Letterhead Applications and Notices Relating to Operations

OMB Number: 1512–
Form Number: ATF Rec 5000/4
Type of Review: Existing Regulation
Title: Application for Awards Under the Equal Access to Justice Act

Internal Revenue Service

OMB Number: 1545–0057
Form Number: 1024
Type of Review: Revision
Title: Application for Recognition of Exemption Under Section 501(a)

OMB Number: 1545–
Form Number: None
Type of Review: Existing Regulation
Title: Requests for Copies of Written Determinations

OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph A. Donahue,

Departmental Reports, Management Office.

[FR Doc. 83-34804 Filed 12-30-83; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 500]

Change of Title

This Notice announces that the position of Regional Regulatory Administrator is retitled Regional Director (Compliance). This change of title shall be effective January 2, 1984.

Signed: December 28, 1983.

W. T. Drake,

Acting Director.

[FR Doc. 83-34818 Filed 12-30-83; 10:27 am]

BILLING CODE 4810-31-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds; Southeastern Casualty and Indemnity Insurance Company, Inc.]

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company

under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $304,000 has been established for the company.

Name of Company:
Southeastern Casualty and Indemnity Insurance Company, Inc.

Business Address:
1512 E. Broward Blvd.
Ft. Lauderdale, FL 33301

State of Incorporation:
Florida

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30540 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, D.C. 20226.

Dated: December 23, 1983.

W. E. Douglas,

Commissioner.

[FR Doc. 83-34783 Filed 12-30-83; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 1
Tuesday, January 3, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 5, 1984, Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Policy on Release on Consumer Complainant Data

The Commission will consider issues related to the release of consumer complainant data.

2. Enforcement Matter OS #5067

The staff will brief the Commission on issues related to enforcement matter OS #5067.

3. Enforcement Matter OS #4540

The Commission will consider issues related to enforcement matter OS #4540.

For a recorded message containing the latest agenda information call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207, (301) 492–6800.

[S–1810–83 Filed 12–29–83; 3:39 pm]

BILLING CODE 6355–01–M

2

POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, January 9, 1984, in Washington, D.C., and at 8:30 a.m. on Tuesday, January 10, 1984, in the Benjamin Franklin Room, 11th floor, Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, D.C. As indicated in the following paragraph, the January 9 meeting is closed to public observation. The January 10 meeting is open to the public. The Board expects to discuss the matter stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245–3734.

At its meeting on December 5–6, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for January 9. (See 48 FR 56305, December 20, 1983.) The agenda items of the meeting to be closed concern (1) discussion of Board personnel matters; and (2) strategic planning in connection with collective bargaining.

Agenda:

Monday Session, January 9: (Closed)

1:00 p.m.:

1. Discussion of Board personnel matters.
2. Strategic Planning—Collective Bargaining.

Tuesday Session, January 10: (Open)

8:30 a.m.:

1. Minutes of the Previous Meeting, December 5–6, 1983.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. Selection of Chairman and Vice Chairman. (Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and Vice Chairman.)
4. Appointment of Committee Members by Chairman. (The Bylaws also provide that the terms of the Chairman and members of the several committees of the Board expire at the end of this meeting.)
5. Annual Report on Open Meetings Compliance. (Mr. Harris will present for approval by the Board the Annual Report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)
6. Consideration of a proposed rulemaking regarding deposit of E-COM messages in Serving Post Offices (SPOs).
7. PRISM. (Mr. Hagburg, Assistant Postmaster General, Delivery Services Department, will brief the Board on the Program for Retail Information Systems Management.)
8. Capital Investment Projects:

a. Quarter-ton Light Delivery Vehicles
b. Automation—Phase II

(Mr. Hagburg will present the proposal for the purchase of 1,000 right-hand drive light delivery vehicles, and Mr. Jellison will present the proposal for Phase II of the Automation System.)

9. Review of schedule of 1984 Board of Governors' Meetings.
10. Consideration of a Tentative Agenda for the February 8–9, 1984 meetings for the Board in Los Angeles, California.

David F. Harris,

Secretary.

[S–1809–83 Filed 12–29–83; 10:35 am]

BILLING CODE 7710–12–M

federal register

Tuesday
January 3, 1984

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 524

Progress Reports of Inmates; Final Rule

28 CFR Part 524

Classification and Program Review of Inmates; Final Rule

28 CFR Part 548

Religious Beliefs and Practices of Inmates; Proposed Rule

28 CFR Parts 511 and 551

Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors; and Marriages of Inmates; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

Control, Custody, Care, Treatment, and Instruction of Inmates; Progress Reports

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Progress Reports. The rule discusses the type of progress reports used by the Bureau to maintain current information on an inmate. The progress report is intended to summarize information relating to the inmate's adjustment during confinement, program participation, and readiness for release.

EFFECTIVE DATE: February 6, 1984.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing its final rule on Progress Reports. A proposed rule on this subject was published in the **Federal Register** January 12, 1979 (at 44 FR 2981 et seq.). Interested persons were invited to submit comment on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. *Section 524.40*—Final § 524.40 is revised. Deleted from the final rule are specific references to staff regularly preparing progress reports, to discussion of an inmate's response to confinement, and to discussion of the inmate's offense and background. The revised rule more accurately describes the purpose and scope of the progress report, to summarize information relating to the inmate's adjustment during confinement, program participation, and readiness for release. The inmate's individual situation determines when a progress report is prepared. The last sentence of proposed § 524.40 is deleted, since a progress report ordinarily is not intended to decide on institutional programs for an inmate. The purpose for each type of progress report is described in § 524.41.

2. *Section 524.41*—Final § 524.41 is retitled "Types of Progress Reports". Proposed § 524.41(a), concerning an annual progress report, is deleted. This report is not necessary. In addition to the progress reports described in the final rule, each inmate receives a program review at least once every 180 days (see Part 524, Subpart B). This ensures a regular review of the inmate's status. New final § 524.41(a)–(e) identifies progress reports prepared by the Bureau of Prisons. Proposed § 524.42 discussed parole progress reports. Final § 524.41(a)–(c) identifies three types of parole progress reports. A report for an initial parole hearing is prepared when the Bureau's staff summary (classification report) on the inmate is more than 90 days old. Statutory interim/two-thirds review are progress reports prepared for use of the U.S. Parole Commission (see 28 CFR 2.14, 2.53). The pre-release record review is also a report prepared for, and mailed to, the U.S. Parole Commission at least six months prior to the inmate's presumptive parole date. Final § 524.41(d) discusses transfer reports and generally reflects proposed § 524.43, which is now deleted. Final §524.41(e) recognizes that other progress reports (for example, upon request of the court) may occasionally be required.

3. *Section 524.42*—Proposed § 524.44 is revised and becomes final § 524.42. The final rule requires that the inmate central file contain a copy of each progress report prepared on an inmate. The current progress report is to contain a summary of important information reflected in earlier progress reports. Deleted from the revised rule is the statement that all earlier progress reports be destroyed. This revision is compatible with comments received on proposed § 524.42. One commenter suggested that retention of progress reports allows for a "valuable comparison over time". Two other comments, submitted by inmates in federal institutions, also supported the retention of progress reports.

4. *Section 524.43*—Final § 524.43 is retitled "Content of Progress Reports" and identifies information to be included in a progress report prepared on an inmate. One segment of proposed § 524.41(b)(1) becomes final § 524.43(a) and now reads "committed name" as opposed to "name". The other segment of proposed § 524.41(b)(1) and § 524.41 (b)(2)–(b)(12) are in final § 524.43 (a)–(c) and (e)–(n). Final § 524.43(e) reads "offense(s) for which committed" as opposed to "offense" in the proposed rule. Final § 524.43(i) clarifies proposed § 524.41(b)(7) by specifying extra good time "earned". Final § 524.43(k) substitutes the phrase "Tentative release date" for "current mandatory release date" used in proposed § 524.41(b)(9). Final § 524.43(n) requires information on co-defendants to be included in the progress report "when possible". Final § 524.43(d) is new and requires staff to identify the inmate's present security and custody level. Final § 524.43(o) requires the current progress report to contain a summary of the most significant information from earlier reports. This revision encompasses language previously included as part of proposed § 524.41(b). Final § 524.43(p) replaces proposed §524.41(c). The final rule requires staff to summarize significant new information. Proposed § 524.41 (c)(1) through (c)(3) is deleted as a determination on "significant new information" depends more on the inmate and the specific situation than on identification of standard topics. This change is consistent with the thrust of a comment on proposed § 524.41 (c)(1) and (c)(3). Proposed § 524.41(d) and the equivalent language in proposed § 524.41(b) are deleted as final § 524.43(q) identifies areas ordinarily reviewed within the context of institutional adjustment. These include identification of the program plan, work assignments (including information on the inmate's specific work skills), educational/vocational participation, relationship with staff (interactions), incident reports, any community program involvement, institutional movement (transfers), and the physical and mental health of the inmate. Proposed §524.41(e) is deleted as staff analysis and an interpretation of information based on the inmate's abilities is not a general purpose of the progress report and is to be included only when relevant to a specifically discussed aspect. Proposed § 524.41(f) becomes final § 524.43(q)(8). The final rule requires staff to include information on any significant mental or physical health problem, and on any corrective action taken. The intent of proposed §§ 524.41(g) and 524.42 (a)(1) and (a)(2) is now encompassed within final § 524.43(r). This requires staff to request, where appropriate (for example, for an

inmate requesting parole as opposed to a community treatment center placement), the inmate to provide a specific release plan. This ordinarily includes information on the inmate's planned residence and employment. Deleted is the specific reference to an advisor (inmate may provide if has one) and to the U.S. Probation Officer (probably not known by inmate). The final rule expects staff to identify both available release resources and any particular problems that may be present in planning for an inmate's release. Reference in the proposed rule to pre-release program is deleted from the final rule. Pre-release involvement may be discussed in other sections of the progress report.

Proposed § 524.42 (a)(3) and (a)(4) are deleted, with final § 524.43(s), "parole recommendation", indentifying current Bureau procedures. Accordingly, the final rule states that no recommendation is made by the Bureau in connection with an inmate's initial appearance before the U.S. Parole Commission. Where the U.S. Parole Commission has established an effective or presumptive parole date, Bureau of Prisons staff ordinarily will not recommend that the designated date either be affirmed or changed. If a change is recommended, staff are to fully explain in the progress report the reason for this recommendation. Proposed § 524.42(b) is deleted from the final rule as its substance is considered inappropriate in a rule on progress reports.

A commenter on the proposed rule expressed concern that the emphasis on residence, employers, and resources will result in longer incarceration for the poor and for minorities, and a shorter incarceration for the well-to-do. An inmate's release date is established by, and based on, parole guidelines of the U.S. Parole Commission (see 28 CFR 2.20). Inclusion of an inmate's parole plan within a progress report assists the inmate by providing concerned parties with relevant information. It is not intended, nor is it expected, to impact adversely on whether or not the inmate is released.

5. *Section 524.44*—Comments suggested that the inmate receive a copy of his/her progress report(s). Final § 524.44, "Inmate's Access to Progress Reports", is new. It allows the inmate, upon request, to read and/or receive a copy of the progress report completed on that inmate. Staff will request the inmate sign the original progress report to acknowledge having received and/or read the report. Where the inmate refuses to do this, staff are expected to document the refusal on the progress report. The final rule also allows an inmate to receive a copy of any existing progress report, prepared after October 15, 1974. Because recent Bureau policy was to destroy all prior progress reports, upon completion of the new report, this provision will primarily apply to inmates returned to custody following an extended period in the community.

List of Subjects in 28 CFR Part 524

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: December 22, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

Amend Subchapter B of 28 CFR, Chapter V as follows: In Subchapter B, add a new Subpart E to Part 524.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

Subpart E—Progress Reports

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

* * * * *

Subpart E—Progress Reports

§ 524.40 Purpose and scope.

The Bureau of Prisons maintains current information on each inmate through progress reports completed by staff. The progress report summarizes information relating to the inmate's adjustment during confinement, program participation, and readiness for release.

§ 524.41 Types of progress reports.

The Bureau of Prisons prepares the following types of progress reports.

(a) *Initial Hearing*—prepared for an inmate's initial parole hearing only if the staff summary (classification report) is more than 90 days old.

(b) *Statutory Interim/Two-Thirds Review*—prepared for a parole hearing conducted 18 or 24 months following a hearing at which no effective parole date was established, or for a two-thirds review (see 28 CFR 2.53).

(c) *Pre-Release Record Review*—prepared for and mailed to the Regional Parole Commissioner at least six months prior to the inmate's presumptive parole date.

(d) *Transfer Report*—prepared on an inmate recommended for transfer to a community treatment center (CTC) or to another institution and whose progress has not been summarized within the previous three months.

(e) *Other*—prepared for any reason other than those previously stated in this section. The reason (e.g., court request, clemency review) is specified in the report.

§ 524.42 Retention of reports.

Staff shall maintain in the inmate central file a copy of each progress report prepared on the inmate. The most current report is to include a summary of important information from the previous progress reports.

§ 524.43 Content of progress reports.

Staff shall include the following information in each progress report prepared on an inmate:

(a) Committed name;

(b) Registration number;

(c) Age;

(d) Present security and custody level;

(e) Offense(s) for which committed;

(f) Sentence;

(g) Date of commencement of service of sentence;

(h) Time served to date, including jail time credit;

(i) Extra good time earned;

(j) Good time withheld or forfeited;

(k) Tentative release date;

(l) Most recent Parole Commission action, including any special requests or requirements;

(m) Detainers and pending charges on file;

(n) Names of the inmate's co-defendant's, and, when possible, their sentence, present location, and any Parole Commission action;

(o) Summary of the most significant information (program achievements, major disciplinary actions, etc.) from prior progress reports;

(p) Summary of significant new information;

(q) Institutional adjustment; this ordinarily includes information on the inmate's:

(1) Program plan;

(2) Work assignments;

(3) Educational/vocational participation;

(4) Relationship with staff;

(5) Incident reports;

(6) Community program involvement, if any;

(7) Institutional movement; and

(8) Physical and mental health, including any significant mental or physical health problems, and any corrective action taken;

(r) Release planning:

(1) Where appropriate, staff shall request that the inmate provide a specific release plan;

(2) Staff shall identify available release resources (including CTCs) and any particular problem that may be present in release planning; and

(s) Parole recommendation:

(1) Staff recommendations are not made on an inmate's initial appearance before the Parole Commission;

(2) Where the Parole Commission has established an effective or presumptive parole date, Bureau of Prisons staff ordinarily will not recommend that the designated date either be affirmed or changed. If a change is recommended, staff shall fully explain in the progress report the reason for this recommendation.

§ 524.44 Inmate's access to progress reports.

Upon request, an inmate may read and receive a copy of any progress report prepared on that inmate after October 15, 1974. Staff shall request the inmate sign and date the original. If the inmate refuses to sign the progress report, staff witnessing the refusal shall document this refusal on the original of the form.

[FR Doc. 83-34749 Filed 12-30-83; 8:45 am]
BILLING CODE 4410-05-M

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28 CFR Part 524

Control, Custody, Care, Treatment, and Instruction of Inmates; Classification and Program Review of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is amending its final rule on classification and program review of inmates. The amendments are intended to refine and/or clarify existing rules. The amendments primarily concern membership on the classification team, the inmate's initial classification, subsequent program reviews, and the effect of a detainer on an inmate's program.

EFFECTIVE DATE: February 6, 1984.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is making final amendments to its rule on classification and program review of inmates. These amendents were published as proposed rules in the **Federal Register** April 29, 1983 (at 48 FR 19576 et seq.). They are intended to improve the Bureau's existing rules. In an effort to provide more classroom instruction, § 524.11(a) deletes the requirement that an education representative be a mandatory member of the classification team. Section 524.12, retitled "Initial classification", is revised. Specifically, the first sentence of existing § 524.12(d) becomes the first sentence of new § 524.12(c). The reference to the classification packet in existing paragraph (c) is deleted as the program review report discusses the inmate's program. Section 524.12(c) now includes a statement that all sentenced inmates who are physically and mentally able are to be assigned to a work program at the time of initial classification. As revised, the final rule states that with the exception of the work assignment, or where program involvement is mandated by statute (for example, the Youth Corrections Act) or by Bureau policy (for example, the Audit Basic Education (ABE) Program), an inmate may choose not to participate in the offered program.

Section 524.13 is revised. Existing § 524.13(a)(2)(v) used U.S. Parole Commission's guidelines to determine an inmate's anticipated release date. Because there is no certainty that the Bureau would interpret these guidelines the same as the U.S. Parole Commission, subsection (v) is deleted from the existing rule. Remaining § 524.13(a)(2)(i)-(iv) sufficiently explains the term "anticipated release date". Section 524.13(b) is revised to require that a copy of the program review report be placed in the inmate's central file. Revised § 524.13(c) holds the inmate who refuses to attend the program review directly responsible, and accountable, for recommendations made by the classification team. While a copy of the report will be forwarded to the inmate, the Bureau will no longer personally inform the inmate of the team's actions. Section 524.14 is new and discusses the impact of a detainer (ordinarily none) on an inmate's program. Based on new § 524.14, existing §§ 524.14-16 become new §§ 524.15-17.

Interested persons were invited to submit comments on these proposed amendments. No public comment was received. On the basis of internal staff review, some minor changes have been made. In § 524.11(a), the term "(unit)" is added after "classification", as a classification team may also be referrred to as a unit team. The phrase "education advisor" is substituted for "education representative" in this section. A sentence is added to § 524.12(e) to state that a staff summary is not required for an inmate serving a sentence of six months or less. A staff summary in this situation would have little, if any, practical effect. Section 524.13(c) now includes subsections (1) and (2). The only change to the proposed rule is a statement that an inmate who elects not to attend the program review must ordinarily indicate this intent, in writing, at least 24 hours prior to the scheduled team meeting. This change should allow the unit team to function more effectively. In § 524.15, the term "unit manager" is substituted for "team chairperson".

Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 524

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: December 22, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

1. In Subchapter B, Part 524 is amended to read as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

A. In Part 524, Subpart B is amended as follows:

PART 524—CLASSIFICATION OF INMATES

1. In Part 524, Subpart B, the Table of Contents and authority citation are revised to read as follows:

Subpart B—Classification and Program Review of Inmates

Sec.
524.10 Purpose and scope.
524.11 Classification team.
524.12 Initial classification.
524.13 Program reviews.
524.14 Effect of a detainer on an inmate's program.
524.15 Unscheduled reviews.
524.16 Appeals procedure.
524.17 Study and observation cases.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

* * * * *

2. In § 524.11, paragraph (a) is revised to read as follows:

§ 524.11 Classification team.

The Warden shall ensure that each department within the institution has the opportunity to contribute to the classification process.

(a) At a minimum, each classification (unit) team shall include the unit manager, a case manager, and a correctional counselor. An education advisor is ordinarily a member of the classification team. Where the institution does not have unit management, the classification team shall include a case manager, correctional counselor, and one other staff member.

* * * * *

3. In §524.12, the heading of this section and paragraphs (c), (d), and (e) are revised to read as follows:

§ 524.12 Initial classification.

* * * * *

(c) Staff shall complete a program review report at the inmate's initial classification. This report ordinarily includes information on the apparent needs of the inmate, and shall offer a correctional program designed to meet those needs. Each sentenced inmate who is physically and mentally able is assigned to a work program at the time of initial classification. With the exception of the work assignment, or where program involvement is mandated by Bureau policy (for example, Adult Basic Education (ABE) Program) or by statute (for example, Youth Corrections Act), the inmate may choose not to participate in the offered program.

(d) The inmate is to be provided and sign for a copy of the program review report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review report in the inmate's central file.

(e) Within five working days following the initial classification meeting, staff shall prepare a staff summary, discussing those facts which were available at the time of the initial classification. The staff summary is to include information on the inmate's current offense and prior record, social situation, recommended programs, and community resources. A copy of the staff summary is provided to the inmate, upon the inmate's request. A staff summary is not required for an inmate serving a sentence of six months or less.

4. In § 524.13, paragraphs (a)(2)(i)–(iv) are revised, paragraph (a)(2)(v) is removed and paragraphs (b) and (c) are revised to read as follows:

§ 524.13 Program reviews.

(a) * * *

(2) * * *

(i) The inmate's mandatory (statutory) release date;

(ii) The inmate's minimum expiration date;

(iii) The inmate's presumptive parole date; or

(iv) The inmate's effective parole date.

(b) Staff shall prepare a program review report to document each program review. The inmate is to sign for and receive a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review report in the inmate's central file.

(c) Staff shall notify an inmate of the scheduled program review at least 48 hours prior to a staff-originated meeting.

(1) An inmate may waive in writing the 48 hours notice requirement.

(2) An inmate may elect not to attend the program review. An inmate who elects not to attend this review ordinarily must indicate this intent, through a signed statement on the program review report, at least 24 hours prior to the scheduled team meeting. When an inmate does not provide this signed statement, but elects not to attend the program review, staff shall indicate the inmate's refusal to appear and, if known, the reasons for refusal on the program review report. A copy of this report is to be forwarded to the inmate. The inmate who elects not to appear for a program review is responsible for becoming aware of, and will be held accountable for, the classification team's actions.

5. Redesignate existing §§ 524.14 through 524.16 as §§ 524.15 to 524.17 and revise these sections to read as follows::

§ 524.15 Unscheduled reviews.

Staff may establish a schedule to ensure that inmates are provided program reviews as required by this rule. Upon request of either the inmate or staff, and with the concurrence of the unit manager, an advanced or previously unscheduled program review may occur.

§ 524.16 Appeals procedure.

An inmate may appeal, through the Administrative Remedy Procedure, a decision made at initial classification or at a program review.

§ 524.17 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

6. Add a new § 524.14 to read as follows:

§ 524.14 Effect of a detainer on an inmate's program.

The existence of a detainer, by itself, ordinarily does not affect the inmate's program. An exception may occur where the program is contingent on a specific issue (for example, custody) which is affected by the detainer.

[FR Doc. 83-34757 Filed 12-30-83; 8:45 am]
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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

Control, Custody, Care, Treatment, and Instruction of Inmates; Religious Beliefs and Practices

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons is amending and republishing its entire rule on religious beliefs and practices of committed offenders. As amended, the rule provides an inmate reasonable opportunities for pursuing religious beliefs and practices, within the constraints of budgetary limitations and the security and orderly running of the institution and the Bureau of Prisons.

DATE: Comments must be received on or before February 17, 1984.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street N.W., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to amend, and to republish for public comment, its rule on religious beliefs and practices of committed offenders. A final rule on this subject was published in the **Federal Register** June 29, 1979 (at 44 FR 38251). Previous amendments to the rule were published in the **Federal Register** November 13, 1980 (at 45 FR 75127) and November 1, 1983 (at 48 FR 50478 et seq.).

The amended rule affords all inmates comparable opportunities to adhere to their religious beliefs and practices within the constraints of budgetary limitations and the security and orderly running of the institution and the Bureau of Prisons. The amended rule includes a recently finalized section on religious diet. This section was originally published in the **Federal Register** June 1, 1983 (at 48 FR 24626 et seq.) as a proposed amendment to Part 547, Subpart B, Religious Diet Requirements. In the process of making that rule final, the Bureau decided to include the rule on religious diets within the rule on religious beliefs and practices. Because of this redesignation, the Bureau has taken two actions. The first was to make final the proposed amendment to religious diet requirements as an amended § 548.12(a). In conjuction with this, the Bureau has implemented a pilot project to assess the effectiveness of a common fare menu designed to meet nutritional requirements and religious dietary laws to the extent practicable. This new final § 548.12(a), and additional information about the common fare menu, was published in the **Federal Register** November 1, 1983 (at 48 FR 50478 et seq.).

The second action taken by the Bureau is to include the language of new § 548.12(a) within the present proposed rule (see § 548.13(a)). This action allows the public the opportunity both to review and, if desired, to comment on this section.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, N.W., Washington, D.C. 20534. Comments received will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 548

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows:

1. In Subchapter C, Part 548, revise Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 548—RELIGIOUS PROGRAMS

Subpart B—Religious Beliefs and Practices of Committed Offenders

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95–0.99.

Subpart B—Religious Beliefs and Practices of Committed Offenders

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons provides inmates of all religious faiths with reasonable and equitable opportunities for pursuing individual religious beliefs and practices, within the constraints of budgetary limitations and the security and orderly running of the institution and the Bureau of Prisons.

(b) When it is considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity. The Warden may not restrict or allow the religious group itself to restrict attendance at or participation in a religious activity on the basis of race, color, nationality, or creed.

548.11 Definition.

For purposes of this rule, the term "religious activity" includes religious diets, services, ceremonies, and meetings.

§ 548.12 Procedures.

(a) Institution chaplains are available upon request to provide pastoral care and counseling in the inmate's personally held religious beliefs.

(b) Under the general supervision of the Warden, institution chaplains shall schedule and cordinate the institution's religious activities. If an institution has no staff chaplain, a staff member designated by the Warden shall exercise the authority of the chaplain.

(c) Institution staff may contract with representatives of faith groups in the community and are encouraged to accept the services of volunteers to assist inmates to pursue their religious beliefs.

(d) No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation.

(e) An inmate may designate any or no religious preference. An inmate may change this designation at any time.

(f) Attendance at all religious activities is voluntary.

(g) An inmate may wear appropriate personal, liturgical, or ceremonial apparel only during devotional services. An inmate may retain this apparel in designated storage areas, as approved by the Warden, consistent with maintaining security, safety, and good order in the institution.

(h) Consistent with maintaining security, safety, and good order in the institution, an inmate may be approved to wear religious headgear or other

apparel of religious significance within the institution. Such headgear or apparel may be worn only if approved by the Warden. Prior to this approval, the Warden may request the institution chaplain to obtain a documented determination from the recognized representatives of the inmate's faith group of that group's official requirements concerning the wearing of this headgear or other apparel.

(i) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding ordering, purchasing, retaining and accumulating personal property. Literature, publications or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications.

§ 548.13 Diet.

(a) An inmate who wishes to observe religious dietary laws will be provided a diet which meets or exceeds recommended daily allowances established by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and which complies with religious dietary laws to the extent practicable within the constraints of budget limitations and the security and orderly running of the institution and the Bureau of Prisons.

(b) As a once-a-year accommodation, staff may make arrangements with an inmate religious group to have a ceremonial meal. If the inmates representing the organization request, based upon documented necessity, staff may purchase from a food supplier specially prepared food items which meet religious requirements. Funds for the purchase of special food items may be provided from:

(1) Funds from Chaplain's budget;

(2) Inmates' commissary accounts; or

(3) Funds provided by the community organization.

§ 548.14 Scheduling to observe religious holidays, celebrations, and activities.

(a) The Warden shall endeavor to facilitate the observance of important religious holidays or celebrations and to facilitate that observance in accordance with specific requirements of a faith group, such as fasting, worship, diet, or work proscription. The inmate must initiate a request for specific observance of a religious holiday.

(b) The Warden may relieve an inmate from an institution assignment if a religious activity is also scheduled at that time.

Dated: December 22, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 83-34758 Filed 12-30-83; 8:45 am]

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28 CFR Parts 511, and 551

Control, Custody, Care, Treatment, and Instruction of Inmates; Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors; and Marriages of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rules.

SUMMARY: The Bureau of Prisons is publishing its proposed rules on: (1) searching/detaining of non-inmates; arresting authority; use of metal detectors; and (2) marriages of inmates. The first rule is intended to prevent the introduction of contraband (such as narcotics and weapons) into, and the removal of illegal items from, Bureau of Prisons institutions. The rule also discusses the authority of Bureau employees to detain visitors and to make an arrest without a warrant. The second rule is intended to discuss Bureau of Prisons policy on marriages of inmates and on the use of institution facilities for an inmate's marriage ceremony. A proposed rule on each subject was published in the **Federal Register** January 12, 1979 (at 44 FR 2978 et seq.). Those rules are now withdrawn.

DATE: Comments must be received on or before February 17, 1984.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street N.W., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed rules on: (1) Searching/detaining of non-inmates; arresting authority; use of metal detectors; and (2) marriages of inmates. A proposed rule on each subject was published in the **Federal Register** January 12, 1979 (at 44 FR 2978 et seq.). Those rules are now withdrawn.

The first rule is proposed in an effort to prevent the introduction of contraband (such as narcotics and weapons) into a Bureau institution, and to prevent the illegal removal of items from the institution. The rule authorizes staff to subject all persons entering or leaving a Bureau of Prisons institution to a search of their persons and effects. Procedures used in conducting this search may include the use of metal detectors, pat or visual searches, and breathalyzer and urine surveillance tests. Except for the use of metal detectors, the remaining searches and tests may be conducted only when there is reasonable suspicion that an individual possesses contraband or is introducing or attempting to introduce contraband into the institution, or is under the influence of a narcotic, drug, or intoxicant. The rule provides a visitor who objects to any of the search or test or entrance procedures the option of refusing and leaving the institution property, unless there is reasons to detain and/or arrest. The rule also describes Bureau policy with respect to detaining and/or arresting a non-inmate.

The rule on marriages of inmates says that the Warden shall approve an inmate's request to marry except where a legal restriction to the marriage exists, or where the proposed marriage presents a threat to the security or good order of the institution, or to the protection of the public. Institution facilities may be used for an inmate's marriage ceremony provided that a ceremony in the institution poses no threat to the security or good order of the institution.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, N.W. Washington, D.C. 20534. Comments received will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Parts 511 and 551

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapters A and C of 28 CFR Chapter V as follows:

1. In Subchapter A, add a new Part 511 to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

Subpart A—[Reserved]

Subpart B—Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors

Sec.
511.10 Purpose and scope.
511.11 Reasonable suspicion.
511.12 Procedures for searching visitors.
511.13 Controlled visiting—denying visits.
511.14 Right of refusal/termination of a visit.
511.15 Detaining visitors.
511.16 Use of arrest authority.

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 3050, 4001, 4042; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, 6.1.

Subpart A—[Reserved]

Subpart B—Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors.

§ 511.10 Purpose and scope.

(a) In an effort to prevent the introduction of contraband (such as narcotics and weapons) into its institutions, and to prevent the illegal removal of items from the institution, Bureau of Prisons staff may subject all persons entering or leaving an institution to a search of their persons and effects.

(b) Title 18, United States Code, section 3050 authorizes Bureau of Prisons Employees (does not include United States Public Health Services employes) to make an arrest without warrant for any violation of the provisions of section 751—Prisoners in Custody of Institution or Officer; section 752—Instigating or Assisting Escape; section 1791—Traffic in Contraband Articles; and section 1792—Mutiny, Riot, Dangerous Instrumentalities Prohibited. Such an arrest may be made when staff has reasonable suspicion that a person has committed one of these offenses and when there is likelihood of the person fleeing or escaping before a warrant can be obtained.

§ 511.11 Reasonable suspicion.

As used in this rule, "reasonable suspicion" refers to specific, objective facts and to rational inferences that prison officials may draw from these facts on the basis of experience. A reasonable suspicion may be based on reliable on reliable, although confidential information; on a positive reading of a metal detector; or when contraband or indicia of contraband is found during search of a visitor's personal effects.

§ 511.12 Procedures for searching visitors.

(a) The Warden shall post a notice outside the institution's secure perimeter advising all persons that it is a Federal crime to bring upon the institution grounds any weapons, ammunition, intoxicants, drugs, or contraband, and that all persons, property (including vehicles), and packages are subject to search.

(b) The Warden may require visitors entering the institution from outside the secure perimeter to submit to a search:

(1) By electronic means (for example, walk-through and/or hand-held metal detector).

(2) Of personal effects. The institution ordinarily provides locker space for personal effects not taken into the visiting room.

(c) The Warden may authorize a pat search of a visitor as a prerequisite to a visit when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution.

(d) The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an immate in a Security Level IV, V, VI, or administrative institution when there is reasonable suspicion that the visitor possessess contraband or is introducing or attempting to introduce contraband into the institution.

(e) The Warden may authorize a breathalyzer or urine surveillance test or other comparable test of a visitor as a prerequisite to a visit to an inmate when there is reasonable suspicion that the visitor is under the influence of a narcotic, drug, or intoxican.

(f) When practicable, the Warden should request the Federal Bureau of Investigation (FBI) or other appropriate law enforcement officials to investigate and conduct the search of a visitor suspected of introducing or attempting introduce contraband into the institution, or who appears to be under the influence of a narcotic, drug, or intoxicant. When time and/or circumstances do not permit this contact, or when the FBI or other appropriate law enforcement officials are unable to undertake the investigation or to conduct the search, the Warden shall, consistent with the procedures of this rule, take that action necessary to maintain the security of the institution.

(1) When a pat search, visual search, or urine surveillance test is to be conducted by Bureau staff, the staff member conducting the search or taking the sample shall be the same sex as the visitor.

(2) Bureau staff shall conduct a pat search, visual search, urine surveillance, or breathalyzer test out of the view of other visitors and inmates.

§ 511.13 Controlled visiting—denying visits.

(a) The Warden may restrict visiting to controlled situations or to more closely supervised visits when there is any suspicion that the visitor is introducing or attempting to introduce contraband, or when there has been a prior incident of such introduction or attempted introduction, or when there is any concern, based upon sound correctional judgment, about the visitor presenting a risk to the orderly running of the visiting room or area.

(b) The Warden may deny visiting privileges when a controlled or closely supervised visit is not possible.

(c) Staff shall deny admission to the institution to a visitor who refuses to be screened by a metal detector or who refuses to undergo a search of his/her person and effects as dictated by these rules.

§ 511.14 Right of refusal/termination of a visit.

(a) A visitor who objects to any of the search or test or entrance procedures has the option of refusing and leaving the institution property, unless there is reason to detain and/or arrest.

(b) Staff may terminate a visit upon determining that a visitor is in possession of, or is passing or attempting to pass contraband not previously detected during the search process, or is engaged in any conduct or behavior which poses a threat to the orderly or secure running of the institution, or to the safety of any person in the institution. The staff member terminating the visit is to prepare written documentation describing the basis for this action.

§ 511.15 Detaining visitors.

(a) Staff may detain a visitor who is found to be introducing or attempting to introduce such contraband as norcotics, guns, knives or other weapons or who is engaged in any other conduct which is a violation of law (including, but not limited to, actions which assist escape or encourage riots), pending notification and arrival of appropriate law enforcement officials. Institution staff should not interrogate suspects unless immediate questioning is necessary to protect the security of the institution or the life or safety of any person.

(b) Staff shall employ only the minimum amount of force necessary to detain the individual. Visitors will be detained in an area away from the sight of, and where there can be no contact with, other visitors and inmates.

§ 511.16 Use of arrest authority.

To effect an arrest under any of the cited sections in § 511.10(b), staff shall have reasonable suspicion that the suspected individual is violating the law. Whenever possible, the Warden or designee shall make the determination as to whether an arrest should occur.

2. In Subchapter C, Part 551 is amended by adding a new Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

Subpart B—Marriages of Inmates

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart B—Marriages of Inmates

§ 551.10 Purpose and scope.

(a) The Warden shall approve an inmate's request to marry except where a legal restriction to the marriage exists, or where the proposed marriage presents a threat to the security or good order of the institution, or to the protection of the public.

(b) The Warden may approve the use of institution facilities for an inmate's marriage ceremony. If a marriage ceremony poses a threat to the security or good order of the institution, the Warden may disapprove a marriage ceremony in the institution.

§ 551.11 Authority to approve a marriage.

(a) The Warden may approve the marriage of a federal inmate confined in a federal institution. This authority may not be delegated below the level of Acting Warden.

(b) The appropriate Regional Director may approve the request to marry of a federal inmate who is not confined in a federal institution (for example, an inmate who is in U.S. Marshal's custody or who is in state custody).

§ 551.12 Eligibility to marry.

An inmate's request to marry shall be approved provided:

(a) The inmate is legally eligible to marry;

(b) The inmate is mentally competent;

(c) The intended spouse has verified, ordinarily in writing, an intention to marry the inmate;

(d) The marriage poses no threat to institution security or good order, or to the protection of the public; and

(e) There is no indication that the marriage will interfere with, or discourage the inmate's good adjustment while confined, or upon release to the community.

§ 551.13 Application to marry.

(a) A federal inmate confined in a Bureau institution who wants to get married shall submit a request to marry to the inmate's unit team. The unit team shall evaluate the request based on the criteria identified in § 551.12. A written report of the unit team's findings, and its recommendation, shall be forwared to the Warden for a final decision.

(b) The Warden shall notify the inmate in writing whether the inmate's request to marry is approved or disapproved. A copy of this notification shall be placed in the inmate's central file. Where the Warden's decision is to disapprove the inmate's request, the notification to the inmate shall include a statement of reason(s) for that action. The Warden shall advise the inmate that the decision may be appealed through the Administrative Remedy Procedure.

(c) All expenses of the marriage (for example, a marriage license) shall be paid by the inmate, the inmate's intended spouse, the inmate's family, or other appropriate source approved by the Warden. The Warden may not permit appropriated funds to be used for an inmate marriage.

§ 551.14 Special circumstances.

(a) *Detainers and Pending Charges.* Staff review of a marriage request from an inmate who has a detainer(s) and/or a pending charge(s) shall include an assessment of the legal effects of the marriage on these actions. For example, an inmate could request to marry a potential witness in litigation pending against that inmate. Approving this marriage could affect the status of this litigation.

(b) *Marriages Between Inmates in Federal Institutions.* Because of the potential for an adverse impact on both institution security and good order, close scrutiny should be given to a marriage request from one inmate asking to marry another inmate.

(c) *Pretrial Inmates.* A pretrial inmate may request permission to marry in accordance with the provisions of this rule. Staff shall contact the court, U.S. Attorney, and in the case of an alien, the Immigration and Naturalization Service, to advise of the marriage request of the pretrial inmate and to request their comments.

(d) *Federal Inmates not in Federal Institutions.* The appropriate Regional Director may approve the request to marry of a federal inmate who is not confined in a federal institution (for example, an inmate who is in U.S. Marshal's custody or who is in state custody). Prior to making a decision on the inmate's request, the Regional Director shall advise the detaining authority of the inmate's request, the Regional Director shall advise the detaining authority of the inmate's request and ask that information on the criteria identified in § 551.12 be furnished.

§ 551.15 Furloughs.

An inmate whose request to marry is approved, and who also meets the Bureau's criteria for furlough (see Part 570, Subpart C), may be considered for a furlough for the purpose of getting married.

§ 551.16 Marriage ceremony in the institution.

(a) The Warden may approve the use of institution facilities for an inmate's marriage ceremony. If a marriage ceremony poses a threat to the security or good order of the institution, the Warden may disapprove a marriage ceremony in the institution. The Warden may not delegate the authority to approve or to disapprove a marriage ceremony in the institution below the level of Acting Warden.

(b) Expenses for a marriage ceremony in the institution shall be paid by the inmate, the inmate's intended spouse, the inmate's family, or other appropriate source approved by the Warden. The Warden may not permit appropriated funds to be used for the marriage ceremony, except for those inherent in providing the place and supervision for the event. Upon request of the inmate, a Chaplain may also be authorized to assist in a marriage ceremony at the institution.

(c) The Warden shall require that a marriage ceremony at the institution be a private ceremony conducted without media publicity.

Dated: December 22, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 83-34759 Filed 12-30-83; 8:45 am]

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January 3, 1984

Part III

Environmental Protection Agency

Ethylene Oxide; Response to the Interagency Testing Committee; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-4207; BHTSH FRL 2443-1]

Ethylene Oxide; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The First Report of the Interagency Testing Committee (ITC), transmitted to EPA in October 1977, designated the category of alkyl epoxides for consideration by EPA for health and environmental fate testing. This Notice provides EPA's response to the ITC's recommendations with respect to ethylene oxide, one member of the alkyl epoxides category. Other category members will be addressed in separate **Federal Register** notices. In view of the accumulating data base and the current regulatory activities underway on ethylene oxide by the Occupational Safety and Health Administration (OSHA) and EPA's Office of Pesticide Programs (OPP), EPA has concluded that additional health effects testing of ethylene oxide should be pursued by EPA only if OSHA or OPP concludes that such additional testing is necessary and requests support in gathering test data under the Toxic Substances Act (TSCA). EPA believes that existing data are adequate to reasonably predict the environmental fate of ethylene oxide. Consequently, EPA is not initiating rulemaking under section 4(a) of TSCA to require health or environmental fate testing of ethylene oxide at this time.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-547, 401 M St., SW., Washington, D.C. 320460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003 et seq.; 15 U.S.C. 2601 et seq.) authorizes EPA to promulgate regulations requiring testing of chemical substances and mixtures to develop data relevant to assessing the risks that such chemicals may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of TSCA The ITC placed the alkyl epoxides category on its first priority testing list published in the **Federal Register** of October 1977 (42 FR 55026). The ITC recommended that testing be considered for the alkyl epoxides for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, and environmental; effects. The ITC recommended that the chronic effects testing consider organ effects and behavioral changes and that the environmental testing focus on the fate of epoxides in the environment. Epidemiological studies were also recommended for two or three of the highest exposure compounds if suitable cohorts could be identified.

The alkyl epoxides category, as defined by the ITC, includes all noncyclic aliphatic hydrocarbons with one or more epoxide functional groups. This notice addresses a single member of this category, ethylene oxide. Other members of the category will be addressed in other **Federal Register** notices.

Approximately 5 to 6 billion pounds of ethylene oxide is produced annually in the United States. Over 99 percent of the ethylene oxide produced is consumed as a chemical intermediate. Less than 1 percent of the ethylene oxide produced is used as a sterilant or fumigant. However, these latter uses are regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and by the Food and Drug Administration (FDA), and therefore releases to the environment and exposures from these uses have not been considered in this notice. EPA's responses to the ITC's specific recommendations are set forth below with respect to ethylene oxide.

II. Analysis of the ITC's Concerns

A. Carcinogenicity

A chronic inhalation bioassay with ethylene oxide has been completed at Union Carbide's Bushy Run Research Center. Exposure levels were 10, 33, and 100 parts per million (ppm). A statistically significant increase in mononuclear cell leukemia was found in female rats exposed to 100 ppm. In addition, increased incidences of mononuclear cell leukemia for the females exposed at 33 and 10 ppm, although not statistically significant over controls, suggest a dose-response relationship. An increase in peritoneal mesothelioma was reported in the male rats exposed at 33 and 100 ppm. Among the males exposed at 100 ppm, the cumulative percentage developing a tumor of this type was reported to be statistically significantly higher than that of the controls beginning with the 21st month of exposure. The incidence of these tumors in males exposed at 33 ppm was not appreciably higher than in the controls until the final month of the study. These peritoneal tumors originated in the testicular mesothelium and were confined to the abdominal cavity (Ref. 1). A statistically significant increased incidence of primary brain neoplasms in the male rats exposed to 100 ppm ethylene oxide and an increased incidence (not statistically significant) of primary brain neoplasms for males exposed to 33 ppm and for females exposed to both 100 and 33 ppm ethylene oxide was subsequently reported (Ref. 2).

Preliminary results from a two-year chronic inhalation study conducted by the National Institute for Occupational Safety and Health (NIOSH) on male rats and male monkeys were reported at the 1982 meeting of the Society of Toxicology (Ref. 3). In that study, groups of 80 male Fischer 344 rats and 12 male Cynomolgus monkeys were exposed to 50 ppm and 100 ppm ethylene oxide over a two year period. Two groups, 80 rats and 12 monkeys, were used as controls and exposed to conditioned, filtered ambient air. During the study, all of the rat groups became infected with *Mycoplasma pulmonis* which, beginning with the sixteenth month, caused the death of a large segment of the rat population. The preliminary results of the available histopathological evaluation of the spleen indicated an exposure-related increase of mononuclear cell leukemia in male rats exposed to ethylene oxide at 50 ppm but not at 100 ppm. NIOSH has acknowledged that these preliminary results must be interpreted in light of the known spontaneous incidence of leukemia in Fischer 344 rats, but notes that excess mortality has occurred in the 100 ppm group (19% survived as compared to 49% of the controls). At the terminal kill, a significantly higher frequency of leukemia was found only in the group exposed to 100 ppm of ethylene oxide. Of equal or greater importance, however, is the apparent dose-related finding of gliomas in the rats of the NIOSH study. This tumor is rare in Fischer 344 rats. Gliomas were found in 5 of 79 rats exposed at 100 ppm and 2 of 77 rats exposed at 50 ppm. There were none in the 76 control rats. A significant association of exposure and an occurrence of peritoneal mesothelioma was found for rats exposed to 100 ppm ethylene oxide, but not to 50 ppm ethylene oxide. These results parallel those from the Bushy Run study. None of the monkeys in the

NIOSH study have demonstrated any evidence of leukemia to date but they are still being monitored. A more comprehensive evaluation of the chronic studies is planned by NIOSH after further data analysis. In addition, the National Toxicology Program (NTP) is sponsoring a chronic bioassay via inhalation with ethylene oxide in mice. The exposure phase of this study was completed in July, 1983.

Available data and the data to be obtained from these ongoing studies are sufficient to reasonably determine the carcinogenicity of ethylene oxide. The current OSHA and OPP regulatory actions on ethylene oxide are based in part on the excess risks to humans presented due to carcinogenicity.

B. Mutagenicity

Ethylene oxide gave positive results in gene mutation assays in: (1) prokaryotes (Refs. 4, 5); (2) eukaryotes (Refs. 6–13); (3) the *Drosophila* sex-linked recessive lethal mutation assay (Refs. 14, 15); and (4) the *Drosophila* autosomal deletion mutation assay (Refs. 15). There is an ongoing evaluation of the mutagenicity testing sponsored by EPA and conducted at Oak Ridge National Laboratory (ORNL) and Louisiana State University on: (1) alkylation in *Drosophila* sperm cells, (2) alkylation in mouse sperm cells, and (3) mouse specific locus test. In addition, the National Institute of Environmental Health Sciences (NIEHS) is conducting a biochemical specific locus assay in mice.

Positive results were obtained in the following tests to detect chromosomal aberrations: (1) dominant lethal in mice (Refs. 16–18); (2) dominant lethal in rats (Ref. 19); (3) micronucleus test (Ref. 20); (4) heritable translocation in mice following intraperitoneal injection (Ref. 17); (5) chromosomal abnormalities in rat bone marrow cells (Refs. 4, 21–23); and (6) chromosomal aberrations in the cultured lymphocytes of Cynomolgus monkeys (Ref. 3). In addition, a heritable translocation test in mice inhalation sponsored by NTP is in progress at ORNL. The NTP protocol calls for exposure concentrations of 50, 100, 150, 200, and 255 ppm.

Positive results were obtained in the following studies to detect primary DNA damage: (1) unscheduled DNA synthesis in mice (Ref. 24); and (2) increases in sister chromatid exchanges (SCE's) in cultured lymphocytes of Cynomolgus monkeys exposed to ethylene oxide via inhalation (Ref. 3).

Indications of chromosomal changes in humans resulting from occupational exposure to ethylene oxide have also been reported. These include increases in chromosomal aberrations (Refs. 25, 26) and sister chromatid exchanges (Refs. 26–29) in human lymphocytes.

Available data and data from ongoing mutagenicity studies are sufficient to reasonably determine the mutagenic effects of ethylene oxide. The current OSHA and OPP regulatory actions are based partially upon the evidence of mutagenicity for ethylene oxide.

C. Teratogenicity

A discussion of the data from teratogenicity testing of ethylene oxide in the mouse, the rat, and the rabbit follows.

Mouse. La Borde and Kimmel (Ref. 30) reported the results of a teratogenicity study in the CD–1 mouse following intravenous injections of ethylene oxide in 5% dextrose at doses of 75 and 150 mg/kg. Four groups of mice were treated daily for 3 days at each of the following periods of gestation: days 4–6 (Period I), 6–8 (Period II), 8–10 (Period III), and 10–12 (Period IV). Cervical and thoracic skeletal abnormalities were noted in fetuses in the 150 mg/kg group exposed during period II. This dose also produced severe effects in the dams exposed during periods I, III, or IV but not during period II. A dose-response relationship was not evident in any of the periods; the incidence of effects (both maternal and fetal) was similar for animals treated at 75 mg/kg and for controls.

Rat. Results of an inhalation teratology study sponsored by NIOSH in Sprague-Dawley CD rats have been reported (Ref. 31). Maternal toxicity, reproductive performance, and developmental toxicology were evaluated following 7 hr/day inhalation exposures to 150 ppm ethylene oxide. Rat exposure regimens were: (1) filtered air (control); (2) chemical exposure from days of gestation (dg) 7 through 16; (3) chemical exposure from dg 1 through 16 and (4) chemical exposure for 5 days/wk for 3 weeks prior to mating and daily from dg 1 through 16. Unexposed males were used in mating.

Reduction in food consumption and body weight were significant in rats exposed before breeding and rats exposed dg 1 through 16. The incidence of resorptions was significantly increased only in litters from rats exposed before breeding. Fetal weight and crown-rump length were reduced in litters from all ethylene oxide-exposed groups of rats. Fetal morphologic changes included reduced ossification of the skull and sternebrae in litters from all ethylene oxide-exposed groups and an increased incidence of hydroureter (not statistically significant) in litters exposed from dg 7 through 16. Significant adverse effects in development were observed in the group exposed from dg 7 through 16 in the absence of any significant adverse effects on maternal body weight gain or food consumption.

Results from another inhalation teratology study in rats at the Bushy Run Research Center have also been reported (Ref. 32). Pregnant Fischer 344 rats were exposed 6 hours daily to 10, 33, or 100 ppm ethylene oxide on dg 6 through 15. No treatment-related effects were noted in the dams. Fetal weights for both males and females were significantly depressed, and an increased frequency (not statistically significant) of delay ossification was noted in the 100 ppm group. No effects from exposure were noted for the dams or fetuses in the 33 and 10 ppm groups.

Rabbit. Intravenous studies were carried out by Kimmel et al. (Ref. 33) in rabbits at doses of 0, 9, 18, and 36 mg/kg administered intravenously daily on dg 6 through 14 or doses of 0, 18, and 36 mg/kg daily on dg 6 through 9. Preliminary studies had indicated the maximum tolerated dose (MTD) to be approximately 40 mg/kg. A statistically significant trend toward decreased maternal weight gain with increasing dose was seen during treatment and throughout gestation after treatment either on dg 6 through 9 or 6 through 14. No significant effects were seen in the fetal parameters examined after treatment on dg 6 through 9. However, a significant increase in mean number and percent resorptions/litter was noted in the 36 mg/kg dose group treated on dg 6 through 14. Thus, ethylene oxide administered intravenously to pregnant rabbits increases the incidence of adverse effects on development, after treatment throughout organogenesis at a dose that also produces maternal toxicity. Unlike the effect of ethylene oxide in the mouse following intravenous administration, no structural malformations were detected in rabbits in this study.

Results of an inhalation teratology study sponsored by NIOSH in New Zealand white rabbits have also been reported (Ref. 31). Rabbits were artificially inseminated and placed on one of the following exposure regimens at 150 ppm for 7 hours/day: (1) filtered air (control); (2) chemical exposure from dg 7 through 19; and (3) chemical exposure from dg 1 through 19. No evidence of maternal toxicity, adverse effects on development or structural malformations was detected in rabbits exposed to 150 ppm of ethylene oxide.

EPA concludes that the data from the above studies are sufficient to

reasonably determine the teratogenicity of ethylene oxide.

D. Other Chronic Effects

As a matter of general policy under section 4 of TSCA, EPA generally accepts data from well-conducted oncogenicity studies as being sufficient to assess the chronic toxicity of a chemical. EPA has concluded that adequate data are and will be available, from the completed oncogenicity studies, from the ongoing oncogenicity studies, and from the various subchronic studies which have been conducted, to reasonably determine the other chronic effects of ethylene oxide, except for reproductive and neurotoxic effects.

E. Reproductive Effects

The final report of a one-generation reproductive study in rats by the Bushy Run Research Center is available (Ref. 34). Both male and female rats were exposed to doses of 10, 33, or 100 ppm of ethylene oxide vapor. Statistically significant observations in the 100-ppm exposure group were decreased implantations, smaller litters, and increased length of gestational period. No treatment-related effects were noted in either the dams exposed to 33 or 10 ppm ethylene oxide or in their litters. Because this study was only a one-generation study, EPA does not believe that it was fully adequate to assess the reproductive effects of ethylene oxide.

Nevertheless, as discussed in Unit III of this notice, EPA has concluded that, in view of the ongoing regulatory activities on ethylene oxide by OPP and OSHA, additional reproductive effects testing of ethylene oxide should only be required under TSCA if requested by OSHA or OPP in support of their regulatory efforts.

F. Neurotoxicity

Paralysis, muscular atrophy of the hind limbs, and growth depression were observed in subchronic studies in rats, rabbits, and monkeys exposed to 357 and 204 ppm ethylene oxide vapor (Ref. 35). Peripheral neuropathy was reported in four workers who were accidentally exposed to high levels of ethylene oxide over a two-month period at a plant where hospital products were sterilized (Ref. 36). The NIOSH chronic inhalation bioassay (Ref. 3), discussed in Unit II.A. of this notice, includes an evaluation of neuropathology and neurophysiology in Cynomolgus monkeys. Exposure levels in the NIOSH chronic bioassay were 50 and 100 ppm via inhalation over a two-year period. The results of the neuropathological evaluation have recently been reported (Ref. 37). Two of the twelve monkeys in each exposure group were sacrificed for neuropathological evaluation. The only significant finding was an increase in axonal dystrophy in the nucleus gracilis of the experimental monkeys as compared to the two controls and demyelination of portions of the gracile tract in one of the monkeys in each of the low and high dose groups.

As discussed in Unit III of this notice, in view of the ongoing regulatory activities on ethylene oxide by OPP and OSHA, EPA has concluded that additional Neurotoxicity testing of ethylene oxide, including testing for behavioral changes, should be pursued under TSCA only if requested by OSHA or by OPP to support their ongoing regulatory activities.

G. Epidemiology

As a consequence of three observed cases, Hogstedt et al. (Ref. 38) reported an apparent excess of leukemia among Swedish workers in a factory where a mixture of ethylene oxide and methyl formate had been used to sterilize hospital equipment. In another study, Hogstedt et al. (Ref. 39) reported the results of a historical prospective mortality and cancer morbidity investigation of 89 workers in an ethylene oxide production facility. These workers may also have been exposed to other chemicals. Among 23 deaths, 9 cancer deaths were observed compared with 3.4 that were expected. The significance of the above epidemiological findings is limited by the small number of observed deaths, the uncertainty of worker exposure information, and the inability to attribute the observed mortality to a particular chemical. Morgan et al. (Ref. 40) reported on a mortality study cohort of 787 production workers potentially exposed to ethylene oxide. Industrial hygiene measurements reportedly revealed no detectable ethylene oxide levels in the product area. At the sources of ethylene oxide (pumps, valves, pipe flanges, spigots, and gauges), less than 10 ppm was recorded. Only during tank car loading operations were levels of approximately 6,000 ppm ethylene oxide recorded. All other measurements were below 50 ppm. The researchers saw fewer than expected deaths from all causes and fewer than expected deaths from total malignancies. The standardized mortality ratios were 58 to 79, respectively. No death from leukemia was observed as compared to 0.70 expected. There were, however, a total of 8 deaths reported for pancreatic cancer, bladder cancer, brain and CNS cancer and Hodgkin's disease compared to 2.16 expected for this worker group. In addition, at least two mortality studies are in progress. NIOSH is conducting a study on occupational exposure to ethylne oxide at a Union Carbide plant in West Virginia. EPA's Office of Research and Development (ORD) is funding an epidemiological study at Columbia University of hospital workers exposed to ethylene oxide.

Recently, Hemminki et al. (Ref. 41) reported an increase in the number of spontaneous abortions of Finnish hospital workers exposed to ethylene oxide. From other studies, the authors inferred the 8-hour time weighted average (TWA) to be 0.1 to 0.5 ppm with peak concentrations up to 250 ppm. Due to certain methodological problems, this study does not sufficiently define the effects of ethylene oxide exposure on female reproduction. The finding of spontaneous abortions in ethylene oxide-exposed humans, however, does raise questions about reproductive effects. Further efforts may be needed to address this issue. Because of the small number of women exposed to ethylene oxide during its manufacture (Ref. 42), confirmatory epidemiological studies would have to be carried out on hospital workers, where the use of ethylene oxide is not covered by TSCA. A reproductive outcome study of workers potentially exposed to ethylene oxide in hospitals, partially funded by the March of Dimes, has recently begun at the State University of New York at Buffalo. NIOSH has also expressed an interest in performing an epidemiological study of the effects of ethylene oxide on males. In addition, OSHA's proposed rule on ethylene oxide (Ref. 43) includes workplace exposure monitoring and a requirement for worker medical surveillance.

As discussed in Unit III of this notice, in view of the completed and ongoing epidemiological efforts on ethylene oxide, EPA has concluded that a requirement for additional epidemiological studies on ethylene oxide under TSCA does not appear necessary at this time. The TSCA authority could be utilized at a later time if the ongoing epidemiological activities prove to be inadequate and if such additional work is considered necessary to support OSHA or OPP regulatory activities.

H. Environmental Fate

The ITC expressed concern for the reaction products of alkyl epoxides in the environment. Therefore, it recommended that the fate of epoxides in the environment should be determined through testing. EPA has concluded, however, that there are

sufficient data to reasonably predict the environmental fate, including the characterization of degradation products, of the ethylene oxide that might be released during manufacture, distribution in commerce, processing, use, and disposal, and that there is no need for EPA to require testing to better characterize the fate of such releases.

Ethylene oxide is produced by the direct oxidation of ethylene. Almost 90 percent of the ethylene oxide produced is used by its manufacturers as an intermediate or a raw material for the manufacture of other products. Over 9 percent is sold to other firms for similar use (Ref. 44). As explained earlier, sterilant or fumigant uses are regulated under FIFRA and by FDA; therefore, environmental releases from these uses have not been considered in this notice.

Ethylene oxide is manufactured, processed, and distributed in systems engineered to prevent escape of ethylene oxide to the surrounding air. In a letter from the Ethylene Oxide Industry Council (EOIC) to EPA dated December 7, 1981, estimates of the release of ethylene oxide to the atmosphere were submitted. According to the EOIC, the primary source of environmental exposure is through release into the air. The EOIC estimates that about 3 million lbs/year is released to the air (Ref. 45). In a report prepared by Science Applications, Inc. (SAI) for EPA, total nationwide atmospheric emissions of ethylene oxide in 1978 from all sources were estimated to be 1,991,000 lbs (Ref. 46). Results from an atmospheric dispersion model predict average annual exposure levels of ethylene oxide near production plants to be very low, i.e., < 10 ug/m^3 (< 6 ppb) (Ref. 46). In addition, the chemistry of ethylene oxide is such that it will be hydrolyzed by water vapor and oxidized by hydroxyl free radicals in the atmosphere. An anticipated atmospheric degradation product is formic anhydride, OHCOCHO, which reacts with water to give formic acid (Ref. 47).

In its December 7, 1981, letter the EOIC also stated that the amount of ethylene oxide lost to water during production and processing was 800,000 lbs. annually; however, most producers reported to the EOIC that this waste water containing ethylene oxide is treated in a biopond before being discharged from the plant (Ref. 45). Ethylene oxide reacts readily with water to form ethylene glycol. The hydrolysis half-life of ethylene oxide in river water at 25° C and pH 7.4 was 14.2 days (Ref. 48). In sterile river water and sterile distilled water, the hydrolysis half-lives were 12.9 and 12.2 days, respectively (Ref. 48). The epoxide functional group of ethylene oxide readily reacts with other nucleophiles, such as the chloride ion, by pathways that parallel hydrolysis. The hydrolysis/hydrochlorination half-life of ethylene oxide in salt water is about 9 days at 25° C (Ref. 48). The ratio of chlorohydrin to glycol formed is about 0.2 at 3% NaCl; the ratio is directly proportional to salt concentration (Ref. 48). Biodegradation within the water column should further decrease ethylene oxide concentrations. In three BOD tests without prior acclimation, ethylene oxide was biodegraded 75, 69, and 52 percent in 20 days (Refs. 48–50). The desorption rate of ethylene oxide from natural waters was estimated to be 0.36 times that of oxygen under the same conditions (Ref. 48).

On the basis of the environmental release, waste treatment, and environmental fate information on ethylene oxide discussed above, EPA concludes that sufficient data exist to reasonably predict the environmental fate, including the characterization of degradation products, of the ethylene oxide that might be released during the manufacture, distribution in commerce, processing, use, and disposal of ethylene oxide and that there is no need for EPA to require testing to better characterize the fate of such releases.

III. Decision Not To Initiate Rulemaking

EPA has decided not to initiate rulemaking at this time under section 4(a) of TSCA to require further health and environmental fate testing of ethylene oxide. This decision is based on a review of the available data and ongoing testing for this chemical and on regulatory actions being undertaken by EPA and OSHA.

OSHA has recently published a proposed rule which would lower the permitted exposure limit (PEL) of ethylene oxide to an 8 hour time-weighted average (TWA) of 1 ppm. The proposal would provide for certain methods of exposure control, personal protective equipment, measurement of employee exposures, training, medical surveillance, signs and labels, regulated areas, emergency procedures and record keeping, among other requirements (Ref. 43). OPP has previously issued a Rebuttable Presumption Against Registration (RPAR) (Ref. 51) against ethylene oxide and plans in the near future to issue a proposal in the **Federal Register** to change pesticide labels and adopt other appropriate measures which will help to lower exposure levels of ethylene oxide resulting from its use as a pesticide.

EPA has sufficient data to reasonably predict the environmental fate of ethylene oxide, and therefore EPA concludes additional environmental fate testing is unwarranted. In view of the ongoing epidemiological efforts on ethylene oxide as discussed in Unit II. G. of this notice, EPA concludes that a requirement for additional epidemiological studies on ethylene oxide under TSCA does not appear necessary at this time. The most recent information available to EPA indicates that available data and ongoing testing are adequate to characterize ethylene oxide's carcinogenicity, mutagenicity, teratogenicity, and other chronic effects except reproductive and neurotoxic effects (including behavioral changes). Although the available health effects data may not be sufficient to thoroughly assess the neurotoxicity or reproductive effects of ethylene oxide, the Agency is not initiating rulemaking to require additional testing for these effects at this time for a number of reasons. First, the available data indicate that ethylene oxide is a carcinogen and may produce other health hazards. The Agency believes that the available data on carcinogenicity and other effects are sufficient to support regulatory action to control exposure from uses governed by TSCA. As noted above, OSHA already has proposed to lower the occupational exposure level for ethylene oxide to a PEL of 1 ppm. Moreover, the occupational exposures subject to OSHA's proposal include the exposures that would be subject to the Agency's authority under TSCA.

In addition, the Agency believes that the 1 ppm TWA level proposed by OSHA will reduce significantly not only the cancer risk from worker exposure to ethylene oxide but will also substantially reduce the potential risks from other health hazards including any neurotoxic and adverse reproductive effects. The Agency believes that additional testing does not need to be conducted in order to adequately support the 1 ppm TWA exposure level proposed by OSHA or even a lower exposure level. Thus, the Agency concludes that no significant additional benefit to society will result from requiring further testing for neurotoxicity or reproductive effects at this time. OSHA and OPP are aware of EPA's activities on ethylene oxide under section 4 of TSCA. If either entity should determine at a later time that additional testing of ethylene oxide is necessary, EPA will consider requiring additional testing under TSCA section 4.

IV. References

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(2) Union Carbide Corp., TSCA Sec. 8(e) Submission 8EHQ–0683–0305 (June 7, 1983), "Final Report on Ethylene Oxide Two-Year Inhalation Study on Rats, Addendum," Washington, D.C.: Office of Pesticides and Toxic Substances, USEPA (1983).

(3) Lynch, D. W., T. R. Lewis, W. J. Moorman, P. S. Sabbarwal and J. R. Burg, "Chronic Inhalation Toxicity of Ethylene Oxide and Propylene Oxide in Rats and Monkeys—A Preliminary Report," *The Toxicologist* 2:11–12 (1982).

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(6) Kilbey, B. J. and H. G. Kolmark, "A Mutagenic After-Effect Associated with Ethylene Oxide in *Neurospora crassas*," *Mol. Gen. Genet.* 101:185–188 (1968).

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(8) Ehrenberg, L., A. Gustafsson and U. Lundqvist, "The Mutagenic Effects of Ionizing Radiations and Reactive Ethylene Derivatives in Barley," *Hereditas* 45:351–368 (1959).

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V. Public Record

The EPA has established a public record for this testing decision (docket number OPTS–42027). This record includes:

1. **Federal Register** notice designating the alkyl epoxides category to the priority list and all public comments on ethylene oxide received in response to that notice.

2. Letters.

3. Contact reports of telephone conversations and meeting summaries.

4. Published and unpublished data.

This record, containing the basic information considered by the Agency in developing this decision, is available for inspection in the Office of Pesticide and Toxic Substances (OPTS) Reading Room from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: December 21, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83–34799 Filed 12–30–83; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
January 3, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 1030]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 27, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1030

ISSUED DECEMBER 27, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409415	F-89-075099	4209732323		102-4	103	BURRELL #4	DELAWARE BEND NORTH (	110.0	LONE STAR GAS CO
-ALCORN PRODUCTION CO				RECEIVED:	11/25/83	JA: TX			
8409418	F-81-075103	4217731227		102-4		M H LEWIS #2	CHRISTIAN (6800) FIEL	0.0	TIPPERARY GAS CO
-ALPS OIL CO				RECEIVED:	11/25/83	JA: TX			
8409345	F-88-074683	4210333242		103		M B MCKNIGHT "A" 10	SAND HILLS (MCKNIGHT)	13.7	WARREN PETROLEUM
-AMOCO PRODUCTION CO				RECEIVED:	11/25/83	JA: TX			
8409260	F-86-071942	4234730549		102-4		EMMETT CASE #1	APPLEBY N (RODESSA)	548.0	UNITED GAS PIPELI
8409373	F-88-074989	4200333470		103		FULLERTON SAN ANDRES UNIT 848	FULLERTON SAN ANDRES	97.0	AMOCO PRODUCTION
-ARCO OIL AND GAS COMPANY				RECEIVED:	11/25/83	JA: TX			
8409246	F-86-071086	4213136231		103		J R FOSTER #64	HAGIST RANCH (1030)	45.0	NATURAL GAS PIPEL
8409277	F-86-073218	4241930417		103		J S PRICE GAS UNIT #4	JOAQUIN TRAVIS PEAK	372.0	SOUTHERN NATURAL
8409258	F-86-071935	4236585207		107-TF		J W WILTCHER GAS UNIT #2	CARTHAGE	200.0	SOUTHERN NATURAL
8409259	F-86-071937	4236530895		107-TF		OCIE GLASPIE GAS UNIT #3	CARTHAGE	365.0	SOUTHERN NATURAL
-ARENA OIL & GAS CO				RECEIVED:	11/25/83	JA: TX			
8409322	F-82-074386	4229733282		102-4		W A SMITH #1	GOEBEL N (SLICK 6635)	109.0	REATA INDUSTRIAL
-BRAZOS PETROLEUM CO				RECEIVED:	11/25/83	JA: TX			
8409284	F-88-073521	4232931171		103		ERVIN #3	SPRABERRY (TREND AREA	11.0	PHILLIPS PETROLEU
8409351	F-88-074799	4231732717		103		KELLY #1	SPRABERRY (TREND AREA	18.0	PHILLIPS PETROLEU
8409352	F-88-074800	4232931173		103		RAYBURN #1	SPRABERRY (TREND AREA	22.0	PHILLIPS PETROLEU
-BRYANT OIL CO				RECEIVED:	11/25/83	JA: TX			
8409329	F-8A-074438	4207931636		103		NICEWARNER #1	LEVELLAND (SAN ANDRES	73.0	CITIES SERVICE OI
-BTA OIL PRODUCERS				RECEIVED:	11/25/83	JA: TX			
8409303	F-7C-073995	4258332643		103		ROCKER "B" #28	SPRABERRY (TREND) ARE	26.0	EL PASO NATURAL G
-BUCK WHEAT RESOURCES INC				RECEIVED:	11/25/83	JA: TX			
8409350	F-7B-074768	4242933662		102-4		SMITH #3	SMITH (MISS)	0.0	WARREN PETROLEUM
-C F LAWRENCE & ASSOC INC				RECEIVED:	11/25/83	JA: TX			
8409353	F-88-074502	4237134481		103		MCMURTRY #11	LEHN-APCO	0.0	APACHE GAS CORP
8409354	F-88-074503	4237134482		103		MCMURTRY #14	LEHN-APCO	0.0	APACHE GAS CORP
8409364	F-88-074967	4237134438		103		MCMURTRY #21	LEHN-APCO 1600	0.0	APACHE GAS CORP
8409365	F-7C-074969	4210536424		103		TODD "X" #4	TODD SW (SAN ANDRES L	0.0	APACHE GAS CORP
-CARTER EXPLORATION CO				RECEIVED:	11/25/83	JA: TX			
8409327	F-82-074389	4223931321		102-4	103	KUBECKA ESTATE #1	WILDCAT PROPOSED - CO	29.5	TRANSCONTINENTAL
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	11/25/83	JA: TX			
8409330	F-86-074472	4236500000		108		CARTHAGE GAS UNIT 23 #1	CARTHAGE	17.0	TENNESSEE GAS PIP
8409331	F-86-074473	4236500000		108		CARTHAGE GAS UNIT 24 #1	CARTHAGE	13.0	TENNESSEE GAS PIP
-CHEVRON U S A INC				RECEIVED:	11/25/83	JA: TX			
8409432	F-8A-075145	4241532431		103		SACROC UNIT 826-14	KELLY - SNYDER	32.0	EL PASO NATURAL G
8409435	F-8A-075148	4241532448		103		SACROC UNIT 8293-4	KELLY - SNYDER	36.0	EL PASO NATURAL G
8409433	F-8A-075146	4241532439		103		SACROC UNIT 855-8	KELLY - SNYDER	676.4	EL PASO NATURAL G
8409434	F-8A-075147	4241532417		103		SACROC UNIT 858-4	KELLY - SNYDER	21.0	EL PASO NATURAL G
8409431	F-8A-075144	4241532430		103		SACROC UNIT NO 56-16	KELLY - SNYDER	44.0	EL PASO NATURAL G
-CLAYTON W WILLIAMS JR				RECEIVED:	11/25/83	JA: TX			
8409248	F-83-071154	4205100000		102-2		FRANK MACHANN #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
8409245	F-83-071002	4205100000		102-2		THARP-SCHWARTZ #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
-COCKRELL CORPORATION				RECEIVED:	11/25/83	JA: TX			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8409412	F-02-075094	4246932038		102-4		ARMOR URBAN #1	GAFFNEY SE (6110) FIE	54.0	
-COMANCHE ENERGY AGENCY				RECEIVED:	11/25/83	JA: TX			
8409242	F-7B-070494	4205933968		102-4		LINDA JONES #1	BOWNE (CADDO)	0.0	LONE STAR GAS CO
-CONOCO INC				RECEIVED:	11/25/83	JA: TX			
8409307	F-08-074080	4213500000		108		GIST UNIT #18 ID 19373	FOSTER	265.0	EL PASO HYDROCARB
8409274	F-04-072896	4247933500		102-2	107-TF	VAQUILLAS RANCH A032	VAQUILLAS RANCH (WILC	0.0	E I DUPONT DE NEM
-CORPUS CHRISTI OIL AND GAS CO				RECEIVED:	11/25/83	JA: TX			
8409353	F-04-074809	4270330301		102-4		STATE TRACT 691-L SW/4 WELL #3-U	BLOCK 691-L (5200') F	0.0	HOUSTON PIPELINE
8409293	F-04-073752	4260330208		102-4		STATE TRACT 826-S WELL #1A-L	CLEAR NORTH (MIOCENE	0.0	HOUSTON PIPELINE
-COTTON PETROLEUM CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409249	F-10-071162	4235700000		103		MCGARROUGH #4	MCGARROUGH WEST	0.0	DIAMOND CHEMICALS
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	11/25/83	JA: TX			
8409299	F-06-073865	4206730426		102-4		HAYNES #1-L	RODESSA	18.3	BRECKENRIDGE GASO
-DANIEL OIL COMPANY				RECEIVED:	11/25/83	JA: TX			
8409238	F-03-070162	4215731368		102-4		MOORE #10	MOORES ORCHARD (YEGUA	0.0	UNITED TEXAS TRAN
8409239	F-03-070176	4215731281		102-4		MOORE #4	MOORES ORCHARD (YEGUA	0.0	
8409240	F-03-070180	4215731282		102-4		MOORE #5	MOORES ORCHARD (YEGUA	0.0	
8409237	F-03-070157	4215731308		102-4		MOORE #7	MOORES ORCHARD (YEGUA	0.0	UNITED TEXAS TRAN
-DEMARCO OIL & GAS INC				RECEIVED:	11/25/83	JA: TX			
8409218	F-7B-061062	4225300000		103		BLANKENSHIP #1	BARTLETT EAST	27.4	PALO DURO PIPELIN
8409219	F-7B-061063	4225300000		103		O C LITTLE #1	BARTLETT EAST	27.4	PALO DURO PIPELIN
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409210	F-10-048438	4239300000		108-ER		CHAMBERS B #1-79	MENDOTA NORTHWEST	0.0	SOUTHWESTERN PUBL
8409211	F-10-048648	4221100000		108-ER		JOHN C ISAACS J #8	CANADIAN SE	0.0	NORTHERN NATURAL
8409208	F-10-020331	4235700000		108-ER		MORRISON E #1-52L	PARSELL	0.0	SOUTHWESTERN PUBL
8409207	F-10-005450	4229500000		108-ER		WALLACE HAMKER B #1	NORTHRUP (CLEVELAND)	0.0	SOUTHWESTERN PUBL
-DIRECTION ENERGY CORP				RECEIVED:	11/25/83	JA: TX			
8409267	F-01-072388	4234130944		103		BRUMLEY #1	PANHANDLE MOORE COUNT	0.0	DIAMOND CHEMICALS
-DJS ENERGY CORP				RECEIVED:	11/25/83	JA: TX			
8409285	F-7C-073552	4210534452		103	107-TF	LADD PIERCE "2" #1	OZONA (CANYON SAND)	73.0	VALERO TRANSMISSI
-ENRICH OIL CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409312	F-7C-074177	4208131199		102-4		J B WALKER #2	SILVER (ODOM)	131.0	SUN GAS CO
-ENSERCH EXPLORATION INC				RECEIVED:	11/25/83	JA: TX			
8409234	F-05-069544	4221300000		103		FLOYD GOODGAME #3	TRI-CITIES	913.0	TEXAS UTILITIES F
8409247	F-05-071149	4221300000		103		FLOYD GOODGAME #3	TRI-CITIES	0.0	
-ESENJAY PETROLEUM CORP				RECEIVED:	11/25/83	JA: TX			
8409328	F-04-074413	4224931644		103		WILBUR ERCK #1	CAPTAIN LUCEY (4000')	0.0	NUE WELLS PIPELIN
-ESSEX EXPLORATION INC				RECEIVED:	11/25/83	JA: TX			
8409217	F-10-060375	4219530845		103		GLASGOW #1	BERNSTEIN	137.5	PHILLIPS PETROLEU
-EXPORT PETROLEUM CORP				RECEIVED:	11/25/83	JA: TX			
8409269	F-09-072589	4223731081		108		WORTHINGTON EDWARDS #4	KEN-RICH CONGLOMERATE	2.0	SOUTHWESTERN GAS
-EXXON CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409339	F-03-074546	4233930585		103		CONROE FIELD UNIT #2071	CONROE	110.0	MORAN UTILITIES C
8409326	F-8A-074379	4216531895		108		EXXON-SHELL FEE #8	ROBERTSON N (CLEAR FO	0.6	PHILLIPS PETROLEU
8409363	F-04-074963	4213135276		102-4		FARMERS LIFE GAS UNIT #1-1 (106439)	SEVEN SISTERS EAST (H	1241.0	ARMCO STEEL CORP
8409324	F-08-074373	4200333475		103		FULLERTON CLEARFORK UNIT #2070	FULLERTON	15.0	PHILLIPS PETROLEU
8409354	F-08-074817	4200335511		103		FULLERTON CLEARFORK UNIT #2276	FULLERTON	15.0	PHILLIPS PETROLEU
8409332	F-08-074484	4200333496		103		FULLERTON CLEARFORK UNIT #584	FULLERTON	15.0	PHILLIPS PETROLEU
8409316	F-06-074228	4245930569		102-4	107-TF	GLADEWATER GAS UNIT 13 #1	GLADEWATER	365.0	DELHI GAS PIPELIN
8409421	F-06-075122	4249931176		103		HAWKINS FIELD UNIT #720	HAWKINS	73.0	
8409325	F-08-074376	4200300000		108		J E PARKER A/C 9 #43	THREE BAR (YATES)	12.0	PHILLIPS PETROLEU
8409437	F-04-075158	4227331580		102-4		KING RANCH ALAZAN 375 (106670)	ALAZAN (J-36)	70.0	ARMCO STEEL CORP
8409434	F-04-075149	4226130821		102-4		KING RANCH TIO MOYA 19 (107147)	SAN JOSE SOUTH (M-39)	365.0	ARMCO STEEL CORP
8409420	F-04-075118	4242731758		103		MCGILL BROS 495-F (10118)	JAY SIMMONS	37.0	TRUNKLINE GAS CO
8409391	F-08-075054	4237134344		102-4		STATE UNIVERSITY FC #1	CUNNINGHAM RANCH (LEO	8.0	
8409370	F-8A-074982	4250132333		103		W C KNORPP #2	JANICE (WOLFCAMP)	2.0	
8409452	F-03-075189	4220131061		103		WEBSTER FIELD UNIT #342	WEBSTER	7.0	HOUSTON PIPELINE
-FARGO ENERGY CORP				RECEIVED:	11/25/83	JA: TX			
8409244	F-03070877	4214931562		102-3		RIETZ "E" GAS UNIT #1	GIDDINGS (AUSTIN CHAL	150.0	PHILLIPS PETROLEU
-FIRST TRIAD CORP				RECEIVED:	11/25/83	JA: TX			
8409319	F-7B-074295	4236732429		102-4		PICKERING #2 (GAS)	DENNIS WEST (STRAWN)	365.0	PARKER GAS INC
8409320	F-7B-074296	4236732428		102-4		WOODRUFF #4 (GAS)	DENNIS WEST (STRAWN)	299.0	PARKER GAS INC
-G S I INC				RECEIVED:	11/25/83	JA: TX			
8409348	F-03-074734	4204130997		102-2		A P WEHMEYER #2	KURTEN (BUDA) FIELD	100.0	FERGUSON CROSSING
-GEODYNE RESOURCES INC				RECEIVED:	11/25/83	JA: TX			
8409335	F-10-074507	4229531350		103		BRADLEY "D" #1	MAMMOTH CREEK NORTH (	104.0	TRANSWESTERN PIPE
-GEORGE L ROUSSEAU				RECEIVED:	11/25/83	JA: TX			
8409355	F-03-074911	4205132433		102-4		FRED OWEN WELL #4-A	HOOKER CREEK (NAVARRO	70.0	PHILLIPS PETROLEU
-GEOSOUTHERN ENERGY CORP				RECEIVED:	11/25/83	JA: TX			
8409220	F-03-062698	4247730485		102-2	103	MONIQUE #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJOM GAS CO
-GETTY OIL COMPANY				RECEIVED:	11/25/83	JA: TX			
8409367	F-8A-074976	4207900000		108		SOUTHWEST LEVELLAND UNIT #24	LEVELLAND	0.0	CITIES OIL & GAS
8409366	F-8A-074975	4207900000		108		SOUTHWEST LEVELLAND UNIT #52	LEVELLAND	2.0	CITIES OIL & GAS
8409368	F-8A-074977	4207900000		108		SOUTHWEST LEVELLAND UNIT #54	LEVELLAND	1.0	CITIES OIL & GAS
-GOLDSTON OIL CORP				RECEIVED:	11/25/83	JA: TX			
8409356	F-01-074950	4231131865		102-4	103	T MARTIN G W WELL #1-C #107265	ROOS (1500')	118.0	TENNESSEE GAS PIP
-GRAHAM-MICHAELIS CORP				RECEIVED:	11/25/83	JA: TX			
8409209	F-10-044296	4242100000		108-ER		HILL #1	TEXAS HUGOTON	0.0	PHILLIPS PETROLEU
-GROTHE BROTHERS				RECEIVED:	11/25/83	JA: TX			
8409344	F-7B-074680	4244733506		103		CONDRON #1 186600	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8409317	F-7B-074270	4241700000		102-4		LES RAYMOND #1	ROYALL ELLENBURGER	40.0	LONE STAR GAS CO
-GRUY MANAGEMENT SERVICE CO				RECEIVED:	11/25/83	JA: TX			
8409232	F-04-069136	4242700000		102-4		I G GUTIERREZ #2	SALINAS (2100')	0.0	ESPERANZA TRANSMI
-GULF COAST MINERALS CO INC				RECEIVED:	11/25/83	JA: TX			
8409349	F-04-074745	4213100000		102-4		HINOIOSA-PEREZ UNIT #2-A	JAM (6500)	74.8	UNITED GAS PIPE L
-GULF OIL CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409440	F-08-075155	4247532835		103		HUTCHINGS STOCK ASSN #1233	WARD-ESTES NORTH	5.0	CABOT CORP
8409439	F-08-075154	4247532836		103		HUTCHINGS STOCK ASSN #1234	WARD-ESTES NORTH	5.0	CABOT CORP
8409438	F-08-075153	4247532843		103		HUTCHINGS STOCK ASSN #1249	WARD-ESTES NORTH	40.0	CABOT CORP
8409278	F-10-073248	4221131586		102-4		ISAACS #4-210	CANADIAN SW (DOUGLAS	29.4	
-HANLEY PETROLEUM INC				RECEIVED:	11/25/83	JA: TX			
8409323	F-7C-074367	4246132027		103		H F NEAL "24B" WELL #2	SPRABERRY (TREND AREA	18.0	EL PASO NATURAL G
-HOWELL DRILLING INC				RECEIVED:	11/25/83	JA: TX			
8409457	F-02-075204	4223931795		103		T K SIMONS #4	TEXANA N	0.0	HOUSTON PIPE LINE
-HUFO OILS				RECEIVED:	11/25/83	JA: TX			
8409214	F-10-056162	4234100000		103		BRENT 63-4	BRENT (PANHANDLE MOOR	0.0	PANHANDLE EASTERN
8409215	F-10-056164	4234100000		103		BRENT 65-1	BRENT (PANHANDLE MOOR	0.0	PANHANDLE EASTERN
-HUGHES & HUGHES				RECEIVED:	11/25/83	JA: TX			
8409282	F-02-073402	4202532005		102-4		DOUGHERTY PROPERTIES -C- #1	DOUGHERTY RANCH (1035	548.0	HOUSTON PIPE LINE
8409309		4247932983		102-4	107-TF	OLMITOS RANCH INC -C- 1	LINCOLN (LOBO III 819	50.0	HOUSTON PIPE LINE
-INDIAN WELLS OIL CO				RECEIVED:	11/25/83	JA: TX			
8409347	F-7C-074711	4223532125		102-2		HARRIS 60-5	PROBANDT (CANYON)	0.0	NORTHERN NATURAL
8409289	F-7C-073654	4223531887		102-2		PROBANDT 4-1	PROBANDT (CANYON)	0.0	FARMLAND INDUSTRI
8409288	F-7C-073653	4223532090		102-2		SMITH 58-2	PROBANDT (CANYON)	0.0	NORTHERN NATURAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8409410	F-7C-075081	4223532127		103		WINTERBOTHAM 27-3	BROOKS (CANYON K)	0.0	NORTHERN NATURAL
-J M HUBER CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409375	F-10-075000	4223300000		108		MAGNOLIA HERRING #14 RC	WEST PANHANDLE	18.0	COLORADO INTERSTA
8409376	F-10-075001	4223300000		108		MAGNOLIA HERRING #4	WEST PANHANDLE	18.0	COLORADO INTERSTA
8409374	F-10-074999	4234130534		108		OTIS PHILLIPS "C" #3A	WEST PANHANDLE	18.0	COLORADO INTERSTA
8409380	F-10-075005	4223300000		108		PENNY "A" #1A	WEST PANHANDLE	6.6	COLORADO INTERSTA
8409379	F-10-075004	4223300000		108		PENNY "A" #2	WEST PANHANDLE	4.4	COLORADO INTERSTA
8409378	F-10-075003	4223300000		108		PENNY "B" #6	WEST PANHANDLE	3.2	COLORADO INTERSTA
8409377	F-10-075002	4223300000		108		READ #1	WEST PANHANDLE	10.0	COLORADO INTERSTA
8409212	F-10-054473	4223300000		108-ER		SANFORD E #2	PANHANDLE	0.0	COLORADO INTERSTA
-J R PARTEN				RECEIVED:	11/25/83	JA: TX			
8409256	F-03-071705	4231300000		102-4		SEVEN J STOCK FARM #37	FORT TRINIDAD W (GLEN	185.0	LONE STAR GAS CO
8409255	F-03-071703	4231300000		102-4		THOMAS W DORRELL #1	FORT TRINIDAD W (GLEN	185.0	MADISON PIPE LINE
-JOHN L ENN				RECEIVED:	11/25/83	JA: TX			
8409235	F-7C-069686	4246132021		103		AMCRADA - NEAL F #1	BENEDON (FUSSELMAN)	10.0	PHILLIPS PETROLEU
8409226	F-7C-067415	4246100000		103		OWENS #3 RRC #07174	SPRABERRY (TREND AREA	10.0	PHILLIPS PETROLEU
-KILLAM OIL CO				RECEIVED:	11/25/83	JA: TX			
8409342	F-04-074574	4247933522		102-4		KILLAM & HURD FEE 2042 WELL #1	VILLEGAS (MIDDLE WILC	0.0	
-LANDMARK EXPLORATION INC				RECEIVED:	11/25/83	JA: TX			
8409283	F-03-073510	4205132491		102-3		LYDIA CALVIN #1	GIDDINGS (AUSTIN CHAL	100.0	FERGUSON CROSSING
-MARALO INC				RECEIVED:	11/25/83	JA: TX			
8409340	F-01-074547	4249331095		102-2	103	HAWKINS-MCMULLEN OIL UNIT #1	STOCKDALE S (AUSTIN C	28.5	WILSON COUNTY GAS
-MARTIN OIL & GAS CO				RECEIVED:	11/25/83	JA: TX			
8409341	F-03-074549	4214931479		102-2		FREYTAG #1	GIDDINGS BUDA	0.0	PHILLIPS PETROLEU
-MCCLYMOND BROTHERS				RECEIVED:	11/25/83	JA: TX			
8409336	F-7B-074508	4242900000		103		TEMPLETON 8	STEPHENS COUNTY REGUL	60.0	WARREN PETROLEUM
-MCCORMICK OPERATING CO				RECEIVED:	11/25/83	JA: TX			
8409254	F-04-071664	4204700000		102-4		CARTER RANCH #7	NORTH RUCIAS	650.0	TRANSCONTINENTAL
-MCMURREY PETROLEUM INC				RECEIVED:	11/25/83	JA: TX			
8409264	F-06-072098	4218300000		102-4	103	J R GARNER #1 RRC ID NO 84938	ALPINE	0.0	ARKANSAS LOUISIAN
-MCZ INC				RECEIVED:	11/25/83	JA: TX			
8409286	F-03-073600	4204100000		102-3		ADKINS UNIT #2	KURTEN (BUDA)	55.0	VANGUARD PIPELINE
-MEWBOURNE OIL COMPANY				RECEIVED:	11/25/83	JA: TX			
8409343	F-10-074639	4229530691		103	107-TF	PEERY #4 ID #05161	PEERY (CLEVELAND)	12.0	TRANSWESTERN PIPE
-MICHAELSON PRODUCING CO				RECEIVED:	11/25/83	JA: TX			
8409399	F-7C-075062	4238332004		103		R B #1	JOHN SCOTT (GRAYBURG)	1.5	NEW ENERGY CO
8409398	F-7C-075061	4238332209		103		R B #2	JOHN SCOTT (GRAYBURG)	1.6	NEW ENERGY CO
8409397	F-7C-075060	4238332098		103		R B #3	JOHN SCOTT (GRAYBURG)	2.9	NEW ENERGY CO
8409396	F-7C-075059	4238332394		103		R B #4	JOHN SCOTT (GRAYBURG)	1.5	NEW ENERGY CO
8409394	F-7C-075057	4238332333		103		R B #5	JOHN SCOTT (GRAYBURG)	12.8	NEW ENERGY CO
8409395	F-7C-075058	4238332210		103		R B #6	JOHN SCOTT (GRAYBURG)	1.8	NEW ENERGY CO
8409393	F-7C-075056	4238332395		103		R B #7	JOHN SCOTT (GRAYBURG)	0.7	NEW ENERGY CO
- 8409392	F-7C-075055	4238332393		103		R B #8	JOHN SCOTT (GRAYBURG)	1.8	NEW ENERGY CO
8409409	F-7C-075073	4238332099		103		RANCH #1	JOHN SCOTT (GRAYBURG)	2.6	NEW ENERGY CO
8409408	F-7C-075072	4238332211		103		RANCH #2	JOHN SCOTT (GRAYBURG)	1.5	NEW ENERGY CO
8409407	F-7C-075071	4238332328		103		RANCH #3	JOHN SCOTT (GRAYBURG)	7.3	NEW ENERGY CO
8409406	F-7C-075070	4238332488		103		RANCH #4	JOHN SCOTT (GRAYBURG)	8.7	NEW ENERGY CO
8409405	F-7C-075069	4238332128		103		SCOTT #1	JOHN SCOTT (GRAYBURG)	3.7	NEW ENERGY CO
8409404	F-7C-075068	4238332341		103		SCOTT #2	JOHN SCOTT (GRAYBURG)	16.4	NEW ENERGY CO
8409403	F-7C-075067	4238332342		103		SCOTT #3	JOHN SCOTT (GRAYBURG)	12.8	NEW ENERGY CO
- 8409402	F-7C-075066	4238332517		103		SCOTT #4	JOHN SCOTT (GRAYBURG)	11.0	NEW ENERGY CO
- 8409401	F-7C-075065	4238332518		103		SCOTT #5	JOHN SCOTT (GRAYBURG)	12.8	NEW ENERGY CO
8409400	F-7C-075063	4238332599		103		SCOTT #7	JOHN SCOTT (GRAYBURG)	9.1	NEW ENERGY CO
-MILLS BENNETT ESTATE				RECEIVED:	11/25/83	JA: TX			
8409430	F-04-075141	4204700000		108		MILLS BENNETT ESTATE FEE #27	MILLS BENNETT (J-2 SA	0.0	TEXAS EASTERN TRA
-MITCHELL ENERGY CORPORATION				RECEIVED:	11/25/83	JA: TX			
8409388	F-09-075042	4249700000		108		C A EUBANKS #1 #19409	BOONSVILLE (CADDO LIM	0.0	NATURAL GAS PIPEL
8409387	F-09-075041	4249700000		108		G W EANES #1 #091724	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8409230	F-09-068116	4249700000		108		J A NORWOOD #1 091009	RHOME (CADDO)	0.0	NATURAL GAS PIPEL
8409386	F-09-075038	4249700000		108		J W BRUMLEY #2 #043159	BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
8409443	F-8A-075176	4203330921		103		SHAFER 411 "A" #1 #64504	MYRTLE W (STRAWN)	0.0	
8409444	F-09-075177	4249732553		103		T C W B #40 #17160	CAP YATES (CONSOLIDAT	123.5	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	11/25/83	JA: TX			
8409233	F-08-069535	4237134090		102-4		LELA-PRICE STATE #1	ATHEY (MISSISSIPPIAN)	511.0	
8409389	F-08-075050	4210301521		108		SHACKELFORD SPRABERRY UNIT #3-1	SPRABERRY (TREND AREA	0.5	EL PASO NATURAL G
-MONSANTO COMPANY				RECEIVED:	11/25/83	JA: TX			
8409358	F-8A-074953	4241531728		103		CLARENCE #10	DIAMOND M (CLEARFORK)	2.0	DIAMOND M-SHARON
8409359	F-8A-074954	4241531684		103		CLARENCE #9	DIAMOND M (CLEARFORK)	4.0	DIAMOND M-SHARON
8409357	F-8A-074952	4241531686		103		JACK #17	DIAMOND M (CLEARFORK)	4.0	DIAMOND M-SHARON
8409371	F-8A-074984	4241531682		103		JACK #18	DIAMOND M (CLEARFORK)	2.0	DIAMOND M-SHARON
8409360	F-8A-074955	4241532460		103		MCLAUGHLIN ACCT #1 - WELL #98	DIAMOND M (CLEARFORK)	8.0	DIAMOND M-SHARON
-MONTERO OPERATING INC				RECEIVED:	11/25/83	JA: TX			
8409224	F-7B-066740	4235331385		103		TUBB "A" #1	JMM (CANYON)	0.0	SUN GAS CO
-NATURAL RESOURCES CORP				RECEIVED:	11/25/83	JA: TX			
8409318	F-03-074278	4208900000		107-TF		NRC HERDER #2 RRC #045887	EAST RAMSEY	0.0	AMOCO PRODUCTION
-NEUMIN PRODUCTION CO				RECEIVED:	11/25/83	JA: TX			
8409223	F-02-066080	4205700000		107-PE		STATE TRACT 90 #2 SAN ANTONIO BAY	PANTHER REEF S W (G-2	607.0	HOUSTON PIPE LINE
-OUTLINE OIL CORP				RECEIVED:	11/25/83	JA: TX			
8409253	F-03-071605	4240700000		102-4		MASSEY-CLUXTON UNIT 1 #1	OLD WAVERLY (YEGUA 45	110.0	TEXAS EASTERN TRA
-PANHANDLE PRODUCING COMPANY				RECEIVED:	11/25/83	JA: TX			
8409231	F-10-069074	4202900000		108		CONTINENTAL-SANFORD #1 (023780)	WEST PANHANDLE	0.0	COLORADO INTERSTA
-PARKER & PARSLEY INC				RECEIVED:	11/25/83	JA: TX			
8409306	F-08-074063	4231732718		103		GLASS "D" WELL #1	SPRABERRY (TREND AREA	0.0	ADOBE OIL & GAS C
8409280	F-08-073260	4232900000		103		SALLY WELL #1	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
8409279	F-08-073258	4232900000		103		TATOM WELL #1	SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
-PARTNERS OIL COMPANY				RECEIVED:	11/25/83	JA: TX			
8409236	F-03-069813	4215731408		102-4		GRIGAR RA #1	MOORES ORCHARD NE (YE	0.0	UNITED TEXAS TRAN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	11/25/83	JA: TX			
8409419	F-08-075105	4222732462		108		(02896) BELLAM #15	IATAN EAST (HOWARD)	1.0	GETTY OIL CO
8409423	F-10-075126	4217900000		108		CLAY #8	PANHANDLE GRAY	0.0	
8409422	F-10-075125	4234100000		108		FUGUA B #1	PANHANDLE WEST	0.0	EL PASO NATURAL G
8409426	F-10-075129	4217900000		108		HUSTED #4	PANHANDLE GRAY	0.0	
8409383	F-10-075031	4223300000		108		INEZ #2	PANHANDLE WEST	0.0	EL PASO NATURAL G
8409425	F-10-075128	4235700000		108		NEUFELD A #1	HORIZON CLEVELAND	0.0	
- 8409424	F-10-075127	4235700000		108		ROBERTS D #6	HORIZON CLEVELAND	0.0	
-PRAIRIE PRODUCING CO				RECEIVED:	11/25/83	JA: TX			
8409276	F-05-073137	4237900000		102-4		R R GOODRICH #1	S E GINGER SMACKOVER	8.0	TEXAS UTILITIES F
-Q E D EXPLORATION INC				RECEIVED:	11/25/83	JA: TX			
8409372	F-7C-074987	4223534146		102-2	103	FARMAR-SUGG #9	LUCKY-MAG (CLEARFORK	6.0	FARMLAND INDUSTRI
-RANKIN OIL CO				RECEIVED:	11/25/83	JA: TX			
8409458	F-08-075205	4249531583		103		COWDEN A #1	HENDRICK	0.0	PHILLIPS PETROLEU
8409417	F-08-075102	4200335587		103		PEBSWORTH "C" #1	NIX SOUTH	0.0	PHILLIPS PETROLEU
--REDD & WILLINGHAM				RECEIVED:	11/25/83	JA: TX			
- 8409321	F-06-074324	4200530160		102-2		DIBOLL HEIRS #1 106686	REDD-WILLINGHAM (REKL	0.0	UNITED GAS PIPELI

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-REED OPERATING CO INC				RECEIVED:	11/25/83	JA: TX			
8409441	F-7B-075160	4236300000		103		TOMERLIN "B" 2	MINERAL WELLS S (STRA	35.5	SOUTHWESTERN GAS
-RELIANCE ENERGY & MINERALS CORP				RECEIVED:	11/25/83	JA: TX			
8409292	F-03-073738	4205100000		102-2		BLACK LAKE #3	GIDDINGS/AUSTIN CHALK	0.0	CLAJON GAS CO
-RK PETROLEUM CORP				RECEIVED:	11/25/83	JA: TX			
8409442	F-8A-075167	4231732293		103		ROGERS "A" #3	SPRABERRY (TREND AREA	11.0	PHILLIPS PETROLEU
-ROGER D DAVID INC				RECEIVED:	11/25/83	JA: TX			
8409338	F-7B-074544	4244132443		103		SANTA FE 1-425 #106923	LAWN (GRAY SAND)	75.0	UNION TEXAS PRODU
-SAMSON RESOURCES COMPANY				RECEIVED:	11/25/83	JA: TX			
8409287	F-06-073636	4236500000		108		BRAD YATES #1-C	BETHANY	10.1	TENNESSEE GAS PIP
-SANTA FE ENERGY PRODUCTS CO				RECEIVED:	11/25/83	JA: TX			
8409250	F-03-071395	4214900000		102-2		KIEL #1		0.0	
-SCANDRILL INC				RECEIVED:	11/25/83	JA: TX			
8409273	F-09-072890	4250337126		103		HINSON-BANNIN "B" #1	BRYSON SOUTHWEST (STR	45.6	TEXAS UTILITIES F
8409382	F-09-075024	4223734716		103		REYNOLDS #2	JACK COUNTY REGULAR	25.6	LONE STAR GAS CO
8409300	F-09-073872	4250337237		103		SCAN-KING "F" #1	STOVALL (MCLESTER)	14.6	J H TAYLOR GAS CO
-SHELL OIL CO				RECEIVED:	11/25/83	JA: TX			
8409251	F-01-071397	4231131857		102-4		L S MCCLAUGHERTY "A" #4	A W P (OLMOS)	50.0	HPI TRANSMISSION
-SOUTHLAND ROYALTY CO				RECEIVED:	11/25/83	JA: TX			
8409294	F-08-073802	4243131321		103	107-TF	FLINT ESTATE #10	CONGER PENN	36.5	VALERO TRANSMISSI
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	11/25/83	JA: TX			
8409295	F-8A-073834	4250132368		103		B L GILSTRAP #8	OWNBY	7.0	AMOCO PRODUCTION
8409384	F-01-075035	4212732427		103		BIG WELLS (SAN MIGUEL) UNIT #13-08	BIG WELLS	3.0	HOUSTON PIPE LINE
8409449	F-08-075185	4233532467		103		J T MCCABE A #19	JAMESON NORTH	22.0	LONE STAR GAS CO
8409451	F-08-075187	4233532542		103		M J WILSON #1	JAMESON N	32.0	LONE STAR GAS CO
8409305	F-02-074005	4246932033		103		MCFADDIN #1-61	MCFADDIN	82.0	TENNESSEE GAS PIP
8409385	F-08-075036	4200300000		108		O B HOLT PENN #1-18	TRIPLE -N (PENN UPPER	1.0	AMOCO PRODUCTION
8409446	F-7B-075182	4215131143		103		PEARCE HOLLAND #1	PARDUE	2.5	
8409447	F-7B-075183	4215131468		103		PEARCE HOLLAND #3	PARDUE	10.0	
8409281	F-04-073595	4242731759		102-4		S RODRIQUEZ #7	SUN N	44.0	FLORIDA GAS TRANS
8409448	F-08-075184	4233532533		103		V T MCCABE #48	JAMESON N	28.0	LONE STAR GAS CO
8409428	F-8A-075134	4207900000		108		WRIGHT UNIT #17-52	LEVELLAND	0.1	CITIES SERVICE OI
8409450	F-8A-075186	4207900000		108		WRIGHT UNIT #20-64	LEVELLAND	0.0	CITIES SERVICE OI
8409427	F-8A-075133	4207900000		108		WRIGHT UNIT #22-55	LEVELLAND	0.1	CITIES SERVICE OI
-SUPERIOR OIL CO				RECEIVED:	11/25/83	JA: TX			
8409369	F-04-074979	4240931704		103		MINNIE S WELDER WELL # 64U	PORTILLA (8100 SAND)	13.0	TENNESSEE GAS PIP
8409304	F-08-074000	4237134434		102-4	103	UNIVERSITY "19-1" WELL #3	TUNIS CREEK (DEVONIAN	46.0	DELHI GAS PIPELIN
-T M HOPKINS				RECEIVED:	11/25/83	JA: TX			
8409296	F-06-073840	4240131669		103	107-TF	BOOTH-FREEMAN #3	OAK HILL (COTTON VALL	730.0	TEXAS EASTERN TRA
-TAMARACK PETROLEUM CO INC				RECEIVED:	11/25/83	JA: TX			
8409453	F-8A-075194	4221933527		103		TAYLOR 19 #1 (RRC #63943)	LEVELLAND	6.0	CITIES SERVICE CO
8409455	F-8A-075196	4221933575		103		TAYLOR 19 #2 (RRC #63943)	LEVELLAND	6.0	CITIES SERVICE CO
- 8409456	F-8A-075197	4221933613		103		TAYLOR 19 #3 (RRC #63943)	LEVELLAND	6.0	CITIES SERVICE CO
8409454	F-8A-075195	4221933614		103		TAYLOR 19A #1 (RRC #64223)	LEVELLAND	10.0	CITIES SERVICE OI
-TED TRUE INC				RECEIVED:	11/25/83	JA: TX			
8409216	F-10-056170	4236100000		103		BRENT 66-5	PANHANDLE MOORE COUNT	0.0	PANHANDLE EASTERN
-TEE OPERATING CO				RECEIVED:	11/25/83	JA: TX			
8409252	F-02-071580	4217531752		102-4		CARMICHAEL #1	MARSHALL EAST WILCOX	0.0	LONE STAR GAS CO
-TEXACO INC				RECEIVED:	11/25/83	JA: TX			
8409310	F-08-074165	4243131287		107-TF		E B COPE #5	CONGER S W (PENN)	165.4	VALERO TRANSMISSI
- 8409275	F-8A-072953	4221933859		103		MONTGOMERY ESTATE DAVIES NCT-2 #101	LEVELLAND	34.3	AMOCO PRODUCTION
- 8409311	F-08-074172	4243131150		107-TF		STERLING "O" FEE #1	CONGER (PENN)	413.6	VALERO TRANSMISSI
8409291	F-8A-073734	4216532600		103		WHARTON UNIT #134	HARRIS	0.0	PHILLIPS PETROLEU
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	11/25/83	JA: TX			
8409229	F-03-067856	4205131488		102-2		BOHACEK #5	BIG "A" TAYLOR	0.0	CLAJON GAS CO
8409228	F-03-067855	4205130881		102-2		BUGG #4	BIG "A" TAYLOR	0.0	CLAJON GAS CO
-TEXLAND-RECTOR & SCHUMACHER				RECEIVED:	11/25/83	JA: TX			
8409429	F-8A-075138	4221933954		103		J J STALLINGS #8	LEVELLAND	17.0	AMOCO PRODUCTION
-THOMPSON J CLEO & JAMES CLEO JR				RECEIVED:	11/25/83	JA: TX			
8409266	F-7C-072271	4210534494		103		INGHAM "B" #1	INGHAM (DEVONIAN)	130.0	PHILLIPS PETROLEU
-THROCKMORTON GAS SYSTEMS				RECEIVED:	11/25/83	JA: TX			
8409213	F-7B-054786	4244732756		102-4		GREGORY #4	BOHNER KIMBELL (CADDO	0.0	WARREN PETROLEUM
-TOM BROWN INC				RECEIVED:	11/25/83	JA: TX			
8409314	F-7C-074187	4243532865		103	107-TF	HILL-EDWIN S MAYER JR "LL" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8409313	F-7C-074186	4243532890		103	107-TF	HILL-EDWIN S MAYER JR "T" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8409346	F-7C-074684	4243532864		103	107-TF	HILL-JOHN A WARD "A" #1	SAWYER (CANYON)	73.0	LONE STAR GAS CO
8409301	F-7C-073883	4243532996		103	107-TF	HILL-MRS MAY M RAY "G" 1	ALDWELL RANCH (CANYON	73.0	LONE STAR GAS CO
8409315	F-7C-074209	4243532999		103	107-TF	HILL-RIP WARD "A"	SAWYER (CANYON)	73.0	LONE STAR GAS CO
-TOM MCGEE CORP				RECEIVED:	11/25/83	JA: TX			
8409272	F-10-072843	4229531179		103	107-TF	SCHULTZ #3	BRADFORD (CLEVELAND)	36.5	TRANSWESTERN PIPE
-TRAVELERS OIL CO				RECEIVED:	11/25/83	JA: TX			
8409381	F-10-075015	4217900000		108		BACK #1 04159	PANHANDLE	0.0	PHILLIPS PETROLEU
-TRI-SERVICE DRILLING CO				RECEIVED:	11/25/83	JA: TX			
8409271	F-7C-072782	4238300000		108		ROCKER "B" #29 #04794	SPRABERRY TREND (SPRA	1.5	PHILLIPS PETROLEU
-TXO PRODUCTION CORP				RECEIVED:	11/25/83	JA: TX			
8409263	F-06-071961	4240131685		102-4		BIRDWELL #2-C	MINDEN E (PETTIT UPPE	0.0	DELHI GAS PIPELIN
8409262	F-06-071960	4240131685		102-4		BIRDWELL #2-T	MINDEN E	0.0	DELHI GAS PIPELIN
8409290	F-08-073730	4237100000		103		CABEEN #3	PUTNAM (WICHITA-ALBAN	750.0	DELHI GAS PIPELIN
8409261	F-06-071959	4245930575		103		CEDAR SPRINGS 6-3	CEDAR SPRINGS (TRAVIS	0.0	DELHI GAS PIPELIN
8409243	F-03-070533	4208900000		103		ENGLEHART GAS UNIT 3	ENGLEHART (WILCOX 880	0.0	DELHI GAS PIPELIN
8409222	F-03-065096	4248131735		103		HILL 5	LOUISE N (MIOCENE 250	0.0	TENNESSEE GAS PIP
8409265	F-06-072146	4245930572		103	107-TF	HUGGINS #1-X	HUGGINS #1-X	0.0	DELHI GAS PIPELIN
8409302	F-7C-073957	4223500000		103		LINDLEY "40" #9	LINDLEY "40" #9	75.0	NORTHERN NATURAL
8409270	F-02-072685	4229700000		102-4		MCCLELLAND E-1	OAKVILLE (WILCOX 9700	0.0	DELHI GAS PIPELIN
8409225	F-06-067115	4231530604		103		MITCHELL "J" #1	LASSATER (TRAVIS PEAK	0.0	
8409241	F-02-070346	4228500000		103		SMOTHERS 4	SPEAKS (9400' WILCOX)	0.0	HOUSTON PIPE LINE
8409227	F-05-067600	4216130790		102-4	103	STEWARDS MILL GAS UNIT #1-3	STEWARDS MILL (TRAVIS	0.0	DELHI GAS PIPELIN
8409221	F-01-064197	4231131793		102-4		STISCHER #2	ROOS (1450')	0.0	TEXAS EASTERN TRA
-USEMCO INC				RECEIVED:	11/25/83	JA: TX			
8409337	F-7B-074512	4236732497		103		WHITE "A"	BETHESDA (CADDO)	1.5	LONE STAR GAS CO
-W D H OIL PROPERTIES INC				RECEIVED:	11/25/83	JA: TX			
8409413	F-7C-075097	4239932745		102-4		ALEXANDER #1 (OIL) (10297)	KING (ELLENBURGER)	27.0	UNION TEXAS PETRO
8409414	F-7B-075098	4244132200		102-4		BURNS A #1 (105963)	SHEP SE (GARDNER SAND	73.0	UNION TEXAS PETRO
-W L BRUCE OPERATOR				RECEIVED:	11/25/83	JA: TX			
- 8409445	F-10-075181	4206531255		103		LOCKE #3 (ID #05368)	PANHANDLE CARSON	40.0	GETTY OIL CO
8409390	F-10-075053	4206531468		103		LOCKE #6 (ID# 05368)	PANHANDLE CARSON	40.0	GETTY OIL CO
-WAGNER & BROWN				RECEIVED:	11/25/83	JA: TX			
8409411	F-08-075085	4243131350		103		GLASS #5-24	CONGER (PENN)	136.2	TEXAS UTILITIES F
-WALLEN PRODUCTION CO				RECEIVED:	11/25/83	JA: TX			
8409308	F-7C-074099	4210534131		103		HELBING #6	OZONA SOUTH (LOWER PE	182.5	NORTHERN NATURAL
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	11/25/83	JA: TX			
8409416	F-08-075100	4210333228		103		M B MCKNIGHT "F" #3	SAND HILLS (MCKNIGHT)	88.7	EL PASO NATURAL G
-WESTERN CHIEF OIL & GAS CO				RECEIVED:	11/25/83	JA: TX			
- 8409268	F-09-072419	4223725089		103		DUNLAP JOHNNY "C"	HANN ETHEL CONGL	0.0	SOUTHWESTERN GAS

JD NO	JA DET	API NO	D	SEC(1)	SEC(2)	WELL NAME		FIELD NAME	PROD	PURCHASER
-WICK PRODUCTION CORP				RECEIVED:	11/25/83	JA: TX				
8409298	F-7C-073850	4239932627		102-4		FOLSOM #2		WINGATE WEST (GARDNER	36.0	LONE STAR GAS CO
8409297	F-7C-073849	4239932769		102-4		FOLSOM #3		WINGATE WEST (GARDNER	72.0	LONE STAR GAS CO
-WILSON ENERGY INC				RECEIVED:	11/25/83	JA: TX				
8409362	F-7C-074958	4210500000		103		UNIVERSITY 11 "A" #1		FARMER (SAN ANDRES)	1.0	J L DAVIS
8409361	F-7C-074957	4210500000		103		UNIVERSITY/11 "A" #2		FARMER (SAN ANDRES)	1.0	J L DAVIS
-WYOMING RESOURCES-KEYSTONE				RECEIVED:	11/25/83	JA: TX				
8409257	F-7C-071771	4238332433		103		PALOMINO "42" #1		SPRABERRY (TREND AREA	52.2	PHILLIPS PETROLEU

[FR Doc. 83-34857 Filed 12-30-83; 8:45 am]
BILLING CODE 6717-01-C

[Volume 1031]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 27, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories with each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
- 102–2: New well (2.5 Mile rule)
- 102–3: New well (1000 Ft rule)
- 102–4: New onshore reservoir
- 102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
- 107–GB: Geopressured brine
- 107–CS: Coal Seams
- 107–DV: Devonian Shale
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS VOLUME 1031

ISSUED DECEMBER 27, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-A & R COMPANY				RECEIVED:	11/30/83	JA: OH			
8409558		3416724982		107-TF		LARRY M HAYNES #1-S OH-29-1901	NEWPORT	12.0	COLUMBIA GAS TRAN
-ALL STATES OIL & PRODUCING CO INC				RECEIVED:	11/30/83	JA: OH			
8409559		3410323513		107-TF		MARGARET E COX WELL #1	SHARON	5.0	EAST OHIO GAS CO
8409560		3410323514		107-TF		MARGARET E COX WELL #2	SHARON TOWNSHIP	5.0	EAST OHIO GAS CO
-ALLEGHENY PRODUCERS INC				RECEIVED:	11/30/83	JA: OH			
8409561		3412725735		103		HOWDYSHELL #5	CLAYTON	24.0	NATIONAL GAS & OI
8409562		3412725968		103		HOWDYSHELL WELL #4	CLAYTON	20.0	NATIONAL GAS & OI
-ALSID OIL & GAS DEVELOPMENT CO				RECEIVED:	11/30/83	JA: OH			
8409563		3409921642		107-TF		MANYPENNY - HENDERSON #1	GOSHEN	15.0	
-ALTIER PETROLEUM INC				RECEIVED:	11/30/83	JA: OH			
8409564		3412725660		107-TF		KETCHAM #1	DEARFIELD	6.0	TRAN-CONTINENTAL
8409565		3412725742		107-TF		MINGUS #1	DEARFIELD	6.0	TRAN-CONTINENTAL
-AMERICAN ENERGY DEVELOPMENT INC				RECEIVED:	11/30/83	JA: OH			
8409567		3408504360		107-TF		ADVEY JOLES #2	PERRY	35.0	
8409566		3408520407		107-TF		HERBERT N ROSENBERG #1	PERRY	38.0	
-ATWOOD RESOURCES INC				RECEIVED:	11/30/83	JA: OH			
8409568		3407524171		103	107-TF	SCHLABACH/MILLER UNIT #1	BECKMILLS	15.0	
-B & B ENTERPRISES				RECEIVED:	11/30/83	JA: OH			
8409569		3411523253		107-TF		JERRY APPERSON #1	MCCONNELSVILLE	40.0	
8409570		3411523286		107-TF		LYLE & CARMELITTA APPERSON #1	MCCONNELLSVILLE	40.0	
-BARTLO OIL AND GAS COMPANY				RECEIVED:	11/30/83	JA: OH			
8409571		3410323419		103	107-TF	A NAGY UNIT #3	SHARON	5.0	
-BELDEN & BLAKE & CO				RECEIVED:	11/30/83	JA: OH			
8409574		3416923587		103	107-TF	F & M WRIGHT #4 - 341330	CHESTER	36.5	
-BELDEN & BLAKE & CO 80				RECEIVED:	11/30/83	JA: OH			
8409572		3415123830		103	107-TF	GEORGE & ELIZABETH GONTER #1-341311	SUGAR CREEK	36.5	
-BELDEN & BLAKE & CO 82				RECEIVED:	11/30/83	JA: OH			
8409573		3416923586		103	107-TF	J&J MILEY #1 -341327	CHESTER	36.5	
-BLAUSER WELL SERVICE INC				RECEIVED:	11/30/83	JA: OH			
8409578		3410522166		107-TF		B D GRIFFIN #1	OLIVE TOWNSHIP	0.4	COLUMBIA GAS TRAN
8409575		3400922099		107-TF		FRANKLIN WASHBURN #1	CARTHAGE TOWNSHIP	5.7	COLUMBIA GAS TRAN
8409577		3400922150		107-TF		H C PARRISH #1	CARTHAGE	5.9	COLUMBIA GAS TRAN
8409576		3400922149		107-TF		HARLEY G SHAN #1	CARTHAGE	6.4	COLUMBIA GAS TRAN
8409579		3416725177		107-TF		HAROLD DUNFEE #2	DECATUR TOWNSHIP	6.4	COLUMBIA GAS TRAN
-BUCKEYE CRUDE EXPLORATION INC				RECEIVED:	11/30/83	JA: OH			
8409581		3416725001		103		LAURA GIFFEN #1	ADAMS	10.0	OHIO OIL GATHERIN
8409580		3416724683		103		WAY #1	ADAMS	15.0	OHIO OIL GATHERIN
-CALLANDER & KIMBREL INC				RECEIVED:	11/30/83	JA: OH			
8409582		3400722326		103		ORDS #2	PLYMOUTH	2.0	
-CLINTON OIL CO				RECEIVED:	11/30/83	JA: OH			
8409672		3411926707		107-TF		E VIRGIL PYLE #1-586	SALT CREEK	10.0	
-CUYAHOGA EXPLORATION & DEVELOPMENT				RECEIVED:	11/30/83	JA: OH			
8409586		3411122746		103		HERMAN RITCHIE #1	FRANKLIN	23.4	
8409583		3411122604		103		HERMAN RITCHIE #2	FRANKLIN	27.0	
8409584		3411122605		103		HERMAN RITCHIE #3	FRANKLIN	18.9	

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8409588		3416727402		103		LULU B KOON #1	LIBERTY	57.2	
8409587		3411122981		103		ROSE #3	WASHINGTON	33.5	
8409585		3411122643		103		STONER LAND #1	FRANKLIN	49.3	
-DEER CREEK INC				RECEIVED:	11/30/83	JA: OH			
8409589		3411926776		103		MATHEWS #3	MONROE	15.8	
-DERBY OIL & GAS CORP				RECEIVED:	11/30/83	JA: OH			
8409590		3407524127		103	107-TF	ANDY YODER #1	WALNUT CREEK	12.0	COLUMBIA GAS TRAN
-DUSTY DRILLING COMPANY INC				RECEIVED:	11/30/83	JA: OH			
8409591		3412724699		103		HELSER #3	THORN	3.7	NATIONAL GAS & OI
8409592		3412725890		103		HELSER #4	THORN	3.7	NATIONAL GAS & OI
-ENERGY DEVELOPMENT CORP				RECEIVED:	11/30/83	JA: OH			
8409594		3405520168		107-RT		SOLTIS #3	PARKMAN	18.0	COLUMBIA GAS TRAN
8409595		3408550231		107-RT		SOLTIS WELL #4	PARKMAN	17.0	COLUMBIA GAS TRAN
-FRANKLIN GAS & OIL CO INC				RECEIVED:	11/30/83	JA: OH			
8409596		3408323333		103		RUBY FARQUHAR #2	JEFFERSON	0.0	EAST OHIO GAS CO
-FREDERICK PETROLEUM CORP				RECEIVED:	11/30/83	JA: OH			
8409597		3412122446		103		D HELLER #1	ELK	5.0	
-GRAVEL BANK PRODUCTION CO				RECEIVED:	11/30/83	JA: OH			
8409593		3416727308		103		LOREN TROUT HEIRS #2	WARREN TOWNSHIP	0.0	GAS TRANSPORT INC
-GREENLAND PETROLEUM CO				RECEIVED:	11/30/83	JA: OH			
8409599		3412123047		107-TF		MARTIN #1	WARREN	150.0	EAST OHIO GAS CO
8409600		3412123053		107-TF		SMITH #3	JACKSON	150.0	EAST OHIO GAS CO
-HERALD OIL & GAS CO				RECEIVED:	11/30/83	JA: OH			
8409601		3410522696		107-TF		EVA SEIDEMABLE #1	SALISBURY	273.3	COLUMBIA GAS TRAN
-HOPEWELL OIL AND GAS DEVELOPMENT CO				RECEIVED:	11/30/83	JA: OH			
8409602		3412726073		103	107-TF	PEABODY MILLIS LEWIS #2	PIKE	0.0	COLUMBIA GAS TRAN
-IRVIN PRODUCING COMPANY				RECEIVED:	11/30/83	JA: OH			
8409603		3411523255		103	107-TF	PENNSYLVANIA FARMS #3	YORK	10.0	COLUMBIA GAS TRAN
-J D DRILLING CO				RECEIVED:	11/30/83	JA: OH			
8409604		3410522598		107-TF		J B & ROBERTA O'BRIEN #6	SALISBURY	7.0	COLUMBIA GAS TRAN
-J O B INC				RECEIVED:	11/30/83	JA: OH			
8409607		3416727562		103		ROBERT RUDOLFH #1	MUSKINGUM	4.0	RIVER GAS CO
8409606		3416727555		103		W & J BURKHART #1	DEVOLA	2.0	RIVER GAS CO
8409605		3416727558		103		WHITING #3	MUSKINGUM	4.0	RIVER GAS CO
-JOHN C MASON				RECEIVED:	11/30/83	JA: OH			
8409609		3407524113		103		ADA BROWN #1	RICHLAND	15.0	COLUMBIA GAS TRAN
-JOHNSON JAMES E/EAGLE EXPLORATION				RECEIVED:	11/30/83	JA: OH			
8409608		3403125122		103	107-TF	CALL #1	BETHLEHEM	15.0	COLUMBIA GAS TRAN
-KENOIL				RECEIVED:	11/30/83	JA: OH			
8409610		3416923385		107-TF		RICHARD #1	CANAAN	1.0	COLUMBIA GAS TRAN
-L & S OIL & GAS				RECEIVED:	11/30/83	JA: OH			
8409611		3408924768		103		HUGHES #1-A	LICKING	4.8	NATIONAL GAS & OI
-LAKE REGION OIL INC				RECEIVED:	11/30/83	JA: OH			
8409612		3407524142		103	107-TF	NOAH & AMANDA YODER #2	CLARK	10.0	YANKEE RESOURCES
-LANGASCO DRILLING CO				RECEIVED:	11/30/83	JA: OH			
8409613		3402920974		107-TF		LEE BUCKMAN #1	WEST	45.0	EAST OHIO GAS CO
-LOMAK PETROLEUM INC				RECEIVED:	11/30/83	JA: OH			
8409614		3405520528		107-TF		A FIRST #2	CLARIDON	30.0	EAST OHIO GAS CO
8409615		3415520553		107-TF		C BATES #2	MESOPOTAMIA	30.0	CNG DEVELOPMENT C
-M B OPERATING CO INC				RECEIVED:	11/30/83	JA: OH			
8409626		3415123848		103		CITY OF CANTON #4	PIKE	12.8	CITY OF CANTON
8409627		3415123849		103		CITY OF CANTON #5	PIKE	12.8	CITY OF CANTON
8409628		3415123897		103		GRIFFITH UNIT #1	CANTON	54.8	EAST OHIO GAS CO
8409629		3415123902		103		R FRANK UNIT #2-A	BETHLEHEM	27.4	EAST OHIO GAS CO
-M C F OIL COMPANY INC				RECEIVED:	11/30/83	JA: OH			
8409619		3407523031		103		BENJAMIN MILLER #1	MONROE	1.8	COLUMBIA GAS TRAN
8409616		3407522727		103		GRAVEN FARM	MONROE	3.8	COLUMBIA GAS TRAN
8409617		3407523028		103		JERRY & LAVONNE UHL #2	MONROE	2.8	COLUMBIA GAS TRAN
8409618		3407523029		103		UHLAND FARMS INC #1	MONROE	1.8	COLUMBIA GAS TRAN
8409620		3407523723		103		VICTOR W & SARAH HOFFMAN #1	MONROE	1.5	COLUMBIA GAS TRAN
-MARK RESOURCES CORP				RECEIVED:	11/30/83	JA: OH			
8409622		3400722296		103		BRUNELL UNIT #1	KINGSVILLE	30.0	EAST OHIO GAS CO
8409623		3400722299		103		FISCHER #1	SHEFFIELD	30.0	EAST OHIO GAS CO
8409625		3400722318		103		GANLEY #2	KINGSVILLE	30.0	EAST OHIO GAS CO
8409621		3400722184		103		HUBBARD #2	KINGSVILLE	30.0	EAST OHIO GAS CO
8409624		3400722301		103		VESEY-BURNETT UNIT #1	KINGSVILLE	30.0	EAST OHIO GAS CO
-MILLER & VERMILLION DRILLING CO INC				RECEIVED:	11/30/83	JA: OH			
8409630		3407522819		103		CARTER #2	STARR	2.0	OHIO OIL GATHERIN
-MULTI BASIN ENERGY CORP				RECEIVED:	11/30/83	JA: OH			
8409631		3411123023		103		H FRY #2	BENTON	8.5	RIVER GAS CO
-OHIO OIL & GAS CO				RECEIVED:	11/30/83	JA: OH			
8409632		3415522340		107-TF		PARK COLONY #3	BAZETTA	20.0	COLUMBIA GAS TRAN
-OXFORD OIL CO				RECEIVED:	11/30/83	JA: OH			
8409679		3408923375		108		BARRICK-WALCUTT #1		2.5	NATIONAL GAS & OI
8409680		3408923374		108		BARRICK-WALCUTT #2		2.5	NATIONAL GAS & OI
8409681		3408923664		108		BARRICK-WALCUTT #3		2.5	NATIONAL GAS & OI
8409682		3408923775		108		BARRICK-WALCUTT #4		2.5	NATIONAL GAS & OI
8409683		3408923776		108		BARRICK-WALCUTT #5		2.5	NATIONAL GAS & OI
8409678		3407524120		103		DALE SCHLEGEL #2	PRAIRIE	0.0	
8409684		3408924732		103		DORIS WHITE FOLK #3	FALLSBURY	8.0	
8409674		3403123095		108		MASTON - FOWLER #3		4.0	NATIONAL GAS & OI
8409673		3403123094		108		MASTON-FOWLER #1		4.0	NATIONAL GAS & OI
8409675		3403123551		108		MASTON-FOWLER #2		4.0	NATIONAL GAS & OI
8409676		3403123608		108		MASTON-FOWLER #4		4.0	NATIONAL GAS & OI
8409677		3403123617		108		MASTON-FOWLER #5		4.0	NATIONAL GAS & OI
-POI ENERGY INC				RECEIVED:	11/30/83	JA: OH			
8409633		3400722341		103	107-TF	EASTLAKE #1	ANDOVER	45.0	
-POMINEX INC				RECEIVED:	11/30/83	JA: OH			
8409635		3409921635		103	107-TF	BUEHLER #2	BEAVER	18.0	YANKEE RESOURCES
8409634		3409921622		103	107-TF	ELSER #2	BEAVER	18.0	YANKEE RESOURCES
8409636		3409921636		103	107-TF	KERSHNER UNIT #1	BEAVER	18.0	YANKEE RESOURCES
-PRIME TIME ENERGY INVESTMENT INC				RECEIVED:	11/30/83	JA: OH			
8409637		3407524069		103		JOSEPH POOLE #1	GREER	35.0	COLUMBIA GAS OF O
-PROFESSIONAL PETROLEUM INC				RECEIVED:	11/30/83	JA: OH			
8409638		3416727438		103		USA/MILDREN #4	INDEPENDENCE	20.0	
8409640		3416727539		103		USA/MILDREN #6	INDEPENDENCE	0.0	
8409639		3416727466		103		USA/MILDREN #7	INDEPENDENCE	25.0	
8409641		3416727540		103		USA/MILDREN #8	INDEPENDENCE	0.0	
-PUTNEY RIDGE GAS CO INC				RECEIVED:	11/30/83	JA: OH			
8409657		3405920670		108		ALLIE HALL #3239R (2 WELLS)	ALLIE HALL	3.0	COLUMBIA GAS OF O
8409644		3405920069		108		BAR #2309R (2 WELLS)	BARR	4.8	COLUMBIA GAS OF O
8409656		3405920341		108		COLBURN #4091X	COLBURN	2.4	COLUMBIA GAS OF O
8409646		3405920137		108		CORBEAU #3048	CORBEAU	3.7	COLUMBIA GAS OF O
8409650		3405920213		108		E A HALL #3424R	E A HALL	2.2	COLUMBIA GAS OF O

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8409648		3405920202		108		FREY #3383X (2 WELLS)	FREY	5.0	COLUMBIA GAS OF O
8409643		3405920068		108		HARTLEY #2729	HARTLEY	2.3	COLUMBIA GAS OF O
8409654		3405920307		108		HEANY #3518R	HEANY	2.5	COLUMBIA GAS OF O
8409655		3405920309		108		HENDERSON #7239R	HENDERSON	2.5	COLUMBIA GAS OF O
8409658		3405920763		108		KEENAN #6010	KEENAN	2.5	COLUMBIA GAS OF O
8409652		3405920227		108		MILLER #3406R (2 WELLS)	MILLER	2.3	COLUMBIA GAS OF O
8409645		3405920106		108		OHIO #6460	OHIO	2.7	COLUMBIA GAS OF O
8409649		3405920212		108		QUAKER #3482R	QUAKER	4.0	COLUMBIA GAS OF O
8409651		3405920220		108		R HALL #3508R	R HALL	2.9	COLUMBIA GAS OF O
8409647		3405920175		108		STILLION & HALL #6537R	STILLION & HALL	2.5	COLUMBIA GAS OF O
8409659		3405900769		108		VIRGINIA #2646	VIRGINIA	3.3	COLUMBIA GAS OF O
8409653		3405920240		108		WEBSTER #6666	WEBSTER	2.2	COLUMBIA GAS OF O
8409642		3405920066		108		YAW #2850	YAW	2.5	COLUMBIA GAS OF O
-R GENE BRASEL DBA BRASEL & BRASEL				RECEIVED:	11/30/83	JA: OH			
8409666		3405320834		107-TF		BOSTER #2	ADDISON	1.0	COLUMBIA GAS TRAN
8409664		3405320799		107-TF		CHARLES ROUSH #2	ADDISON	1.0	COLUMBIA GAS TRAN
8409660		3405320574		107-TF		CHARLES W SHAVER #1	ADDISON	1.0	COLUMBIA GAS TRAN
8409665		3405320833		107-TF		JAMES BAIRD #2	GALLIPOLIS	1.0	COLUMBIA GAS TRAN
8409667		3405320841		107-TF		JAMES BAIRD #3	GALLIPOLIS	1.0	COLUMBIA GAS TRAN
8409661		3405320705		107-TF		R O J #1-A	CHESHIRE	1.0	COLUMBIA GAS TRAN
8409663		3405320794		107-TF		R O J #5-A	CHESHIRE	1.0	COLUMBIA GAS TRAN
8409662		3405320749		107-TF		STELLA BURNETT #5	ADDISON	1.0	COLUMBIA GAS TRAN
-RELIANCE ENERGY				RECEIVED:	11/30/83	JA: OH			
8409593		3408323317		103		LAKEN STOOTS #3	HARRISON	3.5	COLUMBIA GAS TRAN
-RESERVE EXPLORATION CO				RECEIVED:	11/30/83	JA: OH			
8409669		3400922249		107-TF		BROZAK #1	ROME	1.2	COLUMBIA GAS TRAN
8409668		3400922241		107-TF		SEEL #1	ROME	0.9	COLUMBIA GAS TRAN
-SHONGUM OIL & GAS INC				RECEIVED:	11/30/83	JA: OH			
8409670		3410323218		107-TF		VAUGHN #2	SHARON	0.0	YANKEE RESOURCES
-THE CARTER JONES LUMBER CO				RECEIVED:	11/30/83	JA: OH			
8409671		3415321350		107-TF		CARTER-JONES #4	TALLMADGE	15.0	
-THUNDERBIRD PETROLEUM DEVELOP CO				RECEIVED:	11/30/83	JA: OH			
8409685		3411122063		103		RHODES #1	BENTON	0.0	RIVER GAS CO
8409686		3411122064		103		RHODES #2	BENTON	0.0	RIVER GAS CO
-UNIVERSAL ENERGY INVESTMENT CO				RECEIVED:	11/30/83	JA: OH			
8409687		3415521390		103		G F BUSINESS EQUIPMENT INC #1	LIBERTY	23.0	G F BUSINESS EQUI
-VICTOR MCKENZIE DRILLING CO INC				RECEIVED:	11/30/83	JA: OH			
8409688		3408924807		103		DAVID R CUMMINGS #1	BOWLING GREEN	0.0	
-WALLICK PETROLEUM CO				RECEIVED:	11/30/83	JA: OH			
8409689		3411523278		103	107-TF	TOM SCHULTZ #1-A	HOMER	10.0	COLUMBIA GAS TRAN
-WILLIAM H TIPKA				RECEIVED:	11/30/83	JA: OH			
8409695		3415723921		107-TF		BEAR #1	PERRY	15.0	LIBBEY-OWENS-FORD
8409692		3406720636		107-TF		CYRUS UNIT #1	FREEPORT	15.0	LIBBEY-OWENS-FORD
8409691		3406720635		107-TF		GARDNER UNIT #1	FREEPORT	20.0	LIBBEY-OWENS-FORD
8409694		3410323524		107-TF		GREATHOUSE UNIT #1	SHARON	15.0	DOEHLER-JARVIS
8409693		3410323521		107-TF		GRINDLE UNIT #1	SHARON	20.0	DOEHLER-JARVIS
8409690		3405923499		103		MONTGOMERY #2A	WASHINGTON	5.0	LIBBEY-OWENS-FORD
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** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE,NM									
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-AMOCO PRODUCTION CO				RECEIVED:	11/28/83	JA: NM 4			
8409530	NM-1292-83PB	3004520966		108-PB		A L ELLIOTT B #7	BLANCO	0.0	EL PASO NATURAL G
8409529	NM-1291-83PB	3004709188		108-PB		E E ELLIOTT B #6	BASIN	0.0	EL PASO NATURAL G
8409532	NM-1293-83PB	3004520297		108-PB		ELLIOTT GAS COM T #1	BLANCO	0.0	EL PASO NATURAL G
8409531	NM-1294-83PB	3004509109		108-PB		ELLIOTT GAS COM K #1	BLANCO	0.0	EL PASO NATURAL G
8409525	NM-1288-83PB	3004506798		108-PB		GALLEGOS CANYON UNIT #147	BASIN	0.0	EL PASO NATURAL G
8409526	NM-1287-83PB	3004507158		108-PB		GALLEGOS CANYON UNIT #175	BASIN	0.0	EL PASO NATURAL G
8409527	NM-1290-83PB	3004507275		108-PB		GALLEGOS CANYON UNIT #183	BASIN	0.0	EL PASO NATURAL G
8409528	NM-1289-83PB	3004511618		108-PB		GALLEGOS CANYON UNIT #213	BASIN	0.0	EL PASO NATURAL G
8409534	NM-1306-83PB	3004511739		108-PB		GALLEGOS CANYON UNIT #240	BASIN	0.0	EL PASO NATURAL G
8409533	NM-1256-83PB	3003932337		108-PB		JICARILLA CONTRACT 148 #14	OTERO	0.0	EL PASO NATURAL G
8409523	NM-1255-83PB	3004520970		108-PB		W D HEATH B #5	BLANCO	0.0	EL PASO NATURAL G
-BLACKWOOD & NICHOLS CO LTD				RECEIVED:	11/28/83	JA: NM 4			
8409555	NM-1071-83PB	3004522528		108-PB		NORTHEAST BLANCO UT #65	BLANCO-MV	0.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED:	11/28/83	JA: NM 4			
8409556	NM-1307-83PB	3003908083		108-PB		JICARILLA CONTRACT #78	BALLARD - PC	0.0	EL PASO NATURAL G
-CONSOLIDATED OIL & GAS INC				RECEIVED:	11/28/83	JA: NM 4			
8409554	NM-1267-83PB	3004510866		108-PB		OWEN #1	BLANCO-MV	0.0	EL PASO NATURAL G
-DEPCO INC				RECEIVED:	11/28/83	JA: NM 4			
8409547	NM-1260-83PB	3003906632		108-PB		MKL #10	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
8409544	NM-1259-83PB	3003906554		108-PB		MKL #11	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
8409545	NM-1258-83PB	3003906615		108-PB		MKL #13	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
8409543	NM-1257-83PB	3003906712		108-PB		MKL #14	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
8409548	NM-1262-83PB	3003900000		108-PB		MKL #6	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
8409546	NM-1261-83PB	3003906673		108-PB		MKL #9	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
-DUGAN PRODUCTION CORP				RECEIVED:	11/28/83	JA: NM 4			
8409549	NM-1321-83PB	3004522969		108-PB		FAF #4	FRUITLAND-PC	0.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	11/28/83	JA: NM 4			
8409465	NM-1327-83-P	3004507049		108-PB		BLANCO #12	BLANCO	0.0	EL PASO NATURAL G
8409514	NM-1344-83-P	3004507019		108-PB		BOLACK B #1	BLANCO	0.0	EL PASO NATURAL G
8409512	NM-1346-83-P	3004506600		108-PB		BOLACK B #4	BLANCO	0.0	EL PASO NATURAL G
8409504	NM-1355-83-P	3003921172		108-PB		CANYON LARGO UNIT #288DK	BASIN	0.0	EL PASO NATURAL G
8409463	NM-1329-83-P	3004508782		108-PB		CORNELL #5	UNDESIGNATED FRUITLAN	0.0	EL PASO NATURAL G
8409521	NM-1336-83PB	3004521515		108-PB		DAY #5	BLANCO	0.0	EL PASO NATURAL G
8409488	NM-1371-83-P	3004511912		108-PB		DAY A #6	BLANCO	0.0	EL PASO NATURAL G
8409489	NM-1368-83-P	3004512192		108-PB		DAY A #8	BLANCO	0.0	EL PASO NATURAL G
8409503	NM-1354-83-P	3004522824		108-PB		FIELDS #11	BLANCO	0.0	EL PASO NATURAL G
8409471	NM-1318-83PB	3004520890		108-PB		FIELDS #8	BLANCO	0.0	EL PASO NATURAL G
8409472	NM-1319-83PB	3004521094		108-PB		GELBKE #1	BLANCO	0.0	EL PASO NATURAL G
8409478	NM-1313-83-P	3004513085		108-PB		GRAMBLING #4	BLANCO	0.0	EL PASO NATURAL G
8409482	NM-1309-83-P	3004521564		108-PB		GRAMBLING #8	BLANCO	0.0	EL PASO NATURAL G
8409498	NM-1361-83-P	3004521120		108-PB		GRAMBLING C #10	BLANCO	0.0	EL PASO NATURAL G
8409466	NM1328-83-PB	3004520671		108-PB		GRAMBLING C #7	BLANCO	0.0	EL PASO NATURAL G
8409510	NM-1348-83-P	3004507496		108-PB		HARDIG E #1	BLANCO	0.0	EL PASO NATURAL G
8409462	NM-1332-83-P	3003906851		108-PB		HARRINGTON #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409461	NM-1331-83-P	3004520669		108-PB		HEATON #25	AZTEC	0.0	EL PASO NATURAL G
8409520	NM-1337-83PB	3004520757		108-PB		HEATON #26	BLANCO	0.0	EL PASO NATURAL G
8409464	NM-1330-83-P	3004522883		108-PB		HORTON #2	BLANCO	0.0	EL PASO NATURAL G
8409511	NM-1345-83-P	3004506950		108-PB		HOWELL #3	BLANCO	0.0	EL PASO NATURAL G
8409491	NM-1366-83-P	3004521454		108-PB		HUBBELL #4	OTERO	0.0	EL PASO NATURAL G
8409486	NM-1373-83PB	3004560020		108-PB		HUERFANO UNIT #155	BASIN	0.0	EL PASO NATURAL G
8409473	NM-1316-83-P	3004511944		108-PB		HUERFANO UNIT #158	BASIN	0.0	EL PASO NATURAL G
8409476	NM-1315-83-P	3004505701		108-PB		HUERFANO UNIT #58	BALLARD	0.0	EL PASO NATURAL G
8409459	NM-1333-83-P	3004520308		108-PB		HUERFANO UNIT #181	BASIN	0.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8409460	NM-1334-83-P	3003921115		108-PB		JICARILLA C #11	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409478	NM-1324-83-P	3003921158		108-PB		JICARILLA C #13	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409518	NM-1340-83-P	3003906409		108-PB		JICARILLA F #5	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409513	NM-1343-83-P	3002906359		108-PB		JICARILLA G #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409477	NM-1312-83-P	3003905916		108-PB		JICARILLA J#6	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409480	NM-1311-83-P	3003906368		108-PB		JICARILLA J#7	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409507	NM-1349-83-P	3003922120		108-PB		JICARILLA 67 #19	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409474	NM-1317-83-P	3004509752		108-PB		KELLY B #1	BLANCO	0.0	EL PASO NATURAL G
8409519	NM-1338-83PB	3003920304		108-PB		KLEIN #15	OTERO	0.0	EL PASO NATURAL G
8409481	NM-1303-83-P	3003921061		108-PB		KLEIN #25	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409496	NM-1363-83-P	3004506554		108-PB		KNAUFF #1	FULCHER KUTZ	0.0	EL PASO NATURAL G
8409467	NM-1325-83-P	3003920638		108-PB		LINDRITH UNIT #76	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409500	NM-1359-83-P	3003921107		108-PB		LINDRITH UNIT #85	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409497	NM-1360-83-P	3003922057		108-PB		LINDRITH UNIT #96	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409499	NM-1358-83-P	3003900000		108-PB		LINDRITH UNIT #82	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409475	NM-1314-83-P	3004513111		108-PB		MANSFIELD #5	BLANCO	0.0	EL PASO NATURAL G
8409493	NM-1364-83-P	3004509054		108-PB		MURPHY E #3	AZTEC	0.0	EL PASO NATURAL G
8409492	NM-1367-83-P	3004520841		108-PB		NYE #6	AZTEC	0.0	EL PASO NATURAL G
8409487	NM-1370-83-P	3004513312		108-PB		QUITZAU #11	BALLARD	0.0	EL PASO NATURAL G
8409508	NM-1350-83-P	3004520773		108-PB		RIDDLE B #6	BLANCO	0.0	EL PASO NATURAL G
8409502	NM-1357-83-P	3004521271		108-PB		RIDDLE C#4	BLANCO	0.0	EL PASO NATURAL G
8409522	NM-1335-83PB	3004521130		108-PB		RIDDLE G #4	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409495	NM-1362-83-P	3003920497		108-PB		RINCON UNIT,#192	BASIN	0.0	EL PASO NATURAL G
8409469	NM-1323-83-P	3003906728		108-PB		RINCON UNIT #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409505	NM-1351-83-P	3003921392		108-PB		RINCON UNIT #220	LARGO	0.0	EL PASO NATURAL G
8409484	NM-1375-83-P	3003906537		108-PB		RINCON UNIT #94	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409433	NM-1376-83-P	3003907049		108-PB		SAN JUAN 27-5 UNIT #47 PC#MV	SOUTH BLANCO & BLANCO	0.0	EL PASO NATURAL G
8409515	NM-1341-83-P	3003907067		108-PB		SAN JUAN 28-7 UNIT #116	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409479	NM-1310-83PB	3003920993		108-PB		SAN JUAN 28-7 UNIT #232	BASIN	0.0	EL PASO NATURAL G
8409509	NM-1347-83-P	3003921084		108-PB		SAN JUAN 28-7 UNIT #243	BASIN	0.0	EL PASO NATURAL G
8409506	NM-1353-83-P	3003921083		108-PB		SAN JUAN 28-7 UNIT #244	BASIN	0.0	EL PASO NATURAL G
8409490	NM-1369-83-P	3003907793		108-PB		SAN JUAN 30-6 UNIT #11	BLANCO	0.0	EL PASO NATURAL G
8409501	NM-1356-83-P	3004506756		108-PB		SCHWERDTFEGER A#12	BLANCO	0.0	EL PASO NATURAL G
8409516	NM-1342-83-P	3004521821		108-PB		SCOTT #10	BLANCO	0.0	EL PASO NATURAL G
8409468	NM-1326-83-P	3004509234		108-PB		SELLERS #1	BLANCO	0.0	EL PASO NATURAL G
8409494	NM-1365-83-P	3004520854		108-PB		SELLERS #7	AZTEC	0.0	EL PASO NATURAL G
8409485	NM-1372-83-P	3004509720		108-PB		STOREY B #6	AZTEC	0.0	EL PASO NATURAL G
8409517	NM-1339-83-P	3004521265		108-PB		TAPP #11	SOUTH BLANCO	0.0	EL PASO NATURAL G
-LADD PETROLEUM CORPORATION				RECEIVED:	11/28/83	JA: NM 4			
8409542	NM-1297-83PB	3004524090		108-PB		AZTEC #2E	BASIN-DAKOTA	0.0	EL PASO NATURAL G
-MERRION OIL & GAS CORP				RECEIVED:	11/28/83	JA: NM 4			
8409558	NM-1269-83PB	3004320273		108-PB		JICARILLA 428 #4	BALLARD-PC	0.0	NORTHWEST PIPELIN
—MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	11/28/83	JA: NM 4			
8409553	NM-1320-83PB	3003906438		108-PB		JICARILLA D #7	BLANCO-MV & GAVILAN-P	0.0	NORTHWEST PIPELIN
8409552	NM-1304-83PB	3003907044		108-PB		JICARILLA E #3	BLANCO-MV & GAVALIN P	0.0	NORTHWEST PIPELIN
-NORTHERN NATURAL GAS PRODUCING CO				RECEIVED:	11/28/83	JA: NM 4			
8409551	NM-1303-83PB	3004500000		108-PB		NYE FED TRACT 1 #2	BASIN-DAKOTA	0.0	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	11/28/83	JA: NM 4			
8409540	NM-1280-83PB	3003907838		108-PB		SAN JUAN 30-5 UNIT #10	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8409539	NM-1281-83PB	3003907792		108-PB		SAN JUAN 30-5 UNIT MP 27	BASIN/BLANCO DAKOTA/M	0.0	NORTHWEST PIPELIN
— 8409538	NM-1278-83PB	3003921168		108-PB		SAN JUAN 30-5 UNIT 2R	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
- 8409537	NM-1279-83PB	3003907754		108-PB		SAN JUAN 30-5 UNIT 7	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8409541	NM-1282-83PB	3003907907		108-PB		SAN JUAN 31-6 UNIT 14	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8409535	NM-1269-83PB	3004521330		108-PB		SAN JUAN 32-7 NP 34	BASIN DAKOTA	0.0	EL PASO NATURAL G
8409536	NM-1283-83PB	3004511251		108-PB		SAN JUAN 32-7 UNIT 14	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
-TENNECO OIL COMPANY				RECEIVED:	11/28/83	JA: NM 4			
8409557	NM-1264-83PB	3004500000		108-PB		BASSETT COM #1	BASIN-DAKOTA	0.0	EL PASO NATURAL G

[FR Doc. 83-34701 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1032]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued December 27, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd, Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease
Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1032

ISSUED DECEMBER 27, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ILLINOIS DEPARTMENT OF MINES & MINERALS									
-HORIZON ENERGY CORP				RECEIVED:	11/28/83	JA: IL			
8409696		1213500000	D	102-2		WAGGONER #1		0.0	INTERNATIONAL VER
** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE,NM									
-AMOCO PRODUCTION CO				RECEIVED:	11/22/83	JA: NM 4			
8409318	NM-1049-83PB	3004520966		108-PB		A L ELLIOTT B #7	BLANCO	0.0	EL PASO NATURAL G
8409828	NM-0934-83PB	3004520966		108-PB		A L ELLIOTT B #7	BLANCO	0.0	EL PASO NATURAL G
8409827	NM-0934-83PB	3004521014		108-PB		A L ELLIOTT C #3	BLANCO	0.0	EL PASO NATURAL G
8409844	NM-1051-83PB	3004505258		108-PB		C A MCADAMS B #2	BASIN	0.0	EL PASO NATURAL G
8409830	NM-1053-83PB	3004509188		108-PB		E E ELLIOTT B #6	BLANCO	0.0	EL PASO NATURAL G
8409832	NM-1037-83PB	3004509193		108-PB		E E ELLIOTT B #7	BASIN	0.0	EL PASO NATURAL G
8409841	NM-1045-83PB	3004507137		108-PB		E E ELLIOTT C #2	BLANCO	0.0	EL PASO NATURAL G
8409834	NM-1029-83PB	3004509109		108-PB		ELLIOTT GAS COM K #1	BLANCO	0.0	EL PASO NATURAL G
8409833	NM-1048-83PB	3004520297		108-PB		ELLIOTT GAS COM T #1	BLANCO	0.0	EL PASO NATURAL G
8409822	NM-1041-83PB	3004507158		108-PB		GALLEGOS CANYON UNIT #175	BASIN	0.0	EL PASO NATURAL G
8409826	NM-0939-83PB	3004507158		108-PB		GALLEGOS CANYON UNIT #175	BASIN	0.0	EL PASO NATURAL G
8409835	NM-1028-83PB	3004507275		108-PB		GALLEGOS CANYON UNIT #198	BASIN	0.0	EL PASO NATURAL G
8409819	NM-0992-83PB	3004511739		108-PB		GALLEGOS CANYON UNIT #240	BASIN	0.0	EL PASO NATURAL G
8409839	NM-1044-83PB	3004511687		108-PB		GALLEGOS CANYON UNIT #241	BASIN	0.0	EL PASO NATURAL G
8409820	NM-0993-83PB	3004506981		108-PB		GALLEGOS CANYON UNIT #90	BASIN	0.0	EL PASO NATURAL G
8409825	NM-0938-83PB	3004506402		108-PB		H B MCGRADY A #2	BASIN	0.0	EL PASO NATURAL G
8409842	NM-1046-83PB	3004506402		108-PB		H B MCGRADY A #2	BASIN	0.0	EL PASO NATURAL G
8409831	NM-1054-83PB	3003982337		108-PB		JICARILLA CONTRACT	OTERO	0.0	EL PASO NATURAL G
8409821	NM-0994-83PB	3003982337		108-PB		JICARILLA CONTRACT 148 #14	OTERO	0.0	EL PASO NATURAL G
8409837	NM-1043-83PB	3003905975		108-PB		JICARILLA CONTRACT 148 #16	OTERO	0.0	EL PASO NATURAL G
8409823	NM-0937-83PB	3003921999		108-PB		JICARILLA CONTRACT 148 #17	OTERO	0.0	EL PASO NATURAL G
8409843	NM-1050-83PB	3003921999		108-PB		JICARILLA CONTRACT 148 #17	OTERO	0.0	EL PASO NATURAL G
8409840	NM-1045-83PB	3004500000		108-PB		JICARILLA CONTRACT 148 #24	OTERO	0.0	EL PASO NATURAL G
8409836	NM-1027-83PB	3004524339		108-PB		SHANE GAS COM A #1	BLANCO	0.0	EL PASO NATURAL G
8409838	NM-1042-83PB	3004520715		108-PB		SHAW GAS COM B #1	BLANCO	0.0	EL PASO NATURAL G
8409824	NM-0936-83PB	3004520970		108-PB		W D HEATH B #5	BLANCO	0.0	EL PASO NATURAL G
8409829	NM-1052-83PB	3004520970		108-PB		W D HEATH B #5	BLANCO	0.0	EL PASO NATURAL G
-BLACKWOOD & NICHOLS CO LTD				RECEIVED:	11/22/83	JA: NM 4			
8409711	NM-1072-83PB	3004510867		108-PB		NORTHEAST BLANCO UT #33	BLANCO-MV	0.0	EL PASO NATURAL G
-DUGAN PRODUCTION CORP				RECEIVED:	11/22/83	JA: NM 4			
8409712	NM-1069-83PB	3004522969		108-PB		FAF #4	WAW FRUITLAND - PC	0.0	EL PASO NATURAL G
-EL PASO EXPLORATION CO				RECEIVED:	11/22/83	JA: NM 4			
8409698	NM-0931-83PB	3003906226		108-PB		JICARILLA 120 C #15	SOUTH BLANCO	0.0	NORTHWEST PIPELIN
8409697	NM-0967-83PB	3004506443		108-PB		SAN JUAN 27-8 #44	SOUTH BLANCO	0.0	NORTHWEST PIPELIN
-EL PASO NATURAL GAS COMPANY				RECEIVED:	11/22/83	JA: NM 4			
8409314	NM-1058-83PB	3004506373		108-PB		ANGEL PEAK #2	BASIN	0.0	EL PASO NATURAL G
8409740	NM-0965-83PB	3004512093		108-PB		ATLANTIC C #5	BLANCO	0.0	EL PASO NATURAL G
8409718	NM-1000-83PB	3004520758		108-PB		ATLANTIC C #9	BLANCO	0.0	EL PASO NATURAL G
8409722	NM-0927-83PB	3004500000		108-PB		BLANCO #15	BLANCO-MV SOUTH BLANC	0.0	EL PASO NATURAL G
8409732	NM-1011-83PB	3004507019		108-PB		BOLACK B #1	BLANCO	0.0	EL PASO NATURAL G

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8409795	NM-1015-83PB	3004506176		108-PB		BOLACK C #1e	BLANCO	0.0	EL PASO NATURAL G
8409801	NM-1024-83PB	3004506176		108-PB		BOLACK C #16	BLANCO	0.0	EL PASO NATURAL G
8409843	NM-1019-83PB	3003982340		108-PB		CANYON LARGO UNIT #107	OTERO	0.0	EL PASO NATURAL G
8409807	NM-1107-83PB	3003906194		108-PB		CANYON LARGO UNIT #11	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409763	NM1064-83-PB	3003920261		108-PB		CANYON LARGO UNIT #148	OTERO	0.0	EL PASO NATURAL G
8409715	NM-0997-83PB	3003920271		108-PB		CANYON LARGO UNIT #151	OTERO	0.0	EL PASO NATURAL G
8409745	NM-0958-83PB	3003920278		108-PB		CANYON LARGO UNIT #154	OTERO	0.0	EL PASO NATURAL G
8409799	NM-1111-83PB	3003906059		108-PB		CANYON LARGO UNIT #29	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409742	NM-0961-83PB	3003906116		108-PB		CANYON LARGO UNIT #34	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409809	NM-1067-83PB	3003905970		108-PB		CANYON LARGO UNIT #52	BALLARD	0.0	EL PASO NATURAL G
8409751	NM-0954-83PB	3003906187		108-PB		CANYON LARGO UNIT #65	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409776	NM-1081-83PB	3003960048		108-PB		CANYON LARGO UT NP #78	BALLARD	0.0	EL PASO NATURAL G
8409805	NM-1109-83PB	3003920793		108-PB		CANYON LARGO UNIT NP #238	BLANCO	0.0	EL PASO NATURAL G
8409769	NM1058-83-PB	3003920790		108-PB		CANYON LARGO UT #228	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409730	NM-0977-83PB	3004521515		108-PB		DAY #8	BLANCO	0.0	EL PASO NATURAL G
8409734	NM-0971-83PB	3004520907		108-PB		DAY A #14	BLANCO	0.0	EL PASO NATURAL G
8409806	NM-1108-83PB	3004506724		108-PB		DAY B #5	BLANCO	0.0	EL PASO NATURAL G
8409717	NM-0999-83PB	3004520444		108-PB		DRYDEN #5	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409770	NM1057-83-PB	3004521528		108-PB		EL PASO #3	AZTEC	0.0	EL PASO NATURAL G
8409784	NM-1008-83PB	3004520890		108-PB		FIELDS #8	BLANCO	0.0	EL PASO NATURAL G
8409761	NM-0964-83PB	3004511769		108-PB		FLORANCE #6	BLANCO	0.0	EL PASO NATURAL G
8409716	NM-0998-83	3004520462		108-PB		FLORANCE #8	BLANCO	0.0	EL PASO NATURAL G
8409792	NM-1012-83PB	3004507163		108-PB		FLORANCE C #10	BASIN	0.0	EL PASO NATURAL G
8409732	NM-0979-83PB	3004506543		108-PB		FLORANCE D #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409790	NM-1014-83PB	3004520819		108-PB		GRAMBLING A #4	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409773	NM1084-83-PB	3004507136		108-PB		HANCOCK B #7	AZTEC	0.0	EL PASO NATURAL G
8409778	NM-1079-83PB	3004521087		108-PB		HARDIE #7	BLANCO	0.0	EL PASO NATURAL G
8409767	NM1066-83-PB	3003906848		108-PB		HARRINGTON #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409815	NM-1097-83PB	3004510351		108-PB		HEATON #14	BASIN	0.0	EL PASO NATURAL G
8409753	NM-0950-83PB	3004520757		108-PB		HEATON #25	BLANCO	0.0	EL PASO NATURAL G
8409726	NM-0923-83PB	3004506958		108-PB		HOWELL #3	BLANCO	0.0	EL PASO NATURAL G
8409761	NM1063-83-PB	3004506132		108-PB		HUERFANITO UNIT #31	BALLARD	0.0	EL PASO NATURAL G
8409808	NM-1099-83PB	3004506076		108-PB		HUERFANITO UNIT #71	BASIN	0.0	EL PASO NATURAL G
8409748	NM-0952-83PB	3004505916		108-PB		HUERFANITO UNIT #92	BASIN	0.0	EL PASO NATURAL G
8409764	NM1062-83-PB	3004506154		108-PB		HUERFANITO UT #36	BALLARD	0.0	EL PASO NATURAL G
8409752	NM-0953-83PB	3004511944		108-PB		HUERFANO UNIT #159	BASIN	0.0	EL PASO NATURAL G
8409813	NM-1092-83PB	3004511966		108-PB		HUERFANO UNIT #163	BASIN	0.0	EL PASO NATURAL G
8409743	NM-0960-83PB	3004511948		108-PB		HUERFANO UNIT #165	BASIN	0.0	EL PASO NATURAL G
8409750	NM-0955-83PB	3004520419		108-PB		HUERFANO UNIT #190	BASIN	0.0	EL PASO NATURAL G
8409771	NM0996-83-PB	3004520632		108-PB		HUERFANO UNIT #204	BASIN	0.0	EL PASO NATURAL G
8409798	NM-1076-83PB	3004505969		108-PB		HUERFANO UNIT #21	WEST KUTZ	0.0	EL PASO NATURAL G
8409817	NM-1078-83PB	3004521207		108-PB		HUERFANO UNIT #239	ANGELS PEAK	0.0	EL PASO NATURAL G
8409845	NM-0995-83PB	3004521889		108-PB		HUERFANO UNIT #265 GL & DK	ANGELS PEAK & BASIN	0.0	NORTHWEST PIPELIN
8409749	NM-0956-83PB	3004520390		108-PB		HUERFANO UNIT #54	BASIN	0.0	EL PASO NATURAL G
8409768	NM1059-83-PB	3004521140		108-PB		HUGHES A #7	BLANCO	0.0	EL PASO NATURAL G
8409720	NM-0930-83PB	3003921158		108-PB		JICARILLA C #13	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409787	NM-1006-83PB	3003921164		108-PB		JICARILLA D #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409755	NM-0948-83PB	3003906409		108-PB		JICARILLA F #8	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409762	NM1065-83-PB	3003906459		108-PB		JICARILLA F #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409810	NM-1091-83PB	3003906429		108-PB		JICARILLA J #6	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409812	NM-1093-83PB	3003906469		108-PB		JICARILLA J #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409737	NM-0963-83PB	3004507451		108-PB		JOHNSTON #4	AZTEC	0.0	EL PASO NATURAL G
8409716	NM-1004-83PB	3004521049		108-PB		KING #5	BLANCO-PC	0.0	EL PASO NATURAL G
8409772	NM1083-83-PB	3004507349		108-PB		LACKEY B #16	BASIN	0.0	EL PASO NATURAL G
8409775	NM1085-83-PB	3004507316		108-PB		LACKEY B #17	BASIN	0.0	EL PASO NATURAL G
8409811	NM-1094-83PB	3003920016		108-PB		LINDRITH UNIT #66	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409779	NM-1038-83PB	3004506338		108-PB		LODEWICK #6	FULCHER KUTZ	0.0	EL PASO NATURAL G
8409719	NM-0929-83PB	3004509329		108-PB		LUDWICK #6	AZTEC	0.0	EL PASO NATURAL G
8409754	NM-0949-83PB	3004509028		108-PB		LUDWICK #8	BLANCO	0.0	EL PASO NATURAL G
8409793	NM-1017-83PB	3004513111		108-PB		MANSFIELD #5	BLANCO	0.0	EL PASO NATURAL G
8409816	NM-109683-PB	3004509228		108-PB		MANSFIELD #6	BLANCO	0.0	EL PASO NATURAL G
8409777	NM-1080-83PB	3004523710		108-PB		MORRIS A #3R	AZTEC	0.0	EL PASO NATURAL G
8409791	NM-1013-83PB	3004513208		108-PB		MUDGE #20	BASIN	0.0	EL PASO NATURAL G
8409725	NM-0925-83PB	3003906332		108-PB		QUANTIUS #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409788	NM-1001-83PB	3004520773		108-PB		RIDDLE B #6	BLANCO	0.0	EL PASO NATURAL G
8409738	NM-0969-83PB	3004520848		108-PB		RIDDLE B #7	BLANCO	0.0	EL PASO NATURAL G
8409733	NM-0970-83PB	3003960093		108-PB		RINCON UNIT #107	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409759	NM0932-83-PB	3003920699		108-PB		RINCON UNIT #142	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409804	NM-1110-83PB	3003920496		108-PB		RINCON UNIT #191	OTERO	0.0	EL PASO NATURAL G
8409721	NM-0926-83PB	3003906728		108-PB		RINCON UNIT #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409726	NM-0973-83PB	3003921392		108-PB		RINCON UNIT #220	LARGO	0.0	EL PASO NATURAL G
8409723	NM-0928-83PB	3003906809		108-PB		RINCON UNIT #35	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409746	NM-0957-83PB	3003906925		108-PB		RINCON UNIT #70	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409760	NM10933-83-PB	3003906822		108-PB		RINCON UNIT #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409756	NM10967-83-PB	3003960098		108-PB		RINCON UNIT #97	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8409797	NM-1077-83PB	3003920404		108-PB		RINCON UNIT NP #23	BLANCO	0.0	EL PASO NATURAL G
8409765	NM1061-83-PB	3003960092		108-PB		RINCON UT #68	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409744	NM-0959-83PB	3004520281		108-PB		ROELOFS #4	BLANCO	0.0	EL PASO NATURAL G
8409736	NM-0966-83PB	3004500000		108-PB		SAN JUAN #21	AZTEC	0.0	EL PASO NATURAL G
8409780	NM-1039-83PB	3003920731		108-PB		SAN JUAN 27-4 UNIT #63	TAPACITO	0.0	EL PASO NATURAL G
8409786	NM-1005-83PB	3003907049		108-PB		SAN JUAN 27-5 UNIT #47 PC & MV	SOUTH BLANCO & BLANCO	0.0	EL PASO NATURAL G
8409739	NM-0968-83PB	3003906774		108-PB		SAN JUAN 27-5 UNIT #93	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409729	NM-0976-83PB	3003907125		108-PB		SAN JUAN 28-6 UNIT #24	BLANCO	0.0	EL PASO NATURAL G
8409796	NM-1021-83PB	3003907067		108-PB		SAN JUAN 28-7 UNIT #116	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409800	NM-1020-83PB	3003906999		108-PB		SAN JUAN 28-7 UNIT #119	SOUTH BLANCO	0.0	EL PASO NATURAL G
8409728	NM-0975-83PB	3003920517		108-PB		SAN JUAN 28-7 UNIT #164	BASIN	0.0	EL PASO NATURAL G
8409731	NM-0978-83PB	3003920624		108-PB		SAN JUAN 28-7 UNIT #193	BASIN	0.0	EL PASO NATURAL G
8409782	NM-1022-83PB	3003920875		108-PB		SAN JUAN 28-7 UNIT #216	BASIN	0.0	EL PASO NATURAL G
8409785	NM-1009-83PB	3003921082		108-PB		SAN JUAN 28-7 UNIT #240	LARGO	0.0	EL PASO NATURAL G
8409727	NM-0974-83PB	3003921084		108-PB		SAN JUAN 28-7 UNIT #243	BASIN	0.0	EL PASO NATURAL G
8409747	NM-0962-83PB	3003960071		108-PB		SAN JUAN 28-7 UNIT NP #68	BLANCO	0.0	EL PASO NATURAL G
8409766	NM1060-83-PB	3003907433		108-PB		SAN JUAN 28-7 UT #23	BLANCO	0.0	EL PASO NATURAL G
8409794	NM-1016-83PB	3004509161		108-PB		SELLERS #6	BASIN	0.0	EL PASO NATURAL G
8409735	NM-0972-83PB	3004520854		108-PB		SELLERS #7	AZTEC	0.0	EL PASO NATURAL G
8409774	NM1078-83-PB	3003906165		108-PB		SHEETS A #2	BALLARD	0.0	EL PASO NATURAL G
8409757	NM10946-83-PB	3004513231		108-PB		STOREY B #3	BLANCO	0.0	EL PASO NATURAL G
8409781	NM-1010-83PB	3004521135		108-PB		SUNRAY H #3	BLANCO	0.0	EL PASO NATURAL G
8409783	NM-1007-83PB	3004521136		108-PB		SUNRAY H #5	BLANCO	0.0	EL PASO NATURAL G
8409789	NM-1003-83PB	3004521050		108-PB		TURNER #6	BLANCO	0.0	EL PASO NATURAL G
8409758	NM10951-83-PB	3003920258		108-PB		VAUGHN #10	OTERO	0.0	EL PASO NATURAL G
-KOCH INDUSTRIES INC				RECEIVED:	11/22/83	JA: NM 4			
8409704	NM-0989-83PB	3004521830		108-PB		CAIN #2	BLANCO- PC	0.0	EL PASO NATURAL G
8409703	NM-0990-83PB	3004521901		108-PB		LAMBE #7	BLANCO - PC	0.0	EL PASO NATURAL G
8409702	NM-0991-83PB	3004503504		108-PB		WRIGHT #2	AZTEC - PC	0.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	11/22/83	JA: NM 4			
8409710	NM-1034-83PB	3003900000		108-PB		JICARILLA OTERO FED #1	BASIN-DAKOTA	0.0	EL PASO NATURAL G
8409709	NM-1035-83PB	3004500000		108-PB		STEPHENS UNIT #1	BASIN-DAKOTA	0.0	NORTHWEST PIPELIN
-NATIONAL COOP REFINERY ASSOC				RECEIVED:	11/22/83	JA: NM 4			
8409706	NM-0987-83PB	3003906735		108-PB		CANDADO #11	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
8409705	NM-0988-83PB	3003906744		108-PB		CANDADO #13	SOUTH BLANCO - PC	0.0	EL PASO NATURAL G
8409707	NM-0986-83PB	3003906731		108-PB		CANDADO #3	SOUTH BLANCO-PC	0.0	EL PASO NATURAL G
-NORTHERN NATURAL GAS PRODUCING CO				RECEIVED:	11/22/83	JA: NM 4			
8409708	NM-1033-83PB	3004500000		108-PB		NYE FEDERAL TRACT 1 #2	BASIN-DAKOTA	0.0	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	11/22/83	JA: NM 4			
8409701	NM-1040-83PB	3004510700		108-PB		SAN JUAN 32-8 UNIT #16	BLANCO - MV	0.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO				RECEIVED:	11/22/83	JA: NM 4			
8409700	NM-1031-83PB	3004508787		108-PB		HAWK #1	AZTEC-PC	0.0	EL PASO NATURAL G
8409699	NM-1030-83PB	3004507512		108-PB		MCCLANAHAN #1	AZTEC -.PC	0.0	EL PASO NATURAL G
-THELMA FORD SIMMONS				RECEIVED:	11/22/83	JA: NM 4			
8409713	NM-1023-83PB	3004511869		108-PB		SIMMONS PC #11	AZTEC-PC	0.0	EL PASO NATURAL G

[FR Doc. 83-34868 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1033]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 27, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1033

ISSUED DECEMBER 27, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-GOULD OIL INC				RECEIVED:	11/30/83	JA: KS			
8409856	K-83-0340	1500720495		108-SA		Z-BAR #1	AETNA	3.5	NORTHWEST CENTRAL
-KAN-EX INC				RECEIVED:	12/01/83	JA: KS			
8409853	K-83-0611	1515121268		102-4		NEEL #1	KAN-OPENER	18.0	KANSAS GAS SUPPLY
8409852	K-83-0612	1515121275		102-4		NEEL #2	KAN-OPENER	18.0	KANSAS GAS SUPPLY
8409854	K-83-0613	1515121304		102-4		NEEL #3	KAN-OPENER	18.0	KANSAS GAS SUPPLY
8409855	K-83-0609	1515121208		102-4		ONSTOT #1	KAN-OPENER	18.0	KANSAS GAS SUPPLY
-TEXAS ENERGIES INC				RECEIVED:	12/01/83	JA: KS			
8409851	K-83-0067	1500721528		102-4		HOAGLAND 2-21	WILDCAT	150.0	REPUBLIC NATURAL
LOUISIANA OFFICE OF CONSERVATION									
-ALLIANCE EXPLORATION CORPORATION				RECEIVED:	12/02/83	JA: LA			
8409984	83-1122	1705721997		102-4		M B RICHARD #1 6A RB SUA	ROUSSEAU	474.5	TEXAS GAS TRANSMI
-AMOCO PRODUCTION CO				RECEIVED:	12/02/83	JA: LA			
8410042	83-1091	1703121518		102-3		J F GUY #1	WILDCAT/GRAND CANE	730.0	UNITED GAS PIPELI
8410034	83-1088	1701320519		102-3		LAUHON LAND COMPANY #1	WILDCAT/RINGGOLD BLOC	730.0	
8409932	82-3239	1705320608		103		LOUISIANA RICE MILLING CO #7	SOUTH THORNWELL	730.0	COLUMBIA GAS TRAN
8409974	83-0638	1770520094		103		S/L 862 #11	VERMILION BLOCK 14	1200.0	FLORIDA POWER & L
8409975	83-0637	1770520107		103		S/L 862 #14	VERMILION BLOCK 14 FI	3000.0	TRUNKLINE GAS CO
8409976	83-0633	1770520116		103		S/L 862 #15	VERMILION BLOCK 14 FI	2500.0	TRUNKLINE GAS CO
8410004	83-1265	1708120421		102-3		SAMPLE #2	THORN LAKE	292.0	UNITED GAS PIPELI
-AMSYTHE EXPLORATION CO INC				RECEIVED:	12/02/83	JA: LA			
8410026	82-3650	1700520139		103		UNITED LANDS CO INC #1	SORRENTO	1332.0	
-BASS ENTERPRISES PRODUCTION CO				RECEIVED:	12/02/83	JA: LA			
8409972	83-0624	1707523017		103		DELACROIX #52 (BF-7 "A") VUF	POINTE-A-LA-HACHE	18.0	SOUTHERN NATURAL
8410005	83-1264	1707523017		103		DELACROIX #52 VUF	POINTE-A-LA-HACHE	180.0	SOUTHERN NATURAL
-C & K PETROLEUM INC				RECEIVED:	12/02/83	JA: LA			
8410027	83-0205	1710920266		102-2		STATE LEASE 8083 #2-D	COON POINT	1049.0	AMERICAN PIPELINE
-CONOCO INC				RECEIVED:	12/02/83	JA: LA			
8409977	83-0628	1771920261		103		WELL #2 S/L 2550 WD56	WEST DELTA BLOCK 56	360.0	TENNESSEE GAS PIP
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	12/02/83	JA: LA			
8410039	83-1100	1704920190		102-4		DAVIS BROTHERS "C" #1 HOSS RA SU22	VERNON	803.0	UNITED GAS PIPE L
8410033	83-1121	1701521447		102-4		DICKSON DUTY #1 CVRB SU38	ARKANA	168.8	ARKANSAS LOUISIAN
8409967	83-1120	1701521644		102-4		J T DAVIS #1 CV RB SUQ	ARKANA	157.0	ARKANSAS LOUISIAN
8409968	83-1119	1701521544		102-4		KEOUN #1 CV RB SU16	ARKANA	14.6	ARKANSAS LOUISIAN
8410013	83-1009	1708120300		103		POLLEY #1	GAHAGAN	54.4	LOUISIANA INTRAST
8410032	83-1016	1708120411		103		POSEY "A" #2	GAHAGAN	83.9	LOUISIANA INTRAST
8410037	83-1105	1701521731		102-4		WATSON #1-D CV RB SU 46	ARKANA	18.3	ARKANSAS LOUISIAN
-DEVON ENERGY CORP				RECEIVED:	12/02/83	JA: LA			
8409966	83-1084	1707300045		108		GUTHRIE #1	MONROE	1.8	PRIMOS PRODUCTION
-DYNAMIC EXPLORATION INC				RECEIVED:	12/02/83	JA: LA			
8409985	83-0605	1705320686		102-4		LANGLEY #2 RB RA SUA	WEST EDNA FIELD	182.0	TENNESSEE GAS PIP
-E N SMITH III ENERGY CORP				RECEIVED:	12/02/83	JA: LA			
8410015	83-1042	1703121540		103		MARTIN TIMBER A #1 SERIAL #174082	BETHANY-LONGSTREET	0.0	LOUISIANA INTRAST
-EDWIN L COX				RECEIVED:	12/02/83	JA: LA			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	FROD	PURCHASER
8409994	83-1260	1704720568		103		E B SCHWING #1	BAYOU SORREL	36.0	
8409973	82-3167	1710922409		102-4		MORRIS BLANCHARD #1	HUMPHREYS	730.0	
-EXXON CORPORATION				RECEIVED:		12/02/83 JA: LA			
8409983	83-0884	I772520219		102-2		S L 6894 A #4	MAIN PASS BLOCK 74	78.0	UNITED GAS PIPE L
8409993	83-1261	1709920894		103		S L 711 #2 DL UL-4 RA NVU	DUCK LAKE	170.0	UNITED GAS PIPE L
-FOREST OIL CORPORATION				RECEIVED:		12/02/83 JA: LA			
8410040	83-1099	1701120510		102-2		CROSBY #1 CKF 9 RA SUB	LITTLE BARNES CREEK	360.0	FLORIDA GAS TRANS
-FREYER SMITH & ASSOCIATES INC				RECEIVED:		12/02/83 JA: LA			
8409992	83-1262	1708120466		102-2		HINKIE #1	RED RIVER BULL BAYOU	125.0	TEXAS EASTERN TRA
-GETTY OIL COMPANY				RECEIVED:		12/02/83 JA: LA			
8410036	83-1089	1712721032		102-2		E GRIFFIN 11-16 #2	CALVIN	260.0	LOUISIANA INTRAST
8410011	83-1011	1703121800		103		J D SAMPLE #2	LOGANSPORT	100.0	TENNESSEE GAS PIP
-GOLDKING PRODUCTION COMPANY				RECEIVED:		12/02/83 JA: LA			
8410012	83-1010	1703320120		102-4		JONES #1 MORGAN 2 RA SU A	BATON ROUGE	0.0	MID LOUISIANA GAS
8409958	83-0613	1703320144		103		LSU A #1 8720 RA SU A "A"	BATON ROUGE	110.0	MID LOUISIANA GAS
8409979	83-1270	1702321802		103		MERMENTAU MIN & LAND CO INC F-1	WILDCAT	2847.0	LOUISIANA INTRAST
-GUERNSEY PETROLEUM CORPORATION				RECEIVED:		12/02/83 JA: LA			
8409995	83-1259	1703122009		103		INTERNATIONAL PAPER CO "C" #8	TEN MILE BAYOU	72.0	TENNESSEE GAS PIP
8410029	83-1013	1703121767		103		INTERNATIONAL PAPER CO "C"-2	BRUSHY BAYOU	0.5	TENNESSEE GAS PIP
8410030	83-1014	1703121769		103		INTERNATIONAL PAPER CO "C"-4	BRUSHY BAYOU	0.5	TENNESSEE GAS PIP
8410028	83-1012	1703121912		103		INTERNATIONAL PAPER CO "C"-7	BRUSHY BAYOU	1.0	TENNESSEE GAS PIP
8410017	83-1055	1703121803		103		SEARCY ETAL #2	BENSON	75.0	LOUISIANA INTRAST
-GULF OIL CORPORATION				RECEIVED:		12/02/83 JA: LA			
8410001	83-1251	1707523077		103		BLD ST UNIT 2 WELL #25	SOUTH PASS BLOCK 24	5.0	SOUTHERN NATURAL
8409991	83-1263	1707522943		103		J C HENDERSON #15	WEST BAY	10.2	TEXAS EASTERN TRA
8409986	83-0622	1707523027		103		J G TIMOLAT "B" #159	WEST BAY	70.0	TEXAS EASTERN TRA
8410002	83-1250	1707522852		103		S L 195 OG #316 OB 3 RB SU	QUARANTINE BAY FIELD	0.7	UNITED GAS PIPELI
8410009	83-1125	1707523068		102-4		S L 7332 WELL #7 OB 9C RA SU	QUARANTINE BAY FIELD	171.6	UNITED GAS PIPELI
-HENRY GOODRICH D/B/A GOODRICH OIL C				RECEIVED:		12/02/83 JA: LA			
8410010	83-1123	1704920188		102-4		STUBBLEFIELD #1HOSS RBSUA	HODGE	365.0	ARKANSAS LOUISIAN
8409969	83-1118	1700120875		102-4		WRIGHT #1 DISCORBIS C SAND RD SUA	MIDLAND	292.0	CONOCO INC
-INEXCO OIL COMPANY				RECEIVED:		12/02/83 JA: LA			
8410008	82-3080	1703920223		102-4		LAHAYE BROTHERS INC ET AL #1	PINE PRAIRIE	70.0	LOUISIANA INTRAST
-J D CARUTHERS & BRADDOCK EXPL				RECEIVED:		12/02/83 JA: LA			
8410031	83-1015	1701725016		103		HALL #1	CADDO PINE ISLAND	249.0	
-JOHN O CLAY EXPLORATION INC				RECEIVED:		12/02/83 JA: LA			
8410041	83-1094	1702120482		102-2		HERMAN HOGG #1 WUA	SWIM LAKE	70.0	LOUISIANA INTRAST
-KERR-MCGEE CORPORATION				RECEIVED:		12/02/83 JA: LA			
8409987	83-0614	1772620254		103		S L 1227 #2	BRETON SOUND BLOCK 32	257.0	SOUTHERN NATURAL
8409971	83-0627	1772620289		103		S L 1237 #6	BRETON SOUND BLOCK 36	125.0	SOUTHERN NATURAL
-LATHAM EXPLORATION CO INC				RECEIVED:		12/02/83 JA: LA			
8410035	83-1090	1701724544		102-2		W H NORTH EST #1 HOSS RC SUA	CADDO PINE ISLAND	250.0	UNITED GAS PIPE L
-MARSHALL EXPLORATION INC				RECEIVED:		12/02/83 JA: LA			
8410003	83-1248	1703121390		103		CLAYTON #1-D SERIAL #182915	WILDCAT	0.0	ARKANSAS LOUISIAN
8410020	83-1059	1703121683		103		HUTCHINS #1 SERIAL #177315	GRAND CANE	80.0	SOUTHERN NATURAL
-MICH-LA OIL & GAS EXPLORATION				RECEIVED:		12/02/83 JA: LA			
8410023	83-1056	1703121949		103		CLECO #1	GROGAN	127.0	TENNESSEE GAS PIP
8410014	83-1047	1703122006		103		W G LORD #7	GROGAN	11.0	TENNESSEE GAS PIP
-PENNZOIL COMPANY				RECEIVED:		12/02/83 JA: LA			
8410018	83-1051	1707520326		102-2		S PASS 57-58 #A-6 S L 6310 A #6	SOUTH PASS 57-58 AREA	1750.0	LOUISIANA INTRAST
8410019	83-1049	1707520326		102-2		S PASS 57-58 #A-6D S L 6310 A #6D	SOUTH PASS 57-58 AREA	1606.0	LOUISIANA INTRAST
8410021	83-1058	1707520328		102-2		S PASS 57-58 #A-7 S L 6310 A #7	SOUTH PASS 57-58 AREA	1750.0	LOUISIANA INTRAST
-PENNZOIL PRODUCING COMPANY				RECEIVED:		12/02/83 JA: LA			
8409996	83-1258	1710921997		103		LAIERRE CO INC C #14	DULAC	540.0	UNITED GAS PIPE L
-PETRO-LEWIS CORPORATION				RECEIVED:		12/02/83 JA: LA			
8409981	82-3166	1704520733		103		KYLE-PETERMAN MANAGEMENT CO #1	BAYOU POSTILLION FIEL	1277.5	SOUTHERN NATURAL
8410024	82-3359	1708720213		103		STATE LEASE 4909 #3	STUARD'S BLUFF	986.0	SOUTHERN NATURAL
-PHILLIPS PETROLEUM COMPANY				RECEIVED:		12/02/83 JA: LA			
8409965	83-1083	1703121759		108		SOTO #2 HOSS RA SUP	SPIDER	19.0	SOUTHERN NATURAL
-PLACID OIL COMPANY				RECEIVED:		12/02/83 JA: LA			
8410000	83-1252	1701320363		102-3		TOBIN #1 VUR	LUCKY	438.0	TEXAS EASTERN TRA
-SAMEDAN OIL CORPORATION				RECEIVED:		12/02/83 JA: LA			
8410022	83-1057	1701724738		103		GEORGE ADAMS HEIRS #1	ROBESSA	1000.0	ARKANSAS LOUISIAN
8409998	83-1254	1711321251		103		STATE LEASE 3020 #4	NORTH BUCK POINT	180.0	SUGAR BOWL GAS CO
-SANTA FE MINERALS INC				RECEIVED:		12/02/83 JA: LA			
8409999	83-1253	1700120945		103		D HARMON #1	CHURCH POINT	300.0	MONTEREY PIPELINE
-SHELL OFFSHORE INC				RECEIVED:		12/02/83 JA: LA			
8410025	82-3410	1770920265		103		EI 18 SL 1667 #48	EUGENE ISLAND BLOCK 1	260.0	TENNESSEE GAS PIP
8410007	83-1267	1707502899		103		SP 24 FLD SL 1388 #B-73	SOUTH PASS BLOCK 24 F	210.0	TENNESSEE GAS PIP
8410006	83-1268	1772100857		103		SP 27 SL 1012 #291	SOUTH PASS BLOCK 27 F	50.0	TENNESSEE GAS PIP
-SHELL OIL CO				RECEIVED:		12/02/83 JA: LA			
8409980	83-1271	1704720501		103		WILBERT #241	WHITE CASTLE	20.0	FLORIDA GAS TRANS
-SKYLINE OIL COMPANY				RECEIVED:		12/02/83 JA: LA			
8410016	83-1041	1702321728		103		SWEETLAKE LAND & OIL CO #7	CHALKLEY	252.0	TEXAS EASTERN TRA
-SOURCE PETROLEUM INC				RECEIVED:		12/02/83 JA: LA			
8409978	83-1269	1701921100		103		FARMERS LAND & CANAL INC #1	SOUTH BON AIR	0.0	LOUISIANA GAS SYS
-SOUTHERN PETROLEUM SERVICES INC				RECEIVED:		12/02/83 JA: LA			
8409997	83-1257	1710922518		103		J G DUPLANTIS	SOUTH HOUMA	256.0	UNITED GAS PIPE L
-SUPERIOR OIL CO				RECEIVED:		12/02/83 JA: LA			
8409990	83-0606	1702321855		103		S L 344 #30	GRAND LAKE	100.0	TRUNKLINE GAS CO
8409989	83-0608	1702321855		103		S L 344 #30-D	GRAND LAKE	100.0	TRUNKLINE GAS CO
-VIKING RESOURCES (LA)				RECEIVED:		12/02/83 JA: LA			
8410038	83-1103	1711123938		108		OLIN #7	MONROE	14.0	PRIMOS PRODUCTION
-WEAVER EXPLORATION CO				RECEIVED:		12/02/83 JA: LA			
8409970	83-1117	1711321086		103		SIMMONS INTEREST #1	FRESHWATER BAYOU	400.0	TRUNKLINE GAS CO

MONTANA BOARD OF OIL & GAS CONSERVATION

-CELSIUS ENERGY CO				RECEIVED:		12/01/83 JA: MT			
8409850	3-83-46	2510122267		108		BENJAMIN FEDERAL LAND BANK 41-27	OLD SHELBY GAS FIELD	14.6	MICHAEL L LETSON
-J BURNS BROWN				RECEIVED:		12/01/83 JA: MT			
8409846	10-83-140	2500522265		103		MEINTZ 30-33-18	LONMAN	40.0	NORTHERN NATURAL
8409847	10-83-139	2500522137		102-2		WERK 21-32-18	TIGER RIDGE	28.0	NORTHERN NATURAL
-MIDLANDS GAS CORPORATION				RECEIVED:		12/01/83 JA: MT			
8409849	6-83-84	2507121790		108		1712 BELL FARMING 1	BOUDOIN	14.0	K-N ENERGY INC
8409848	9-83-130	2507121757		108		3571-1	BOUDOIN	19.0	K N ENERGY INC

NEW MEXICO DEPARTMENT OF ENERGY & MINERALS

-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED:		12/01/83 JA: NM			
8409859		3002527710		103		TONI #2	HOBBS GRAYBURG SAN AN	50.0	PHILLIPS PETROLEU
-AMOCO PRODUCTION CO				RECEIVED:		12/01/83 JA: NM			
8409864		3004525616		103		ABRAMS "K" #1	ARMENTA - GALLUP	7.8	
8409866		3004525560		103		STEDJE GAS COM/TRUE #1E	BASIN - DAKOTA	27.4	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-EL PASO NATURAL GAS COMPANY				RECEIVED:	12/01/83	JA: NM			
8409858		3004520894		108-PB		CALLISON #1	AZTEC	0.0	EL PASO NATURAL G
-EXXON CORPORATION				RECEIVED:	12/01/83	JA: NM			
8409869		3002528018		103		NEW MEXICO DD STATE #6	SCHARB-BONE SPRINGS	5.0	WARREN PETROLEUM
-GULF OIL CORPORATION				RECEIVED:	12/01/83	JA: NM			
8409861		3002527428		103		ARNOTT-RAMSAY (NCT-E) #11	JALMAT SEVEN RIVERS Q	22.4	NORTHERN NATURAL
-MESA PETROLEUM CO				RECEIVED:	12/01/83	JA: NM			
8409872		3002528257		103		VACUUM STATE #5	SCHARB-BONE SPRINGS	26.0	WARREN PETROLEUM
-PETRO-LEWIS CORPORATION				RECEIVED:	12/01/83	JA: NM			
8409867		3002500000		108		WARLICK QUEEN #1	EUMONT	0.0	EL PASO NATURAL G
-POGO PRODUCING COMPANY				RECEIVED:	12/01/83	JA: NM			
8409865		3002500000		103		STATE WES #1	SAUNDERS (PERMO UPPER	65.0	WARREN PETROLEUM
-SOUTHLAND ROYALTY CO				RECEIVED:	12/01/83	JA: NM			
8409857		3004509726		108-PB		CURRENT #1 PC	AZTEC	0.0	EL PASO NATURAL G
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	12/01/83	JA: NM			
8409868		3002500000		108		STATE "A" A/C-1 #49	LANGLIE MATTIX 7 RVRS	16.0	PHILLIPS PETROLEU
-SUPERIOR OIL CO				RECEIVED:	12/01/83	JA: NM			
8409862		3002526735		103		MESCALERO RIDGE #1	SCHARB (BONE SPRING)	0.0	
-UNION TEXAS PETROLEUM				RECEIVED:	12/01/83	JA: NM			
8409860		3004525612		103		CALVIN #3	GALLUP	101.0	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION				RECEIVED:	12/01/83	JA: NM			
8409870		3001524400		103		ACHEN FREY "DM" ST #9	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8409875		3001524359		103		JACKSON "AT" #15	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8409873		3001523397		103		JACKSON ESTATE "BY" #11	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8409874		3001524323		103		JACKSON ESTATE "BY" #16	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8409871		3000524542		103		JACKSON ESTATE "BY" #18	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8409863		3002528262		103		WOODPECKER "SY" ST #7	SAUNDERS PERMO UPPER	0.0	WARREN PETROLEUM
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-AMERICAN PENN ENERGY INC				RECEIVED:	12/02/83	JA: NY			
8409948	5007	3101317816		102-2	107-TF	STATE REFORESTATION AREA #11 #1590	STEBBINS CORNERS	10.0	COLUMBIA GAS TRAN
-BEREA OIL AND GAS CORPORATION				RECEIVED:	12/02/83	JA: NY			
8409951	5468	3101318562		103	107-TF	CAGUE UNIT #1	WILDCAT	12.0	
-GYPSUM ENERGY MANAGEMENT CO				RECEIVED:	12/02/83	JA: NY			
8409938	5816	3112118148		103	107-TF	BEECHLER #1	WILDCAT	4.0	U S GYPSUM CO
8409935	5810	3112118059		103	107-TF	BOXLER #1	WILDCAT	4.0	U S GYPSUM CO
8409944	5828	3112117996		103	107-TF	BREISSINGER #1	WILDCAT	24.0	U S GYPSUM CO
8409942	5824	3112118202		103	107-TF	BRICZNA #1	WILDCAT	4.0	U S GYPSUM CO
8409960	5800	3112118173		103	107-TF	FUGLE #1	WILDCAT	6.0	US GYPSUM CO
8409963	5806	3112118185		103	107-TF	GASTOMSKI #1	WILDCAT	18.0	US GYPSUM CO
8409961	5802	3112117995		103	107-TF	HALSTEAD #1	WILDCAT	18.0	US GYPSUM CO
- 8409940	5820	3112118200		103	107-TF	IGLA #1	WILDCAT	8.0	U S GYPSUM CO
8409956	5792	3103717398		103		J BURKHARDT #1	WILDCAT	24.0	US GYPSUM CO
8409946	5832	3103717396		103	107-TF	KEMP #1	WILDCAT	24.0	U S GYPSUM CO
8409957	5794	3112118149		103	107-TF	KIRSCH #1	WILDCAT	3.0	US GYPSUM CO
8409962	5804	3112118058		103	107-TF	KOHLHAGEN #1	WILDCAT	3.0	US GYPSUM CO
8409964	5808	3112118057		103	107-TF	LEFORT #1	WILDCAT	18.0	US GYPSUM CO
8409937	5814	3103717401		103	107-TF	P MILLER #1	HURON CREEK	14.0	U S GYPSUM CO
8409954	5788	3112118556		103	107-TF	PADAK #1	WILDCAT	24.0	US GYPSUM CO
- 8409958	5796	3112118230		103	107-TF	PFAFF #1	WILDCAT	8.0	US GYPSUM CO
- 8409936	5812	3112118231		103	107-TF	RUPERT #1	WILDCAT	24.0	U S GYPSUM CO
8409943	5826	3112117879		103	107-TF	SCHAD #1	WILDCAT	15.0	U S GYPSUM CO
8409952	5784	3103717397		103	107-TF	SIERK #2	WILDCAT	8.0	US GYPSUM CO
8409953	5786	3112117724		103	107-TF	SLOAND #1	WILDCAT	18.0	US GYPSUM CO
8409955	5790	3112118201		103	107-TF	STEVES #1	WILDCAT	8.0	US GYPSUM CO
8409939	5818	3112117997		103	107-TF	TOPOR #1	WILDCAT	24.0	U S GYPSUM CO
8409945	5830	3112117273		103	107-TF	TRYBUSKIEWICZ #1	WILDCAT	15.0	U S GYPSUM CO
8409947	5834	3112117679		103	107-TF	UNSELT #1	WILDCAT	12.0	US GYPSUM CO
8409959	5798	3103717365		103	107-TF	VILLAGE OF AKRON #1	WILDCAT	4.0	US GYPSUM CO
8409941	5822	3112117243		103	107-TF	WAWRZYNIAK #1	WILDCAT	18.0	U S GYPSUM CO
-KEYSTONE ENERGY OIL & GAS PRODUCTIO				RECEIVED:	12/02/83	JA: NY			
8409950	5845	3100915495		103	107-TF	R ADAMS #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
-NORD/MONTARA PETROLEUM CO				RECEIVED:	12/02/83	JA: NY			
8409949	5844	3112113083		108		GERALD R KEEM #1	JAVA MEDINA	8.0	COLUMBIA GAS TRAN
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
-B & B OIL & GAS PRODUCTIONS CO				RECEIVED:	12/02/83	JA: PA			
8409908	20964	3706327418		103		ROBERT E & ANNA MAE GOOD	WEST MAHONING	10.0	T W PHILLIPS
-C & C TROYER BROTHERS				RECEIVED:	12/02/83	JA: PA			
8409924	21541	3704923084		102-2		J LANDIS #1 #84	WATERFORD	11.0	NATIONAL FUEL GAS
8409925	21542	3704923084		107-TF		J LANDIS #1 #84	WATERFORD	11.0	NATIONAL FUEL GAS
8409912	21392	3704923010		107-TF		JON G ROTHSTEIN #1 (#83)	WATERFORD	2.0	NATIONAL FUEL GAS
8409911	21391	3704923010		102-2		JON G ROTHSTEIN #83	WATERFORD	2.0	NATIONAL FUEL GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	12/02/83	JA: PA			
8409931	21593	3703300479		108		LILLIAN MANLEY #1 MN-1195	PENN	17.0	GENERAL SYSTEM PU
-FAIRMAN DRILLING CO				RECEIVED:	12/02/83	JA: PA			
8409921	21441	3706522761		103		SARAH ELDA MCCORMICK #3 F-3750	BIG RUN	25.0	CONSOLIDATED GAS
-J C ENTERPRISES				RECEIVED:	12/02/83	JA: PA			
8409918	21402	3706522808		103		J C ENTERPRISES JEF-22808 #212	FROSTBURG	23.0	
-KEPCO INC				RECEIVED:	12/02/83	JA: PA			
8409928	21550	3705921822		102-4		W G PHILLIPS #1 (PK-73)	RUFF CREEK	10.0	NEW JERSEY NATURA
-MERIDIAN EXPLORATION CORP				RECEIVED:	12/02/83	JA: PA			
8409919	21409	3704922882		102-2		EDINBORO GRAVEL CO #696-3	EDINBORO	30.0	NATIONAL FUEL GAS
8409920	21410	3704922882		107-TF		EDINBORO GRAVEL CO #696-3	EDINBORO	30.0	NATIONAL FUEL GAS
8409915	21395	3704922884		102-2		HECKER #688-2	EDINBORO NORTH	0.0	COLUMBIA GAS TRAN
8409916	21396	3704922884		107-TF		HECKER #688-2	EDINBORO NORTH	0.0	COLUMBIA GAS TRAN
MSA CROSS CO				RECEIVED:	12/02/83	JA: PA			
913	21393	3704923011		102-2		EDWARD ANYZEK #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8409914	21394	3704923011		107-TF		EDWARD ANYZEK #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8409909	21388	3704923083		102-2		HERBERT WILLIAMS #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8409910	21389	3704923083		107-TF		HERBERT WILLIAMS #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
-PHILLIPS PRODUCTION CO				RECEIVED:	12/02/83	JA: PA			
- 8409923	21538	3703321628		103		ESTATE OF THERESA DEHAVEN #1	BELL	35.0	
- S T JOINT VENTURE 82-D				RECEIVED:	12/02/83	JA: PA			
8409917	21399	3703321542		103		LUPOLD #1	PIKE	25.0	CONSOLIDATED GAS
-SNYDER BROTHERS INC				RECEIVED:	12/02/83	JA: PA			
8409927	21545	3706522899		103		E C PIFER #1	BELL TWP	10.0	T W PHILLIPS GAS
8409926	21544	3706522819		103		L & R PIFER #1	BELL TWP	10.0	T W PHILLIPS GAS
-TETRA ENERGY GROUP LTD				RECEIVED:	12/02/83	JA: PA			
8409932	21607	3704923044		107-TF		ED MORVAY #2	UNION CITY FIELD ERIO	63.0	COLUMBIA GAS TRAN
- 8409933	21609	3704923084		107-TF		FRANCIS RICHARDS #1	UNION CITY FIELD ERIO	5.4	COLUMBIA GAS TRAN
- 8409934	21610	3704923036		107-TF		WILLIAM CZARNECKI #1	UNION CITY FIELD ERIO	4.5	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-WILLIAM B WOOD				RECEIVED: 12/02/83 JA: PA					
8409922	21444	3706300000		108		H E MCCULLOUGH	ARMSTRONG	0.0	PEOPLE NATURAL GA
-4-R INVESTMENT CO				RECEIVED: 12/02/83 JA: PA					
8409929	21553	3704923210		103		MERCYHURST COLLEGE #1	ERIE	20.0	
8409930	21554	3704923210		107-TF		MERCYHURST COLLEGE #1	ERIE	20.0	
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WEST VIRGINIA DEPARTMENT OF MINES									
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-ALLEGHENY & WESTERN ENERGY CORP				RECEIVED: 12/01/83 JA: WV					
8409893		4701100721		107-DV		E SLOAN #1	BARBOURSVILLE	36.0	COLUMBIA GAS TRAN
8409895		4701100719		107-DV		E WALKER #1	BARBOURSVILLE	36.0	COLUMBIA GAS TRAN
8409894		4701100720		107-DV		MCCALLISTER #1	BARBOURSVILLE	36.0	COLUMBIA GAS TRAN
8409891		4701100730		107-DV		MILLS-KILLEN #1	BARBOURSVILLE	36.0	COLUMBIA GAS TRAN
8409892		4701100725		107-DV		NASH #1	BARBOURSVILLE	36.0	COLUMBIA GAS TRAN
-ASHLAND EXPLORATION INC				RECEIVED: 12/01/83 JA: WV					
8409907		4703902576		107-DV		BEDFORD LAND CO #11 - 050490	PAINT CREEK	18.0	COLUMBIA GAS TRAN
8409905		4701900474		107-DV		LAWSON HAMILTON #1 - 093121	PAINT CREEK	2.0	COLUMBIA GAS TRAN
8409904		4701900507		102-2		WRISTON-SMARR UNIT #1 - 095901	PAINT CREEK	14.0	COLUMBIA GAS TRAN
8409906		4701900507		107-DV		WRISTON-SMARR UNIT #1 - 095901	PAINT CREEK	14.0	COLUMBIA GAS TRAN
-FOX DRILLING CO INC				RECEIVED: 12/01/83 JA: WV					
8409900		4700101881		107-DV		M MORSH #2	NOT AVAILABLE	10.0	
-OILSEARCH INTERNATIONAL INC				RECEIVED: 12/01/83 JA: WV					
8409902		4708505344		107-DV		PRIBBLE #1	GRANT DIST	30.0	
8409901		4708505501		107-DV		WILSON-LIGHT #2	MURPHY DIST	75.0	
-SENECA-UPSHUR PETROLEUM CO				RECEIVED: 12/01/83 JA: WV					
8409897		4705901042		107-DV		C-36	HARDEE	35.0	COLUMBIA GAS TRAN
8409898		4705901046		107-DV		C-38	HARDEE	35.0	COLUMBIA GAS TRAN
8409899		4705901038		107-DV		C-42	HARDEE	35.0	COLUMBIA GAS TRAN
8409896		4705901043		107-DV		C-53	HARDEE	35.0	COLUMBIA GAS TRAN
-TRIO PETROLEUM CORP				RECEIVED: 12/01/83 JA: WV					
8409903		4702103917		107-DV		CRADDOCK "A" #1	GLENVILLE NORTH	15.0	COLUMBIA GAS TRAN
8409887		4702103918		107-DV		CRADDOCK "A" #2	GLENVILLE NORTH	20.0	COLUMBIA GAS TRAN
-WACO OIL AND GAS CO INC				RECEIVED: 12/01/83 JA: WV					
8409888		4702104050		107-DV		BAILEY #1	NORTH CREEK	18.0	COLUMBIA GAS TRAN
8409889		4702104024		107-DV		BONNETT #1A	LEADING CREEK	12.0	COLUMBIA GAS TRAN
8409890		4702103907		107-DV		JACKSON #1A	ELLIS CREEK	20.0	COLUMBIA GAS TRAN
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** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CASPER,WY									
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-BASS ENTERPRISES PRODUCTION CO				RECEIVED: 12/01/83 JA: WY 5					
8409835	W678-2	4900526601		103		OHMAN FEDERAL #19-31	BUFF	36.5	MGPC INC
-CITIES SERVICE COMPANY				RECEIVED: 12/01/83 JA: WY 5					
8409877	W643-2	4900526563		103		HARTZOG DRAW UNIT TRACT 78 #5208	HARTZOG DRAW UNIT	29.2	PANHANDLE EASTERN
-DAVIS OIL COMPANY				RECEIVED: 12/01/83 JA: WY 5					
8409881	W659-2	4900526546		102-2		AMOS DRAW FEDERAL #1	WILDCAT	340.0	PHILLIPS PETROLEU
8409879	W657-2	4900922082		102-2		FULMAR FEDERAL #1	WILDCAT	110.0	PHILLIPS PETROLEU
8409880	W658-2	4900526496		102-2		HARRIER FEDERAL #1	WILDCAT	35.0	PHILLIPS PETROLEU
-INTERNORTH INC				RECEIVED: 12/01/83 JA: WY 5					
8409883	W673-2	4900921639		102-2		FEDERAL 952 #1-10	SCOTT	15.0	PHILLIPS PETROLEU
8409882	W672-2	4900921665		102-2		FEDERAL 952 #1-3	SCOTT	15.0	PHILLIPS PETROLEU
8409884	W674-2	4900921638		102-2		FEDERAL 952 #2-10	SCOTT	15.0	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 12/01/83 JA: WY 5					
8409878	W650-2	4900526566		102-3		THUNDER CREEK FED Q #1	SCHOOL CREEK	5.4	PANHANDLE EASTERN
8409876	W639-2	4900526737		102-3		THUNDER CREEK FED R #2	SCHOOL CREEK	9.1	PANHANDLE EASTERN
-WOODS PETROLEUM CORPORATION				RECEIVED: 12/01/83 JA: WY 5					
8409886	W 694-2	4900515459		102-2		TAYLOR UNIT #1	WILDCAT	77.0	WESTERN GAS PROCE

[FR Doc. 83-34090 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 1034]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: December 27, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1,000 Ft rule)
102–4: New onshore reservoir
103–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1034
ISSUED DECEMBER 27, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KENTUCKY DEPARTMENT OF MINES & MINERALS									
-ASHLAND EXPLORATION INC				RECEIVED:	12/02/83	JA: KY			
8410251	502234	1619500000		108-SA		MASON COAL & COKE #2		0.0	COLUMBIA GAS TRAN
-EQUITABLE LIFE ASSURANCE SOCIETY				RECEIVED:	12/02/83	JA: KY			
8410250		1608555250		107-DV		EQUITABLE-IDA LIKENS #4	READY (SHREWSBURY GAS	13.0	MIDWESTERN GAS TR
8410249		1608555275		107-DV		EQUITABLE-WILLIS HEIRS #2	READY (SHREWSBURY GAS	18.0	MIDWESTERN GAS TR
-J SCOTT TALBOTT				RECEIVED:	12/02/83	JA: KY			
8410244	505998	1613100000		108		T-14 ROSS BAKER	T-14 ROSS BAKER	0.7	KENTUCKY WEST VIR
8410245	505999	1613300000		108		T-2 WATTS SHEPARD CRASE	T-2 WATTS SHEPARD CRA	10.0	KENTUCKY WEST VIR
8410246	506000	1619300000		108		T-8 LOGAN HEIRS	T-8 LOGAN HEIRS	9.0	KENTUCKY WEST VIR
-J W KINZER				RECEIVED:	12/02/83	JA: KY			
8410242	505992	1619500000		107-DV		GRANT PHILLIPS #5	PIKEVILLE	0.0	COLUMBIA GAS TRAN
-KENTUCKY WEST VIRGINIA GAS CO				RECEIVED:	12/02/83	JA: KY			
8410072	506163	1619500000		108		A C CHARLES - #5402	KENTUCKY EAST	11.9	
8410132	506103	1619500000		108		A H BLACKBURN #615	KENTUCKY EAST	11.1	
8410189	506046	1619500000		108		AARON JUSTICE - #5495	KENTUCKY EAST	2.4	
8410179	506056	1611500000		108		ABE ELLIOTT ESTATE #5609	KENTUCKY EAST	5.0	
8410140	506095	1607100000		108		ABIGAL AKERS #205	KENTUCKY EAST	16.2	
8410226	506009	1619500000		108		ABNER L JUSTICE - #889	KENTUCKY EAST	1.7	
8410129	506106	1619500000		108		ADRON LOWE #651	KENTUCKY EAST	9.4	
8410125	506110	1619500000		108		ADRON LOWE #752	KENTUCKY EAST	10.1	
8410174	506061	1611900000		108		ALAMANDER CAUDILL #5444	KENTUCKY EAST	9.4	
8410062	506173	1619500000		108		ALBERT THACKER - #5812	KENTUCKY EAST	3.5	
8410191	506044	1619500000		108		ALEX TACKETT - #5489D	KENTUCKY EAST	3.6	
8410225	506010	1619500000		108		ALFRED YOUNG SR #929	KENTUCKY EAST	3.0	
8410151	506084	1619300000		108		ALLEN COMBS #6699	KENTUCKY EAST	5.8	
8410195	506040	1619300000		108		ANDERSON FIELDS #7114	KENTUCKY EAST	11.6	
8410141	506094	1611900000		108		ANDREW COBURN #188	KENTUCKY EAST	1.4	
8410113	506122	1619500000		108		ANDY COLLINS - #6111	KENTUCKY EAST	1.8	
8410087	506148	1607100000		108		ANTHONY HAMILTON - #5197	KENTUCKY EAST	16.6	
8410185	506050	1619500000		108		AVERY STATEN - #5551	KENTUCKY EAST	2.5	
8410053	506182	1607100000		108		B C & T R MAY - #5888 D	KENTUCKY EAST	18.1	
8410050	506185	1607100000		108		B C & T R MAY - #5999	KENTUCKY EAST	6.9	
8410121	506114	1619500000		108		B F JOHNSON - #988	KENTUCKY EAST	8.3	
8410092	506143	1607100000		108		BEAVER ELKHORN - #5049D	KENTUCKY EAST	2.9	
8410163	506072	1619300000		108		BEN GRIGSBY #5557D	KENTUCKY EAST	9.3	
8410119	506116	1611900000		108		BEN SMITH - #5040D	KENTUCKY EAST	3.5	
8410162	506073	1607100000		108		BENJAMIN A CONLEY #6569	KENTUCKY EAST	4.7	
8410157	506078	1619300000		108		BENJAMIN HOLLIDAY #6638	KENTUCKY EAST	1.4	
8410116	506119	1619500000		108		BOWLES & RATLIFF - #6030	KENTUCKY EAST	3.2	
8410115	506120	1619500000		108		BOWLES & RATLIFF - #6092	KENTUCKY EAST	3.6	
8410085	506150	1607100000		108		BURRIS HERALD - #5224D	KENTUCKY EAST	4.7	
8410206	506029	1615900000		108		CARLISLE LANDS - #6218 D	KENTUCKY EAST	3.6	
8410142	506093	1607100000		108		CARR HAYS #119D	KENTUCKY EAST	10.1	
8410159	506076	1619300000		108		CHARLES GODSEY #6615	KENTUCKY EAST	18.4	
8410153	506082	1619300000		108		CHARLES GODSEY #6655	KENTUCKY EAST	3.2	
8410058	506177	1619500000		108		CHAS BARTLEY - #5836	KENTUCKY EAST	14.1	

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410232	506003	1611900000		108		CLAY MARTIN #13D	KENTUCKY EAST	4.3	
8410214	506021	1612700000		108		CLIFTON MOORE - #1138	KENTUCKY EAST	1.9	
8410194	506041	1613300000		108		CLINT ISON #7133	KENTUCKY EAST	10.1	
8410209	506026	1619300000		108		CUSTER BRASHEAR - #1312	KENTUCKY EAST	14.1	
8410205	506030	1619300000		108		CYNTHIA CORNETT - #6795	KENTUCKY EAST	4.4	
8410135	506100	1607100000		108		D B HARRIS #421	KENTUCKY EAST	3.5	
8410059	506176	1607100000		108		DAVID JOHNSON - #5829	KENTUCKY EAST	5.8	
8410082	506153	1611900000		108		DAVID MARTIN - #5319	KENTUCKY EAST	11.2	
8410077	506158	1611900000		108		DAVID MARTIN - #5348	KENTUCKY EAST	3.9	
8410045	506190	1619500000		108		DAVID NEWSOM - #5965	KENTUCKY EAST	6.1	
8410155	506080	1611900000		108		DAVID RITCHIE #6641	KENTUCKY EAST	14.8	
8410222	506013	1619500000		108		E L PINSON - #971	KENTUCKY EAST	3.1	
8410139	506096	1607100000		108		E P MERRITT #232 D	KENTUCKY EAST	5.8	
8410212	506023	1619300000		108		EDITH FELTNER ET AL - #1162	KENTUCKY EAST	8.8	
8410219	506016	1611900000		108		ELBERT WARD - #1056D	KENTUCKY EAST	11.4	
8410108	506127	1619500000		108		ELENDER HALL - #6152	KENTUCKY EAST	1.8	
8410098	506137	1619500000		108		ELI AND BRICE BARTLEY - #6227	KENTUCKY EAST	1.0	
8410176	506059	1615900000		108		ELI CRUM #5632	KENTUCKY EAST	3.2	
8410051	506184	1619500000		108		ELISHA BRANHAM - #5898	KENTUCKY EAST	2.5	
8410208	506027	1611500000		108		ELMER G COMLEY - #1357	KENTUCKY EAST	10.4	
8410148	506087	1607100000		108		F F MARTIN #6727	KENTUCKY EAST	18.1	
8410178	506057	1619500000		108		FERRELL AND HATCHER #5613	KENTUCKY EAST	10.8	
8410123	506112	1619500000		108		FIELDS MAYNARD #863	KENTUCKY EAST	7.3	
8410187	506048	1619500000		108		FREEMAN WILLIAMSON - #5540	KENTUCKY EAST	8.7	
8410134	506101	1607100000		108		G B HALL #464	KENTUCKY EAST	4.9	
8410083	506152	1619500000		108		G W CARROLL - #5292D	KENTUCKY EAST	2.5	
8410076	506159	1619500000		108		GEO W MAYNARD - NO 5354	KENTUCKY EAST	4.3	
8410168	506067	1615900000		108		GEO WILLIAMSON #5713D	KENTUCKY EAST	3.2	
8410144	506091	1619300000		108		GILBERT COMBS #6762	KENTUCKY EAST	6.9	
8410128	506107	1619500000		108		GUFF B WEAVER #698D	KENTUCKY EAST	9.7	
8410175	506060	1611900000		108		H C SHORT #5634	KENTUCKY EAST	12.6	
8410171	506064	1611900000		108		H E SHORT #5683	KENTUCKY EAST	9.8	
8410221	506014	1611900000		108		HAGER MADDEN #983	KENTUCKY EAST	4.9	
8410064	506171	1607100000		108		HARVEY JOHNSON - #5808	KENTUCKY EAST	15.5	
8410136	506099	1611900000		108		HATTIE TRIPLETT #327	KENTUCKY EAST	9.4	
8410120	506115	1619500000		108		HELEN LESLIE - #1143D	KENTUCKY EAST	6.2	
8410147	506089	1611900000		108		HYATT COMBS #6758	KENTUCKY EAST	5.4	
8410210	506025	1619300000		108		J D CORNETT - #1291	KENTUCKY EAST	5.8	
8410143	506092	1619300000		108		J H HALL - #6731	KENTUCKY EAST	6.5	
8410056	506179	1619500000		108		J J KENDRICK - #5874	KENTUCKY EAST	5.4	
8410199	506136	1619500000		108		J M JOHNSON - #6219	KENTUCKY EAST	2.5	
8410074	506161	1607100000		108		J M PORTER - #5392	KENTUCKY EAST	3.6	
8410122	506113	1619500000		108		J P LOWE - #947	KENTUCKY EAST	7.4	
8410046	506189	1611900000		108		J S AMBURGEY - #5962	KENTUCKY EAST	5.8	
8410067	506168	1619500000		108		J S CLINE - #5728	KENTUCKY EAST	11.2	
8410227	506008	1619500000		108		J S CLINE - #801	KENTUCKY EAST	3.3	
8410160	506075	1619500000		108		J W VICARS #6606	KENTUCKY EAST	12.3	
8410220	506015	1619500000		108		J W YOUNG - #1011	KENTUCKY EAST	2.2	
8410224	506011	1619500000		108		JACK L HATCHER #952	KENTUCKY EAST	20.2	
8410089	506146	1607100000		108		JACOB AKERS - #5148	KENTUCKY EAST	9.0	
8410093	506142	1619500000		108		JAMES A BARTLEY - #6464	KENTUCKY EAST	2.0	
8410130	506105	1619000000		108		JAMES BLACKBURN #6350	KENTUCKY EAST	17.0	
8410095	506140	1619500000		108		JAMES ELKINS - #6387D	KENTUCKY EAST	9.0	
8410071	506164	1607100000		108		JAMES HOPKINS - #5404D	KENTUCKY EAST	18.1	
8410063	506172	1619500000		108		JAMES JOHNSON - #5810	KENTUCKY EAST	6.9	
8410170	506065	1619500000		108		JAMES M MILLER #5687	KENTUCKY EAST	2.1	
8410198	506037	1613300000		108		JAMES POTTER #6982	KENTUCKY EAST	3.2	
8410079	506156	1619500000		108		JAMES W BEVINS - #5334	KENTUCKY EAST	11.3	
8410102	506133	1611900000		108		JAS OWENS - #6195	KENTUCKY EAST	8.3	
8410196	506039	1619300000		108		JASON FIELDS #7099	KENTUCKY EAST	1.2	
8410073	506162	1607100000		108		JASPER JOHNSON - #5396	KENTUCKY EAST	12.6	
8410105	506130	1611900000		108		JASPER STEWART - #6183	KENTUCKY EAST	7.2	
8410126	506109	1619500000		108		JEFF SPEARS #751	KENTUCKY EAST	5.2	
8410137	506098	1607100000		108		JENNY SIZEMORE #288	KENTUCKY EAST	2.1	
8410145	506090	1607100000		108		JOEL STUMBO #6759	KENTUCKY EAST	6.9	
8410127	506108	1619500000		108		JOHN B LESLIE #739	KENTUCKY EAST	4.7	
8410094	506141	1619500000		108		JOHN B MORRIS - #6391	KENTUCKY EAST	6.8	
8410204	506031	1619300000		108		JOHN BABCOCK - #6806	KENTUCKY EAST	5.8	
8410202	506033	1619300000		108		JOHN BABCOCK #6819	KENTUCKY EAST	6.9	
8410200	506035	1619300000		108		JOHN BABCOCK #6868	KENTUCKY EAST	10.5	
8410218	506017	1619500000		108		JOHN CABLE - #1072	KENTUCKY EAST	6.2	
8410084	506151	1607100000		108		JOHN F BURCHETT - #5265	KENTUCKY EAST	2.9	
8410080	506155	1607100000		108		JOHN F BURCHETT - #5332	KENTUCKY EAST	10.8	
8410065	506170	1619500000		108		JOHN H LOWE - #5758	KENTUCKY EAST	1.8	
8410183	506052	1607100000		108		JOHN HALL - #5558	KENTUCKY EAST	18.2	
8410078	506157	1611900000		108		JOHN J SLONE - #5338	KENTUCKY EAST	10.9	
8410201	506034	1619300000		108		JOHN P CAUDILL #6852	KENTUCKY EAST	8.7	
8410061	506174	1607100000		108		JOHN W JONES - #5824 D	KENTUCKY EAST	1.8	
8410118	506117	1607100000		108		JOSEPH R LANGLEY - #5046D	KENTUCKY EAST	6.1	
8410156	506079	1611900000		108		JOSEPH RITCHIE #6640	KENTUCKY EAST	3.2	
8410169	506066	1611900000		108		JOSEPH STEWART #5710	KENTUCKY EAST	5.1	
8410086	506149	1607100000		108		L L HUNT - #5216	KENTUCKY EAST	7.9	
8410101	506134	1619500000		108		LEWIS ADKINS - #6206	KENTUCKY EAST	3.6	
8410158	506077	1619300000		108		LEWIS FELTNER #6633	KENTUCKY EAST	6.5	
8410229	506006	1611900000		108		LINDSEY MARTIN - #597	KENTUCKY EAST	17.8	
8410066	506169	1615900000		108		M B GOBLE - #5746D	KENTUCKY EAST	5.4	
8410146	506088	1619300000		108		M C GRIGSBY #6737	KENTUCKY EAST	15.5	
8410154	506081	1611900000		108		MADISON COMBS #6646	KENTUCKY EAST	4.3	
8410112	506123	1619500000		108		MARGARET WRIGHT - #6126	KENTUCKY EAST	14.8	
8410217	506018	1607100000		108		MARION NEELEY ET UX #1074	KENTUCKY EAST	8.3	
8410047	506188	1619500000		108		MARION TACKITT - #5949D	KENTUCKY EAST	6.5	
8410213	506022	1612700000		108		MARY BALL ET AL - #1157	KENTUCKY EAST	2.7	
8410091	506144	1607100000		108		MARY OSBORNE - #5095	KENTUCKY EAST	6.9	
8410172	506063	1619500000		108		MATILDA CLARK #5668	KENTUCKY EAST	6.9	
8410117	506118	1619500000		108		MILES COLEMAN - #6054	KENTUCKY EAST	14.0	
8410197	506038	1613300000		108		MINERAL FUEL COMPANY #7073	KENTUCKY EAST	1.0	
8410165	506070	1619300000		108		NANCY SMITH #6531	KENTUCKY EAST	11.2	
8410124	506111	1619500000		108		P P MCCOY #774	KENTUCKY EAST	9.0	
8410044	506191	1619500000		108		PETER ADKINS - #6014	KENTUCKY EAST	3.2	
8410211	506024	1619500000		108		PROCTOR SPEARS #1235	KENTUCKY EAST	17.3	
8410230	506005	1607100000		108		REUBEN TAYLOR #535D	KENTUCKY EAST	17.3	
8410055	506180	1619500000		108		RICHARD CAINS - #5875	KENTUCKY EAST	8.7	
8410150	506085	1607100000		108		RICHARD GEARHEART #6716	KENTUCKY EAST	14.1	
8410048	506187	1619500000		108		RICHARD ROBERTS - #5939	KENTUCKY EAST	5.1	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	FROD	PURCHASER
8410111	506124	1619500000		108		RICHARD TACKITT - #6130	KENTUCKY EAST	8.7	
8410110	506125	1619500000		108		ROBERT HYLTON - #6131	KENTUCKY EAST	7.2	
8410068	506167	1611900000		108		ROBERT THACKER - #5472D	KENTUCKY EAST	2.5	
8410190	506045	1611900000		108		ROBERT THACKER - #5494	KENTUCKY EAST	7.5	
8410223	506012	1619500000		108		ROBERT WILLIAMS ET AL - #954	KENTUCKY EAST	1.9	
8410081	506154	1619500000		108		S B LESLIE - #5323	KENTUCKY EAST	13.4	
8410070	506165	1619500000		108		S B LESLIE - #5413	KENTUCKY EAST	13.4	
8410096	506139	1619500000		108		S K DAMRON - #6372	KENTUCKY EAST	4.3	
8410133	506102	1607100000		108		S P DAVIDSON #5980	KENTUCKY EAST	9.0	
8410188	506047	1619500000		108		SAM CHILDERS - #5511D	KENTUCKY EAST	7.8	
8410216	506019	1619500000		108		SAM POTTER - #1084	KENTUCKY EAST	3.7	
8410052	506183	1611900000		108		SAM WILLIAMS - #5893	KENTUCKY EAST	14.5	
8410043	506192	1611900000		108		SAMPSON SPARKMAN - NO 6052	KENTUCKY EAST	9.8	
8410100	506135	1619500000		108		SAMUEL J ELKINS - #6212	KENTUCKY EAST	6.1	
8410104	506131	1619500000		108		SHERWOOD W TACKITT - #6188	KENTUCKY EAST	7.2	
8410192	506043	1619500000		108		SPURLOCK ADKINS - #5485	KENTUCKY EAST	6.1	
8410088	506147	1607100000		108		SQUIRE HAMILTON - #5189	KENTUCKY EAST	13.7	
8410138	506097	1607100000		108		T A MARTIN #237	KENTUCKY EAST	7.2	
8410131	506104	1619500000		108		T B BLACKBURN #618	KENTUCKY EAST	14.2	
8410228	506007	1619500000		108		T J TACKETT #789	KENTUCKY EAST	4.7	
8410069	506166	1607100000		108		THOS H BURGY - #5462	KENTUCKY EAST	4.3	
8410181	506056	1607100000		108		TIPTON HALL #5550	KENTUCKY EAST	1.6	
8410103	506132	1619500000		108		URIAH H JOHNSON - #6190	KENTUCKY EAST	7.2	
8410097	506138	1619500000		108		V J KELLEY - #6342	KENTUCKY EAST	2.4	
8410180	506055	1615900000		103		W B PREECE - 5301	KENTUCKY EAST	9.3	
8410184	506051	1615900000		108		W B PREECE #5554D	KENTUCKY EAST	6.9	
8410114	505121	1619500000		108		W H JUSTICE - #5097	KENTUCKY EAST	11.6	
8410203	506032	1619300000		108		W H MILLER - #6815	KENTUCKY EAST	3.9	
8410207	506028	1619500000		108		W J DAMRON - #5160	KENTUCKY EAST	15.1	
8410054	506181	1611900000		108		W J HALL - #5878	KENTUCKY EAST	17.7	
8410109	506126	1613300000		108		W R FOLLEY - #6132	KENTUCKY EAST	5.8	
8410164	506071	1611900000		108		WAYNE FELTNER #6584	KENTUCKY EAST	8.7	
8410161	506074	1611900000		108		WAYNE FELTNER #6579	KENTUCKY EAST	5.1	
8410057	506178	1619500000		108		WESLEY BRANHAM - #5845	KENTUCKY EAST	2.9	
8410107	506128	1607100000		108		WESLEY PRATER - #6172	KENTUCKY EAST	2.5	
8410136	506049	1611900000		108		WESLEY REYNOLDS - #5549	KENTUCKY EAST	1.0	
8410090	506145	1612700000		108		WILLIAM BOYD - #5137	KENTUCKY EAST	1.0	
8410199	506036	1610300000		108		WILLIAM C BRASHEAR #5873	KENTUCKY EAST	12.0	
8410238	506629	1613100000		103		WILLIAM CRESS #7293	KENTUCKY EAST	12.6	
8410193	506042	1613300000		108		WILLIAM J CAUDILL - #7155	KENTUCKY EAST	7.9	
8410167	506063	1619500000		108		WILLIAM RAMEY #6465	KENTUCKY EAST	4.3	
8410166	506069	1619500000		103		WILLIAM RAMEY #5503	KENTUCKY EAST	8.7	
- 8410173	505062	1619500000		108		WILLIAM STANLEY #3655	KENTUCKY EAST	2.8	
8410231	506004	1607100000		108		WILSON CRAFTREE #693	KENTUCKY EAST	4.1	
8410075	506160	1619500000		108		WINSTON G STRATTON - #5363	KENTUCKY EAST	3.2	
8410152	506083	1619500000		108		WINSTON G STRATTON #6664	KENTUCKY EAST	5.5	
8410182	506053	1619500000		108		WM DAMRON #5375	KENTUCKY EAST	11.2	
8410060	506175	1611500000		108		WM E MOLLETT - #5827	KENTUCKY EAST	5.2	
8410177	506058	1619500000		108		WM FRANCISCO #5624	KENTUCKY EAST	10.8	
8410049	506186	1611900000		108		WM J MADDEN - #5913	KENTUCKY EAST	4.0	
- 8410149	506086	1619300000		108		WM W GODSEY #6725D	KENTUCKY EAST	2.1	
* 8410106	506129	1611900000		108		Z W RITCHIE - #6179	KENTUCKY EAST	12.6	
8410215	506020	1612700000		108		ZEAL HAYES - #1115	KENTUCKY EAST	2.9	
-KEPCO INC				RECEIVED:	12/02/83	JA: KY			
8410248	506002	1607100000		107-DV		G W VANCE #KL401	KENTUCKY EAST	8.9	KENTUCKY WEST VIR
8410247	506001	1613100000		107-DV		KYCOGA LAND COMPANY - #KL25	KENTUCKY EAST	10.7	KENTUCKY WEST VIR
8410241	506662	1607100000		108		M A DAVIDSON #KL47	KENTUCKY EAST	16.6	KENTUCKY WEST VIR
8410239	506660	1611900000		108		THE ARIO CORPORATION - NO KP1	KENTUCKY EAST	8.7	KENTUCKY WEST VIR
8410240	506641	1611900000		108		THE ARIO CORPORATION #KL306	KENTUCKY EAST	6.1	KENTUCKY WEST VIR
-WINMAR CORP				RECEIVED:	12/02/83	JA: KY			
8410233	505187	1611500000		108		EVANS OIL & GAS #1 THEALKA COAL CO	BIG SANDY	2.5	COLUMBIA GAS TRAN
MISSISSIPPI OIL & GAS BOARD									
-MARATHON OIL COMPANY				RECEIVED:	12/02/83	JA: MS			
8410260	69-83-53	2303500099		108		UNIT SE 12 #2-T	MAXIE	18.8	UNITED GAS PIPE L
8410266	65-83-53	2303500237		108		UNIT SE 21 #2-E	MAXIE	18.4	UNITED GAS PIPE L
-PRUET PRODUCTION CO				RECEIVED:	12/02/83	JA: MS			
8410265	57-83-573	2308120006		102-2	103	HESTER 27-9 WELL #1	GOODWIN	331.2	TEXAS EASTERN TRA
8410262	54-83-128	2312720083		102-4	103	MANGUM 2-1 WELL #1	MAGEE	4.8	UNITED GAS PIPELI
8410264	56-83-573	2305720034		102-2	103	ROGERS 26-11 WELL #1	GOODWIN	270.0	TEXAS EASTERN TRA
8410259	68-83-598	2309520393		102-2	103	TENNESSEE RIVER PULP & PAPER 30-1#1	WISE GAP	730.0	
8410263	55-83-576	2309520395		102-4	103	W B RYE JR 7-11 WELL #1	RIVERLINE	36.5	TENNESSEE GAS PIP
-RADZEWICZ OPERATING CORP				RECEIVED:	12/02/83	JA: MS			
8410261	34-83-512	2315720925		102-4		THELMA SESSIONS UNIT #1	ASHWOOD	0.0	TENNESSEE GAS PIP
MONTANA BOARD OF OIL & GAS CONSERVATION									
-BRANCH OIL & GAS				RECEIVED:	12/02/83	JA: MT			
8410284		2510122483		102-4		ATKINS 2-30 SECTION 30-33N-2W	PRAIRIE DELL GAS FIEL	3600.0	ALOE VENTURES GAT
-ENERGY & MINERALS EXPLORATION INC				RECEIVED:	12/02/83	JA: MT			
8410281	10-83-144	2510122453		102-4		BAILEY EMEX 1-32 35N3W SEC 32	KEVIN-SUNBURST	40.0	ALOE VENTURES INC
8410285	10-83-145	2510122480		102-4		BAILEY MX 3-32 35N 3W SEC 32	KEVIN-SUNBURST	30.0	ALOE VENTURES INC
-J BURNS BROWN				RECEIVED:	12/02/83	JA: MT			
8410283	10-83-141	2500522235		103		PROSSER 19-33-18	WILDCAT	18.0	NORTHERN NATURAL
-MIDLANDS GAS CORPORATION				RECEIVED:	12/02/83	JA: MT			
8410282	11-83-147	2507121888		102-2		0260-2	BOWDOIN	74.0	K N ENERGY INC
NORTH DAKOTA INDUSTRIAL COMMISSION									
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	12/05/83	JA: ND			
8410288	874	3300700924		102-2		BARLOW B-1	LITTLE KNIFE	30.0	WESTERN GAS PROCE
-MOBIL OIL CORP				RECEIVED:	12/05/83	JA: ND			
8410287	873	3305301495		102-2		ROY MOEN #1	TIMBER CREEK	0.0	MONTANA-DAKOTA UT
--WILLIAM HERBERT HUNT TRUST ESTATE				RECEIVED:	12/05/83	JA: ND			
8410289	875	3300700919		102-2		DOROTHY OSADCHUK D #1	TREETOP	63.5	KOCH HYDROCARBON
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-DOYLE HARTMAN OIL OPERATOR				RECEIVED:	12/02/83	JA: NM			
8410271		3002528289		103		LEGAL #5	JALMAT (GAS)	26.3	EL PASO NATURAL G
-V H WESTBROOK				RECEIVED:	12/02/83	JA: NM			
- 8410272		3001500000		103		GRANDI #1	UNDESIGNATED E CARLSB	106.0	LLANO INC
"-YATES PETROLEUM CORPORATION				RECEIVED:	12/02/83	JA: NM			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410274		3001523528		103		JACKSON "AT" #10	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8410273		3001523529		103		JACKSON "AT" #11	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
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8410267		3001523396		103		JACKSON ESTATE "BY" #10	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8410277		3001500000		103		MORRIS ESTATE "CC" #5	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
8410276		3001524324		103		MORRIS ESTATE "CC" #6	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
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8410270		3001524325		103		WINTERS "DN" #6	EAGLE CREEK SAN ANDRE	0.0	TRANSWESTERN PIPE
********** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, LOS ANGELES,CA **********									
-UNION OIL COMPANY OF CALIF				RECEIVED:	12/02/83	JA: CA 2			
8410286	OCS-P-24-83	0431120550		102-5		SANTA CLARA UNIT WELL S-21	CALIFORNIA OFFSHORE	0.0	PACIFIC LIGHTING
********** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CASPER,WY **********									
-BELCO DEVELOPMENT CORP				RECEIVED:	12/02/83	JA: UT 5			
8410252	042-83	4304731290		107-TF		STAGECOACH UNIT 22-17	STAGECOACH	0.0	MOUNTAIN FUEL SUP
-CHEVRON U S A INC				RECEIVED:	12/02/83	JA: UT 5			
8410254	040-83	4304730391		105		RWU #250 (41-29 C)	RED WASH UNIT	5.5	NORTHWEST PIPELIN
-FRANK B ADAMS				RECEIVED:	12/02/83	JA: UT 5			
8410256	038-83	4301930864		102-2		FEDERAL #2-037	GREATER CISCO AREA	31.0	NORTHWEST PIPELIN
8410255	039-83	4301930992		102-2		FEDERAL #3-037	GREATER CISCO AREA	23.7	NORTHWEST PIPELIN
-NATURAL GAS CORPORATION OF CALIF				RECEIVED:	12/02/83	JA: UT 5			
8410257	036-83	4301330670		102-2		FEDERAL 32-5-G	WILDCAT	41.0	PACIFIC GAS & ELE
8410253	041-83	4301330638		102-2		FEDERAL 42-4	WILDCAT	154.0	PACIFIC GAS & ELE
-TXO PRODUCTION CORP				RECEIVED:	12/02/83	JA: UT 5			
8410258	037-83	4304731248		103		OIL SPRINGS UNIT #7	OIL SPRINGS	965.0	MOUNTAIN FUEL SUP
********** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, TULSA,OK **********									
-SAMSON RESOURCES COMPANY				RECEIVED:	12/05/83	JA: OK 6			
8410290	0587-83	3512120849		102-4		NAVY UNIT #1	EAST ASHLAND	177.9	ARKANSAS LOUISIAN

[FR Doc. 83-34700 Filed 12-30-83; 8:45 am]

BILLING CODE 6717-01-C

federal register

Tuesday
January 3, 1984

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

Horse Protection, Certified Designated Qualified Person (DQP) Programs and Licensed DQP's; Notice

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 83-102]

Horse Protection, Certified Designated Qualified Person (DQP) Programs and Licensed DQP's

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of currently certified DQP (Designated Qualified Person) Programs and Licensed DQP's.

SUMMARY: This notice advises the general public and the horse industry of the Designated Qualified Person (DQP) programs currently certified by the Department and the currently licensed Designated Qualified Persons (DQP's) under each certified program.

SUPPLEMENTARY INFORMATION: Section 11.7(b)(8) of the "Horse Protection Regulations" (9 CFR Part 11) states in relevant part "* * * A current list of certified DQP programs and licensed DQP's will be published in the **Federal Register** at least once each year, and as may be further required for the purpose of deleting programs and names of DQP's that are no longer certified or licensed, and of adding the names of programs and DQP's that have been certified or licensed subsequent to the publication of the previous list."

This document lists the Designated Qualified Person (DQP) programs which are currently certified and lists the currently licensed DQP's under those programs. This list supersedes the list published in the **Federal Register** on March 9, 1981, (46 FR 15852) and serves as notice to the general public and the horse industry that the programs listed are currently certified and the individuals listed are currently licensed, according to the regulations in 9 CFR, Part 11.

The certified DQP programs and the DQP's licensed by each certified program are as follows:

(a) American Fox Trotting Horse Breed Association, Inc., Marshfield, MO 65706

(1) Licensed DQP:

(i) CALIFORNIA

Judy Clother, Sylmar, CA
Steve Herrera, Rowland Heights, Ca
Sebastian C. Kolbusz, Acton, CA
Frank Murphy, Sunland, CA
Ray Pridgen, Sun Valley, CA
Ellen Slaton, Santa Rosa, CA
Paul Slaton, Santa Rosa, CA

(ii) KANSAS

Bruce Howey, Maize, KS
Jack Kirschbaum, Wichita, KS

(iii) MISSOURI

Barbara Bailey, Kirksville, MO
Kerry Baker, Houston, MO
Larry Baysinger, Russellville, MO
Jim Devine, Eminence, MO
Norris Johnson, Jr., St. Joseph, MO
Jeff Jones, Marshville, MO
Billy Kimmons, Bolivar, MO
Claude Laffoon, Houston, MO
Jerry Middleton, Springfield, MO
William Montgomery, Mountain Grove, MO
James McDonough, Salem, MO
A. B. Quick, Protem, MO
Sonny Scrivner, Strafford, MO
Tom Tyler, Hylandville, MO
Jimmy Wisdom, Arnold, MO

(b) Heart of America Walking Horse Association, Inc., Olatha, KS 66061

(1) Licensed DQP:

(i) KANSAS

Dick Brown, Olatha, KS
Jack Kirschbaum, Wichita, KS

(ii) ILLINOIS

Floyd Hampshire, Barry, IL
J. H. Syrcle, Barry, IL
Phillip Williams, Barry, IL

(iii) MISSOURI

Allan Barnes, Columbia, MO
Sandra Brown, Blue Springs, MO
Bob Finley, Eolia, MO
Harold Magers, Moberly, MO
Bernard Owens, Kansas City, MO
Jeff Owens, Kansas City, MO
Elvin Sapp, Columbia, MO
Sonny Scrivner, Strafford, MO

(c) Missouri Fox Trotting Horse Breed Association, Ava, MO 65608

(1) Licensed DQP:

(i) MISSOURI

Daryl Caswell, Lebanon, MO
Lee Chick, Lebanon, MO
John Belshe, Warrensburg, MO
J. R. Jones, Cole Camp, MO

(d) National Walking Horse Regulatory Committee, Shelbyville, TN 37160

(1) Licensed DQP:

(i) ALABAMA

Grady Parsons, Bessemer, AL
Edgar D. Smith, Stevenson, AL

(ii) ARKANSAS

Joe N. Beasley, Farmington, AR

(iii) CALIFORNIA

William A. Hartman, Norco, CA
Sharon McCaleb, Fair Oaks, CA

(iv) GEORGIA

Douglas Brown, Gainesville, GA
A. M. (Bo) Turner, Winder, GA

(v) ILLINOIS

J. H. Syrcle, Barry, IL
Phillip J. Williams, Barry, IL

(vi) KENTUCKY

Danny R. Collier, Danville, KY
Tom Cundiff, Somerset, KY
John Allen Dadisman, Lawrenceberg, KY
B. G. Edwards, Monticello, KY
W. Glenn Edwards, Monticello, KY
Bob Flynn, Winchester, KY
Tomas E. Garland, Mayfield, KY
John Hubbard, Danville, KY
Norton Shearer, Winchester, KY
Vernon Shearer, Winchester, KY
Larry Stigers, Frankfort, KY

(vii) MARYLAND

Norma Shockey, Smithsburg, MD

(viii) MISSISSIPPI

Ed Abernathy, Shannon, MS
Jimmy Sullivan, Raymond, MS

(ix) MISSOURI

George Blades, Billings, MO
Ronald F. Elkins, Jr., Ozark, MO
Bill Maack, Jr., Goodson, MO
Johnny M. Pursley, Bolivar, MO
Linda Scrivner, Strafford, MO
Bobby Dean Wood, Hartville, MO

(x) OHIO

Dan Shockley, Mentor, OH

(xi) OREGON

Douglas A. Bacon, Dundee, OR
Les Hyatt, Grants Pass, OR
Bruce Rumpf, Wilsonville, OR

(xii) PENNSYLVANIA

Richard C. Guise, Harrisburg, PA

(xiii) SOUTH CAROLINA

Tommy Blackwell, Greer, SC
Marietta Gambrell, Anderson, SC
Hank Goodman, Liberty, SC
James A. McKnight, Bishopville, SC
Melvin H. Wallace, Sumter, SC

(xiv) TENNESSEE

G. W. (Copper) Bacon, Rockwood, TN
Leland S. (Cotton) Bacon, Rockwood, TN
Don Bills, Shelbyville, TN
James E. Cole, Jackson, TN
Joe L. Cunningham, Rockwood, TN
Danny Ray Davis, Unionville, TN
Grady S. George, Jr., Bradyville, TN
Jerry McKechnie, Pikeville, TN
Lonnie Messick, Murfreesboro, TN
Randy Tenpenny, Woodbury, TN
Charles Thomas, Lynchburg, TN
William Bolden, Unionville, TN

(xv) TEXAS

Keith Pickard, Crosby, TX
M. D. (Dean) Cox, Humble, TX
Ray Peoples, Baytown, TX

(xvi) WASHINGTON

Skip Bickford, Elma, WA
Rose Bostion, Puyallup, WA
F. M. (Lane) Curry, Maple Valley, WA
Jeff Curry, Maple Valley, WA

(e) Walking Horse Owners' Association of America, Inc.

(1) Licensed DOP:

(i) GEORGIA

James C. House, Ringgold, GA

(ii) ILLINOIS

Floyd Hampshire, Barry, IL

(iii) KENTUCKY

Nolan Benton, Richmond, KY
Harry K. Chaffin, Catlettsburg, KY
Jim Coffey, Russell Springs, KY
James A. Farris, Winchester, KY
Kenneth Gilpin, Louisville, KY
Franklin D. House, E. Bernstadt, KY
Phil Jones, Goshen, KY
Charles W. Sims, Lexington, KY
Kent A. Wagoner, Richmond, KY
Gary L. Ware, Waynesboro, KY
Johnnie Zeller, Eubank, KY

(iv) NORTH CAROLINA

Dewey S. Carpenter, Jr., Forest City, NC

(v) TENNESSEE

Ray "Tut" Brown, Hohenwald, TN
Jesse Dotson, Jr., Thompson Station, TN
Mike Hooper, Knoxville, TN
Gary Kimmons, Dickson, TN
Sam D. Pierce, Seymour, TN
C. D. (Bud) Varnadore, Knoxville, TN
Harold D. White, Franklin, TN

(vi) VIRGINIA

Carl Cartwright, Jr., Tazewell, VA

(vii) WEST VIRGINIA

James L. Singleton, Ashton, WV

(viii) WISCONSIN

John F. Wilson, Helenville, WI

(f) Western International Walking Horse Association, Gig Harbor, WA 98335

(1) Licensed DQP:

(i) NEVADA

Barbara Hibbard, Reno, NV

(ii) WASHINGTON

Dennis Izzo, Puyallup, WA
Duane McIntosh, DVM, Moses Lake, WA
Mary Strandberg, Spokane, WA
R. V. Strandberg, DVM, Spokane, WA
Bunny Winders, Enumclaw, WA
Cliff Winders, Enumclaw, WA

Done at Washington, D.C., this 22nd of December 1983.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-34829 Filed 12-29-83; 9:03 am]
BILLING CODE 3410-34-M

federal register

Tuesday
January 3, 1984

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Prospective Payment for Medicare Inpatient Hospital Services; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 409, and 489

Medicare Program; Prospective Payment for Medicare Inpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the Medicare regulations published as an interim final rule on September 1, 1983 (48 FR 39752). Those regulations implement Title VI of the Social Security Amendments of 1983 (Pub. L. 98–21), which changed the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a prospective payment system based on diagnosis. The changes contained in this final rule result from our consideration of the public comments that were received in response to the interim final rule.

EFFECTIVE DATE: With certain exceptions, these regulations are effective with cost reporting periods beginning on or after October 1, 1983. We refer the reader to section XVII.A. of this preamble for a detailed discussion of effective dates.

FOR FURTHER INFORMATION CONTACT:

Paul Olenick, (301) 594–9349; Determination of Federal Rates, Special Treatment, Addendum

Ed Rees, (301) 597–0274; Determination of Hospital-Specific Rates Excluded Costs Waivers Concerning Part A Billing

John Eppinger, (301) 597–2884; Interim Payments

Sheridan Gladhill, (301) 594–9440; Excluded Hospitals

Tom Hoyer, (301) 594–9446; Medical Review Activities, Exclusions From Coverage

George Cray, (301) 597–3874; Provider Appeals

Ed Roth, (301) 594–9437; Charges to Beneficiaries Secondary Liability

William Morse, (301) 594–1160; Definition of and Payment for Physician Services

SUPPLEMENTARY INFORMATION: On September 1, 1983, we published an interim final rule on Medicare prospective payment for inpatient hospital services (48 FR 39752), to implement Title VI of the Social Security Amendments of 1983 (Pub. L. 98–21). These amendments changed the method of payment for inpatient hospital services (under Part A, Medicare Hospital Insurance) from a cost-based, retrospective reimbursement system to a prospective payment system based on diagnosis. As part of the interim final rule, we issued a number of conforming changes in the regulations made necessary by the prospective payment system. We also published on September 1, 1983, an interim final notice (48 FR 39746) containing both the schedule of target rate percentages for limits on the rate of hospital cost increases and the updating factors for prospective payment rates during the transition period. We refer the reader to the interim final rule and the interim final notice for more detailed explanations of the changes made to Medicare regulations in 42 CFR Parts 405, 409, and 489 as a result of Pub. L. 98–21.

We provided a 45-day comment period on both the interim final rule and interim final notice. This final rule announces our decisions on the issues raised by commenters in response to both documents.

To assist the reader in reviewing this document, we are providing the Table of Contents below.

Table of Contents

I. BACKGROUND

A. Summary of Legislation

Title VI of Pub. L. 98–21 added section 1886(d) to the Social Security Act (the Act) establishing a prospective payment system for Medicare payment of inpatient hospital services. Under the new system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific DRGs into which a discharge may be classified.

Section 1886(d)(1)(A) of the Act provides for a three-year transition period during which a declining portion of the total prospective payment rate is based on hospitals' historical costs in a given base year, and a gradually increasing portion is based on a regional or national Federal rate per discharge or both. Beginning with the fourth year, and continuing thereafter (that is, for cost reporting periods beginning on or after October 1, 1986), Medicare payment for inpatient hospital services will be determined fully under a national DRG payment methodology.

As discussed in detail below, under section 1886(d)(1)(B) of the Act, several types of hospitals and hospital units are excluded from the prospective payment system and will continue to be reimbursed on the basis of reasonable costs subject to the rate of increase limits authorized under section 1886(b) of the Act.

B. Summary of Interim Final Rule

In the interim final rule, we set forth new regulations for the prospective payment system by adding new §§ 405.470 through 405.477. These provisions apply, as hospitals become subject to the prospective payment system, to inpatient hospital services furnished to beneficiaries beginning with hospital cost reporting periods on or after October 1, 1983. We described how the rates and additional payments are calculated; how interim payments are made; how certain hospitals are to receive special treatment; appeal rights under the prospective payment system; changes in review activities; payment for nonphysician services; and changes in the Medicare provider agreement applicable for hospitals paid under the prospective payment system. Additionally, we amended and revised other Medicare regulations considered necessary to conform to the new payment system.

On October 19, 1983, we issued a correction notice (48 FR 48467) in the **Federal Register** to correct technical errors that appeared in the interim final rule (48 FR 39752). The regulations text in this document includes those corrections.

C. Number and Types of Public Comment

We received a total of 2,739 individual comments during the comment period that raised many issues. The types and volume of commenters were as follows:

- Hospitals—383.
- Hospital Associations—46.
- Medical Associations—141.
- Other Associations (professional or supplier associations)—65.
- Individuals—1918.
- Physicians—109.
- Congressional inquiries—77.

The issues raised by the commenters varied widely; however, we received a significant volume of comments (over 200) on each of the following subjects:

- The DRGs for alcoholism and drug abuse treatment modalities.
- Rebundling as it would affect certified registered nurse anesthetists.
- The definition of non-physician services, particularly clinical laboratory services.
- The definition of excluded distinct part rehabilitation and psychiatric units and excluded rehabilitation and psychiatric hospitals.

We also received some general comments on the role of the Federal government, the Medicare program, and the impact of the interim final rule on the health care industry. Several commenters questioned the capability of the Medicare prospective payment system to contain health care costs and the nationwide viability of an "untested" system. These issues are addressed in the impact analysis in section XVI of this preamble. In addition, a few commenters believe that the 45-day comment period was too short a period of time to assess the interim final rule and comment on it. However, section 604(c) of Pub. L. 98–21 required us to publish in the **Federal Register**, no later than September 1, 1983, an interim final rule and comment on it. However, section 604(c) of Pub. L. 98–21 required us to publish in the **Federal Register**, no later than September 1, 1983, an interim final rule and an interim final notice of prospective payment rates for purposes of implementing section 1886(d) of the Act beginning with October 1, 1983. The statute also required us to afford a period of public comment on the rule and the rates, and to affirm or modify them, after consideration of comments, no later than December 31, 1983. Given these statutory deadlines, we determined that a longer comment period would not allow a sufficient period of time to consider and respond to the comments adequately and to publish a final rule by December 31, 1983 (extended to January 3, 1984, in accordance with section 216(j) of the Act).

Below we briefly summarize each of the major provisions of the interim final rule, and provide an analysis of the comments and our responses. Section XV of this preamble provides the reader with a summary of the changes we are making to the regulations as a result of the comments.

II. APPLICABILITY

Section 1886(d) of the Act requires that the prospective payment system apply to inpatient hospital services furnished by all hospitals participating in the Medicare program except those hospitals or units specifically excluded by the law. A hospital's status (that is, whether it is subject to, or excluded from, the prospective payment system) will generally be determined at the beginning of each cost reporting period. This status will continue throughout the period, which is normally one year. Changes in a hospital's (or unit's) status that result from meeting or failing to meet the criteria for exclusion will be implemented only at the start of a cost reporting period. However, under some circumstances involving factors external to the hospital, status changes could be made at times other than the beginning of the cost reporting period. For example, a change in status could occur if a hospital is first included under the prospective payment system and, after the start of its cost reporting period, is excluded because of its participation in an approved demonstration project or State reimbursement control program that begins after the hospital's cost reporting period has begun.

A. Excluded Hospitals and Units

Section 1886(d)(1)(B) of the Act excludes the following hospitals or distinct part hospital units from the prospective payment system:

1. Hospitals that meet the definition of psychiatric hospital in section 1861(f) of the Act (see § 405.471(c)(1)).

2. Hospitals that are rehabilitation hospitals as defined by the Secretary in regulations (see § 405.471(c)(2)).

3. Psychiatric and rehabilitation units of a hospital that are distinct parts of hospitals (see § 405.471(c)(4)).

4. Hospitals whose inpatients are predominantly individuals under 18 years of age (referred to as children's hospitals—see § 405.471(c)(5)).

5. Hospitals with an average length of stay greater than 25 days (referred to as long-term hospitals—see § 405.471(c)(6)).

6. Hospitals located outside the 50 States and the District of Columbia (see § 405.471(c)(7)).

We received approximately 450 comments concerning the provisions of the interim final regulations applicable to excluded hospitals and hospital units. These comments were made by hospitals, consultant groups, physicians, physician and provider associations, occupational therapists, and recreational therapists. A summary of the public comments and our responses follows.

1. Psychiatric Hospitals and Units (§§ 405.471 (c)(1) and (c)(4) (iii))

Comment—Commenters objected to the requirement that the reason for admission to the psychiatric unit must be a diagnosis contained in the American Psychiatric Association's Diagnostic and Statistical Manual, Third Edition. They believe that the approach precludes admission to the psychiatric unit of an inpatient in need of psychiatric care whose reason for admission to the hospital (principal diagnosis) was not psychiatric.

Response—We do not believe that units that admit inpatients whose principal diagnosis is not psychiatric to facilitate patient management while treating the physical condition should be excluded from prospective payment. These units are providing services other than those unique to psychiatric care that are the basis for exclusion of psychiatric units. A patient whose principal diagnosis is physical, rather than psychiatric, would be placed appropriately in an acute care bed and the services would be paid under the DRG for that diagnosis. The prospective payment amounts include allowances for additional services required by secondary diagnoses. However, we have revised the regulations at § 405.471(c)(4)(ii)(A) to clarify that a psychiatric unit must admit only patients whose admission to the unit is required for active treatment of a psychiatric principal diagnosis and that the admission must be for an intensity of treatment that requires use of an inpatient hospital setting. Also, the psychiatric principal diagnosis must be one that is listed in the Third Edition of the American Psychiatric Association's Diagnostic and Statistical Manual, or in Chapter Five ("Mental Disorders") of the International Classification of Diseases, Ninth Revision, Clinical Modification. This change is consistent with our use of special conditions of participation for psychiatric hospitals (§§ 405.1037 and 405.1038) to ensure that patients in those hospitals receive active treatment.

Comment—One commenter expressed concern that the provision stating that psychiatric units must furnish certain services to qualify for exclusion will be interpreted to preclude the use of contractors to furnish the services. The commenter recommended that we revise the provision to state explicity that the unit may use contractors to furnish the services, or may ensure their availability by other means.

Response—If the types of services listed are available in the psychiatric unit, this criterion will have been met. This is true whether the services are furnished by hospital employees assigned to the unit, by contractors, or by other means. We have not revised the provision based on this comment, because we believe that the text is clear as written.

Comment—Several commenters objected to the requirement, stated in the instructions used to implement the interim final regulations, that the supervising nurse for the psychiatric unit be a registered nurse with a masters degree or its equivalent in psychiatric or mental health nursing. They stated that staff with these educational credentials are rare and not typically available.

Response—We have revised § 405.471 to clarify that the supervising nurse may have "the equivalent" of a masters in psychiatric or mental health nursing or may be qualified by education and experience (§ 405.471(c)(4)(ii)(E)(3)(i)). We believe this will assure adequate availability of appropriately trained staff. We have not deleted the requirement, because we believe that a supervising nurse (described in the final regulations as the "director of psychiatric nursing services") with such qualifications is characteristic of a psychiatric unit that provides services that are so similar to those provided in a psychiatric hospital (and thus so dissimilar to services provided elsewhere in the hospital) as to justify exclusion from prospective payment.

Comment—Several commenters objected to the requirement that a psychologist be one of the members of the multidisciplinary team treating the patient. Some commenters stated that in private psychiatric hospitals a psychiatrist generally is responsible for the inpatient's treatment and that a psychologist is called in only on consultation. Other commenters objected because the unavailability of psychologists in some areas would inappropriately prevent exclusion of their units. Another commenter recommended that we require a team to be composed of one or more doctors of medicine or osteopathy, a psychiatric nurse, and other allied health care professionals as appropriate. One commenter recommended that we require that the team be composed of a doctor of medicine or osteopathy, a psychiatric nurse and, if the doctor of medicine or osteopathy is not a psychiatrist, a psychologist. Several commenters objected to any specification of the minimal composition of the team. They indicated that a team approach should be required, but that specifying the composition of the team is overly burdensome.

Response—In view of the variety of recommendations we received from commenters regarding the composition of the multidisciplinary team, we are concerned that it may be impossible to specify a minimal composition that reflects accurately the practices of psychiatric units of acute care hospitals. Moreover, even if a provision appropriate to these units could be developed, it would necessarily be so flexible as to be ineffective as an identifier of units that should be excluded as psychiatric units. Therefore, we have revised the regulations (§ 405.471) governing exclusion of distinct part psychiatric units by deleting the criterion related to a multidisciplinary treatment team.

Comment—One commenter was concerned that State survey agencies would interpret the regulations to require a daily meeting of the multidisciplinary team in order to review and revise the plan of treatment.

Response—As explained above, we have revised § 405.471 to delete the requirement that the plan be established, reviewed, and revised by a multidisciplinary team. We intend to permit each unit and the medical staff associated with the unit to determine who will perform these functions, and we have not specified the frequency of team meetings. However, the final regulations at § 405.471(c)(4)(ii)(D)(*4*), which deal with the treatment plan, provide that progress notes are to be recorded at least weekly for the first two months and once a month thereafter, and that these notes are to contain recommendations for revisions in the treatment plan as indicated.

Comment—Several commenters stated that they had not been given sufficient advance warning to bring their

psychiatric units into compliance with the requirements for exclusion. They requested that they be reconsidered for exclusion.

Response—The criteria that define psychiatric units that are excluded from prospective payment were established to identify existing units that provide care that is so similar to the care provided in psychiatric hospitals, and is so unlike the acute care provided elsewhere in the hospital, as to warrant exclusion. If existing units do not meet these criteria before the start of their fiscal year, exclusion of these units is not appropriate for the forthcoming year. However, if the characteristics of an existing unit change within the year, the hospital would be able to request exclusion beginning with the start of the hospital's next fiscal year. If the unit meets the criteria at that point, exclusion for the forthcoming year would be granted.

In addition to retaining some of the specific criteria for psychiatric units that were included in the interim final rule at § 405.471(c)(3)(ii), we are revising the criteria to provide that psychiatric units must maintain sufficient clinical records and meet certain staffing requirements in order to qualify for exclusion (§ 405.471(c)(4)(ii)(D)). These special clinical records and staffing criteria are similar to the special conditions of participation for psychiatric hospitals that are now in effect (§§ 405.1037 and 405.1038). We believe these criteria will enhance our ability to identify those hospital units that are similar enough to psychiatric hospitals to warrant exclusion from the prospective payment system.

2. Rehabilitation Hospitals and Units (§§ 405.471 (c)(2) and (c)(4)(iii))

As an administrative measure to simplify and expedite initial application of the regulatory criteria for exclusion of rehabilitation hospitals and units, we issued instructions to the State surveyors who recommend exclusion decisions. The instructions specified that rehabilitation hospitals or hospital rehabilitation units that are accredited by the Commission for Accreditation of Rehabilitation Facilities (CARF) or are in substantial compliance with Standard VII of the Joint Commission for Accreditation of Rehabilitation Facilities (JCAH) Standards for Rehabilitation Program Services were assumed to meet all conditions for exclusion except one.

This assumption to meet all conditions for exclusion except one applies for the hospital's or unit's first cost reporting period beginning on or after October 1, 1983. We believe that our instructions facilitated the initial identification and verification of excluded rehabilitation hospitals and units.

The one condition for exclusion that was not assumed to have been met was the requirement that at least 75 percent of the inpatient population must have received intensive rehabilitation services for the list of conditions specified in the regulations. The percentage requirement for the conditions of inpatients treated in the unit or hospital would still have to be met by the JCAH or CARF accredited facilities and units.

However, as discussed below in the comments and responses, we have now revised the instructions to require application of the full-time physician director criterion even if the hospital or unit is JCAH or CARF accredited.

Comment—One commenter recommended that we assume that rehabilitation hospitals and units that have CARF accreditation meet all specified conditions for exclusion. The commenter stated that any facility or unit accredited by CARF would meet or exceed all stated requirements and that assuming the requirements to be met by such facilities or units would prevent duplicative surveys, thus saving time and cost for the provider and the Federal government. Similarly, another commenter recommended that CARF accreditation be *required* for any rehabilitation hospital or unit to be excluded from prospective payment. The commenter stated that such a requirement would result in reduced duplication of resources and less provider cost.

Response—For the reasons set forth in the interim final rule, we believe that the criterion related to the patient population served by a hospital or unit is a key indicator of whether the hospital or unit is primarily engaged in rehabilitation. However, neither JCAH nor CARF evaluates the patient population served. Therefore, we have not adopted the recommendation that hospitals and units accredited by JCAH or CARF be assumed to meet all criteria specific to rehabilitation. We also have not accepted the recommendation that we *require* CARF accreditation. We believe that requiring CARF accreditation would be unnecessarily burdensome to providers and could be more costly than allowing that accreditation to remain optional.

Comment—For a variety of reasons, several commenters objected to the requirement that, to be excluded, a rehabilitation unit must have a full-time director. Some stated that many rehabilitation units are not large enough to require full-time direction or to afford the additional cost such direction may entail. These commenters stated that this requirement, if retained, will result in units hiring full-time directors in order to assure exclusion and that other payors will be required to pay for the resulting physician time.

Other commenters noted that the JCAH and CARF accreditation standards for rehabilitation facilities do not explicitly require full-time service by a director. The commenters stated that since we adopted an administrative approach under which units accredited by JCAH or CARF are assumed to meet all rehabilitation criteria except the provision related to the conditions of the patient population, we should not impose a more restrictive requirement with regard to the director's service than these organizations. However, one commenter who noted the difference between our criteria and the JCAH and CARF standards regarding service by a unit director stated that, because of this difference, we should not accept JCAH or CARF accreditation in lieu of compliance with this criterion.

In addition, some commenters noted that the regulations require full-time direction of rehabilitation units while not explicitly requiring directors of psychiatric units to serve on a full-time basis.

The commenters who objected to the requirement that a director of rehabilitation perform this function on a full-time basis offered a variety of proposals for modifying the requirement. Some commenters recommended that we simply delete the phrase "full-time" from the regulations, and permit each hospital to decide independently how many hours per week the director must serve. Other commenters recommended that a full-time director be required for only those units that have more than a specified number of beds. Many commenters suggested that, if the requirement for full-time direction is retained, we should specify that part of the unit director's time may be spent in performing nonadministrative duties in the unit (for example, direct physician services to inpatients of the unit) or in furnishing services to inpatients or the provider in parts of the provider other than the rehabilitation unit.

Response—We have not adopted the comments recommending that we delete the requirement for full-time direction. We continue to believe that the presence of a full-time director of rehabilitation is characteristic of hospital units that are sufficiently engaged in the provision of intensive inpatient rehabilitation services to

warrant exclusion from prospective payment. We do not agree that requiring full-time direction will cause hospitals to incur excessive compensation costs for the unit director. To the extent unit directors are permitted to spend part of their time in furnishing patient care services for which they can bill the inpatients or their insurers, the hospital's compensation cost should be reduced to a level that is reasonable in relation to the actual services the director provides to the unit.

We also do not agree that a hospital's costs of compensating the director of its rehabilitation unit will be shifted from Medicare to other payers. The reasonable cost reimbursement principles applicable to excluded hospitals and units provide a mechanism under which Medicare bears its proportionate share of the costs of operating the unit, including costs of its direction.

In response to those comments noting that it is inconsistent to apply the full-time director criterion only to hospital units not accredited by the JCAH or CARF, we have revised our program operating instructions to specify that this criterion will apply to all hospitals and units that wish to qualify for exclusion as rehabilitation hospitals or units, without regard to whether they are accredited by the JCAH or CARF. This change will provide for equitable and uniform treatment of both accredited and non-accredited hospitals and units. As noted above, we believe full-time service by the director of rehabilitation is an important indicator of the extent to which a hospital or unit is primarily engaged in rehabilitation, and we do not agree that our exclusion criteria should be less explicit and prescriptive on this point than the JCAH and CARF accreditation standards.

In response to the comments suggesting that we specify that directors of rehabilitation can be considered "full-time" even though they perform some non-administrative functions, we wish to note that the interim final rule does not specify that the director of rehabilitation must spend all of his or her time performing administrative duties. On the contrary, we expect that directors of rehabilitation will spend a significant proportion of their time in overseeing or otherwise involving themselves in the actual provision of rehabilitation services in the unit. As noted below, we have added language to the final regulations to make it clear that not all of the director's time must be spent on administrative activities (§ 405.471(c)(4)(iii)(F)).

We do not believe it is appropriate to consider a physician to be a "full-time" director if he or she regularly spends part of his or her time performing services in other parts of the hospital, since such services would ordinarily be performed for the benefit of other hospital units (or inpatients of those units), and would bear only a very indirect relationship to the operation of the rehabilitation unit.

In response to the comments requesting clarification of the full-time service issue, we have revised § 405.471(c)(4)(iii)(F) to specify that the unit director must serve the unit or its inpatients on a full-time basis. For consistency, we have also made this change in the provision dealing with directors of rehabilitation for hospitals.

Comment—The commenters presented a variety of views regarding the qualifications required to be a director of a rehabilitation hospital or unit. Many commenters stated that the qualification requirements in the interim final rule are not rigorous enough to ensure quality care. Some commenters stated that physicians in the specialties other than physiatry would not be qualified to treat the full range of medical conditions associated with rehabilitation hospitals and units. For example, Board certification in neurology or neurosurgery would not necessarily qualify a physician to treat inpatients with amputations or rheumatoid arthritis. Other commenters stated that no Board-certified physiatrist, or other physician who is Board-certified in any of the specialties noted above, could be qualified to treat the full range of conditions that we have identified as being associated with rehabilitation hospitals and units.

On the other hand, one commenter recommended that we adopt less rigorous requirements for directors of rehabilitation. This commenter stated that the skills of doctors of medicine or osteopathy are not needed to direct rehabilitation hospitals or units, since the director's duties are primarily managerial. The commenter stated that any individual with experience in rehabilitation would be qualified to serve as a director of rehabilitation.

Finally, a commenter recommended that we require directors of rehabilitation to be trained to manage the treatment of the full range of conditions associated with rehabilitation hospitals and units.

Those commenters who did not fully approve of the qualification requirements in the interim final rule recommended a variety of alternatives to them. In particular, various commenters recommended that we require that the director of rehabilitation be one of the following:

- A physiatrist or other doctor of medicine or osteopathy with at least two years of training in the medical direction of a rehabilitation program. (Some commenters also recommended that we permit the two-year requirement to be met by either training or experience.)
- A doctor of medicine or osteopathy who is Board-certified in physiatry or has completed, after State licensing in medicine or surgery and a one-year hospital internship, at least three years of training in the medical management of the full range of conditions we have identified as being characteristic of rehabilitation hospitals and units. (For directors of units that treat only some of those conditions, commenters recommended another standard, that is, Board-certification in a specialty other than physiatry that is related to the conditions treated in the unit, or one year of experience in the medical management of those conditions.)
- A doctor of medicine or osteopathy who is licensed under State law to practice medicine or surgery and has had, subsequent to completing a one-year hospital internship, at least one year of training in the medical management of inpatients requiring rehabilitation services, or has had at least one year of full-time or part-time experience in a rehabilitation setting providing physicians' services similar to those required in 42 CFR Part 486, Subpart B. (These are the requirements for "facility physicians" in comprehensive outpatient rehabilitation facilities (CORFs).)
- A doctor of medicine or osteopathy who is Board-certified or Board-eligible in physical medicine and rehabilitation or has at least two years of training or experience in the medical direction of rehabilitation services.
- A doctor of medicine or osteopathy who is Board-certified in physical medicine and rehabilitation (a physiatrist).

Response—In response to these comments, we first wish to note that we recognize that not all hospitals and units will treat inpatients with the full range of medical conditions we have identified as being associated with inpatient rehabilitation. The mix of inpatients treated by a particular hospital or unit will be determined by a variety of factors. These include the needs of inpatients in the area the hospital or unit serves, the specialties of the physicians who admit inpatients to the hospital or unit, and (in the case of distinct part units) the type and mix of cases treated in the part of the hospital that primarily provides general acute care. Because

certain hospitals and units treat only inpatients with certain medical conditions, we do not believe it would be either reasonable or necessary to require directors of rehabilitation to be qualified in the medical management of all conditions associated with rehabilitation hospitals and units. Therefore, we have not adopted the comments recommending that we impose this requirement.

For similar reasons, we have not adopted the recommendation that we require a director of rehabilitation to be a physiatrist. Although a physiatrist clearly would be qualified to serve as a director of rehabilitation, the relatively small number of physicians in this specialty and their concentration in major urban areas could make it difficult for small and rural hospitals to induce physicians in this specialty to serve as directors of rehabilitation. We believe many small, highly specialized rehabilitation units will not require direction by a physiatrist (although they may require a physiatrist's services on a part-time or consultant basis), and that to require direction by a physiatrist would unfairly deny exclusion to many otherwise qualified units.

While we do not wish to impose qualification requirements for directors of rehabilitation that are unduly restrictive, we are sensitive to the arguments of those who stated that the qualifications for directors of hospitals and units that provide rehabilitation services to inpatients should be at least as rigorous as the requirements for facility physicians in CORFs, which generally provide less intensive rehabilitation services to outpatients. Moreover, we wish to avoid the unwarranted implication that physicians who are Board-certified in certain specialties (for example, neurosurgery) are qualified to direct rehabilitation units that primarily furnish services in other specialties. Therefore, we have revised the regulations to delete references to Board certification in specialties other than physiatry and to emphasize training or experience in rehabilitation as a qualifying factor (§§ 405.471(c)(2)(v) and (c)(4)(iii)(F)). As revised, the regulations require that a director of rehabilitation for an excluded rehabilitation hospital unit be a doctor of medicine or osteopathy who—

- Is licensed under State law to practice medicine or surgery;
- Has completed a one-year hospital internship; and
- After completing the hospital internship, has had at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

We have not adopted the comment recommending that individuals who are not doctors of medicine or osteopathy be permitted to serve as directors of rehabilitation. We expect that directors of rehabilitation will primarily be engaged in the medical management of rehabilitation, and an individual other than a physician would not be able to perform this function.

Comment—Some commenters stated that it is inappropriate to use a definition of "rehabilitation hospital" or "rehabilitation unit" that is based in part on the medical conditions of inpatients admitted to the hospital or unit. One commenter objected to this approach because it is not explicitly provided for by Pub. L. 98–21 of its legislative history. Other commenters recommended that, in the case of hospitals or units that cannot qualify for exclusion based on their mix of inpatients, we use the types of services provided in a hospital or unit, rather than the medical conditions of inpatients admitted to it, to determine whether it is primarily engaged in rehabilitation. One commenter suggested that we use the preadmission screening procedures we have required for rehabilitation hospitals and units as the sole criterion for determining whether the hospitals or units are primarily engaged in rehabilitation (that is, a hospital or unit that admitted only inpatients found to require intensive inpatient rehabilitation would be considered to be primarily engaged in rehabilitation).

Response—As noted in the preamble to the interim final rule, the language of section 1886(d) of the Act indicates clearly that the definitions of "rehabilitation hospital" and "rehabilitation unit" are to be developed by the Secretary. In view of this, we do not agree that use of the approach taken in the interim final rule exceeds the Secretary's statutory authority.

We agree with the statement of some commenters that the types of services furnished in a hospital or unit, and the presence of a preadmission screening of inpatients for their need for rehabilitation, are important indicators of whether a particular hospital or unit is primarily engaged in rehabilitation. However, we do not agree that either of these indicators taken alone, provides a sufficient basis for concluding that a particular hospital or unit is primarily engaged in rehabilitation. Many inpatients of acute care hospitals (or units of hospitals) require some rehabilitative services in conjunction with the acute care that is the primary objective of their hospitalization. Thus, the presence in a hospital or unit of certain types of services is not in itself sufficient to demonstrate that the hospital or unit is primarily engaged in rehabilitation rather than acute care. Also, preadmission screening procedures may not be applied with complete consistency by all hospitals and units. Therefore, we have decided not to use these procedures as the sole basis for determining the primacy of rehabilitation in certain hospitals or units.

Comment—Some commenters stated that the data used to develop the list of conditions associated with rehabilitation hospitals and units were originally gathered in 1975, and argued that because of shifts in patient populations that may have occurred since then, these data may not reflect accurately the current patient mix of rehabilitation hospitals and units. These commenters also noted that the study that produced the data was performed to facilitate review by Professional Standard Review Organizations (PSROs), and stated that the results of such a study are not necessarily transferable to a definition used to determine the status of certain hospitals and units with respect to prospective payment.

Response—We do not believe that the data used to develop the list of medical conditions associated with rehabilitation hospitals and units are outdated. Although the initial work began in 1975, the project results were revised in 1979 and endorsed by the Committee on Rehabilitation Criteria for PSRO of the American Academy of Physical Medicine and Rehabilitation and the American Congress of Rehabilitation Medicine. While it is true that the data were originally gathered for purposes of PSRO review rather than with the objective of defining rehabilitation hospitals and units, we believe it is the fact that the data were derived from comprehensive medical rehabilitation hospitals and units, rather than the original uses of the data, that is material to the data's validity in describing conditions characteristic of rehabilitation inpatients.

Comment—Some commenters recommend that we not specify that a certain percentage of inpatients must be admitted for conditions associated with rehabilitation, since not all inpatients receive uniform amounts of services. They recommended that our characterization of rehabilitation hospitals and units be more closely linked to resource consumption than to inpatients' medical conditions.

Response—For reasons cited above, we believe it is much more feasible from

an administrative standpoint to focus on inpatients' medical conditions than on services in defining inpatient rehabilitation. Moreover, while there are undeniable differences in the services required by individual inpatients, resource consumption by inpatients with similar diagnoses tends to be relatively uniform. Therefore, we have not revised the interim final rule based on these comments.

Comment—Some commenters recommended that we permit a rehabilitation hospital or unit to qualify for exclusion if 60 percent (rather than 75 percent) of its inpatients have medical conditions that we have identified as being associated with rehabilitation.

Response—As explained earlier, we have not received any objective evidence to show that use of the 75 percent figure would fail to recognize hospitals and units that are primarily engaged in rehabilitation. Moreover, we have expanded the list of conditions by adding two conditions that were not taken into account in developing the 75 percent figure. Therefore, we have not adopted this comment.

Comment—Some commenters asked us to specify whether the 75 percent rule is to be applied to a hospital's (or unit's) number of discharges, or to the patient-days of inpatient care it provides.

Response—The 75 percent rule applies to the inpatient population. The population could be measured by either the number of admissions or discharges from a hospital or unit in a particular cost reporting period, but not by its number of patient-days. This approach is consistent with the study used to develop the sample screening criteria, which showed that 75 percent of the admissions included in the study data were for certain medical conditions.

Comment—Several commenters recommended that neurological disorders and burns be added to the lists of medical conditions associated with inpatients in rehabilitation hospitals and units (§§ 405.471(c)(2)(ii) and (c)(4)(iii)(A)), since many inpatients with these conditions require inpatient rehabilitation services. Another commenter stated that neurological conditions limiting motor ability and chronic pain conditions derived from neurological and musculoskeletal conditions are characteristic of about 30 percent of all inpatients in currently existing rehabilitation hospitals and units. One commenter submitted the June 1982 report of the Graduate Medical Education National Advisory Committee regarding requirements for specialists in physical medicine and rehabilitation. The commenter noted that chronic pain and neurological disorders were not included in the list of conditions characteristic of rehabilitation even though these conditions account for many of the cases seen by specialists in physical medicine and rehabilitation. The commenter recommended that these two medical conditions be added to the lists.

Response—Based on these comments, we have revised the lists of medical conditions in §§ 405.471(c)(2)(ii) and (c)(4)(iii)(A) to include neurological disorders (including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease) and burns. We believe that inclusion of these conditions will help us to identify more accurately those hospitals and hospital units that are primarily engaged in intensive inpatient rehabilitation.

We have not adopted the comments recommending that chronic pain conditions be included on the lists cited above, for several reasons. First, chronic pain is not in itself a medical condition of the same type as those now included in the lists, but instead may be a symptom of other medical conditions that, in many cases, may not be fully diagnosed. Second, many of the treatments used for inpatients with chronic pain are significantly different from those used in the traditional physical medicine approach to rehabilitation, and it is not clear that the cost characteristics of hospitals and units that specialize in these treatments are sufficiently different from those of acute care hospitals to warrant exclusion of such hospitals and units. Finally, much of the patient care activity directed toward inpatients with chronic pain represents diagnosis, medical intervention, or palliative care, and this activity cannot be characterized accurately as rehabilitation.

Although we have not included chronic pain as one of the medical conditions characteristic of rehabilitation hospitals and units, this decision does not preclude payment for services to patients with this condition who are treated in these hospitals or units. In rehabilitation hospitals and units, up to twenty-five percent of the discharges may be for conditions not listed, including chronic pain.

Comment—One commenter noted that many elderly people suffer from multiple dysfunctions that interact with one another to produce disabilities. The commenter stated that in recent years many hospitals have set up special geriatric assessment and rehabilitation units to treat inpatients with these conditions. According to the commenter, these units have had a high degree of success in improving inpatients' functional abilities, reducing rates of mortality, and reducing rates of reinstitutionalization (in hospitals and skilled nursing facilities) of inpatients treated in the units. The commenter recommended that the criteria for exclusion of rehabilitation units, and in particular the list of medical conditions associated with rehabilitation units, be revised to permit exclusion of geriatric assessment and rehabilitation units.

Response—In our view, the list of medical conditions set forth in these final regulations comprises those conditions most characteristic of inpatients in rehabilitation hospitals and units. We believe that, in most cases, inpatients treated in geriatric assessment and rehabilitation units would have at least one of the listed conditions, and units that treat only such inpatients would therefore qualify for exclusion. In view of this, we believe it would be redundant to revise the list to specifically include these units. Therefore, we have not adopted this comment.

Comment—Several commenters recommended that we add pulmonary/cardiac disorders to the list of conditions associated with rehabilitation hospitals and units.

Response—Unlike the medical conditions included in the lists, pulmonary/cardiac disorders present special difficulties in distinguishing between the acute and rehabilitative phases of treatment. This is especially apparent with inpatients who may suffer an acute episode during their rehabilitative phase, thus requiring further acute care. If we were to include these disorders on the list, acute care services could be excluded inappropriately from the prospective payment system. Therefore, we have not adopted this comment.

Comment—One commenter objected to the requirement that plans of treatment for inpatients in rehabilitation hospitals and units be established, reviewed, and revised by a physician. The commenter stated that physicians are often not familiar with how to write treatment plans for rehabilitation inpatients, and recommended that we revise the regulations to state that other professional personnel may perform this function.

Response—As noted in the preamble to the interim final rule, the primary objective of the exclusion criteria for rehabilitation hospitals and units is to identify those hospitals and units that are primarily engaged in intensive inpatient rehabilitation. We continue to believe that hospitals and hospital units

of this type will have treatment plans that require creation and revision by physicians. (The same requirement applies to treatment plans for CORFs, which furnish less intensive rehabilitation services on an outpatient basis.) Therefore, we are not revising the regulations based on this comment.

Comment—Some commenters stated that hospitals could use their resources more efficiently if they were permitted to place acute care inpatients in their excluded rehabilitation units when all acute care beds are in use. They recommended that we revise the provision (§ 405.471(c)(4)(i)(G)) regarding commingling of beds to permit this practice.

Response—We are not revising the regulations based on this comment. If we were to permit hospitals to place acute care inpatients in rehabilitation units on an "overflow" basis, special cost finding techniques would be needed to determine and disallow for reasonable cost reimbursement purposes the costs of services to acute care inpatients temporarily located in the units. These procedures would generate additional administrative costs for hospitals and their intermediaries, and would require additional recordkeeping and reporting. Unless the procedures were correctly applied, certain hospitals could inadvertently receive duplicate payments, based on prospective rates and on reasonable costs, for the same services.

If a hospital experiences shortages of acute care beds together with a correspondingly low level of occupancy in an excluded rehabilitation unit, we believe the appropriate response is to redesignate certain rehabilitation beds as acute care beds.

3. Exclusion of Alcohol/Drug Treatment Hospitals and Units (§ 405.471 (c)(3) and (c)(4)(iv))

Comment—We received several comments recommending that programs for the treatment of alcohol and drug dependency be excluded from the prospective payment system. In regard to programs for the inpatient treatment of chronic alcoholism, some commenters stated that the prospective payment system does not provide for payment rates appropriate to the lengths of stay typical of either detoxification or rehabilitation programs. (The comments regarding the lengths of stay of these programs are discussed in greater detail in section III. B. of this preamble.) These commenters recommended that, until the DRGs on which the prospective payment system is based are revised to reflect more accurately the lengths of stay characteristic of these programs, we should permit alcohol/drug programs to qualify for exclusion.

Commenters suggested different approaches to the exclusion of alcohol/drug programs. Some commenters suggested that we develop special criteria for the exclusion of distinct part psychiatric units. Under the criteria these commenters recommended, the requirements for a psychiatrist as director, a registered nurse with a masters degree in psychiatric or mental health nursing as supervising nurse, and a multidisciplinary team composed of a doctor of medicine of osteopathy, psychologist, and psychiatric nurse would not apply to alcohol/drug units. Other commenters suggested that we develop separate criteria to be applied only to alcohol/drug rehabilitation programs.

Response—We have revised the regulations to provide separate criteria for the exclusion, for a limited time period, of hospitals and distinct part units that specialize in alcohol/drug dependency treatment. Under these criteria, the hospitals and units would not be required to meet the criteria related to psychiatric or rehabilitation hospitals or distinct part units. Instead, they would be subject to special criteria regarding the reasons for admission of inpatients to the hospital or unit, the composition of the multidisciplinary treatment team, and the types of services available. The units would also be subject to the general criteria for distinct part units. These special criteria, which are set forth in greater detail in § 405.471(c)(4)(iv), are designed to correspond to the staffing and treatment practices of alcohol/drug programs. We believe application of these criteria will help prevent these hospitals and units from being inappropriately included under the prospective payment system.

Each hospital that is granted the special exclusion for a distinct part alcohol/drug treatment unit is expected to use that unit to provide the full range of alcohol and drug dependency treatment services available in the hospital. To the extent that the hospital admits alcohol and drug dependent individuals for inpatient detoxification or rehabilitation, those admissions must be to the excluded unit. Consequently, a hospital with an excluded alcohol/drug unit should not claim prospective payment for any discharges with principal diagnoses that result in assignment to DRGs 436 (Alcohol Dependence) or 434 (Drug Dependence). We will examine closely the appropriateness of continuing to exclude the alcohol/drug unit of any hospital that claims payment for discharges assigned to DRGs 436 or 434.

The special criteria we have developed for alcohol/drug treatment hospitals and units would permit exclusion only until October 1, 1985. As required by section 1886(d)(4)(C) of the Act, we will adjust the classifications and weighting factors used in determining payment for discharges on or after that date. Since we expect that this adjustment will permit prospective payment to be made appropriately for alcohol/drug treatment services, we do not believe it will be necessary to continue to exclude hospitals or units that provide these services.

4. Treatment of New Rehabilitation Hospitals and Units

Comment—Several commenters noted that hospitals and units that have not previously been extensively involved in rehabilitation would not have a base of patient data to which the 75 percent test could be applied. As a result, they could not meet this test and qualify for exclusion from prospective payment until they had operated for at least a full (12-month) cost reporting period. These commenters stated that this result is inequitable to these new hospitals and units, and recommended that we provide some special recognition of these hospitals' and units' need to be excluded.

Some of the commenters recommended that we permit new rehabilitation hospitals and units to be excluded for their first year of operation based on their assurances regarding compliance with the exclusion criteria and their estimates of the medical conditions of the patient populations they plan to treat.

Response—We recognize that new rehabilitation hospitals and units will not be excluded until they have demonstrated compliance with the exclusion criteria. However, we believe that providing exclusions based on projections of future operations could create significant overpayments and severe administrative problems in situations in which a hospital's (or unit's) projections prove to be inaccurate. Therefore, we have not adopted the comments suggesting that we exclude hospitals and units based on assurances and estimates.

5. Types of Services That Must Be Available in Excluded Hospitals and Units

Comment—Several commenters expressed general approval of the provisions of the interim final rule that recognize occupational therapy as one of the services furnished in excluded rehabilitation hospitals and units and in

excluded psychiatric units (§§ 405.471(c)(2)(iv), (c)(4)(iii)(C) and (c)(4)(ii)(C), respectively, of this final rule). These commenters suggested that we retain the provisions in the final regulations. One commenter recommended that we also specify that psychiatric hospitals must provide occupational therapy services in order to qualify for exclusion from the prospective payment system.

Response—As recommended by these commenters, we have retained the provisions that recognize occupational therapy as one of the services typically furnished in rehabilitation hospitals and units and in psychiatric units. In regard to the comment suggesting that these services also be required in excluded psychiatric hospitals, we wish to note that § 405.1038(g)(1) imposes this requirement on psychiatric hospitals, and that the criteria for exclusion of psychiatric hospitals (§ 405.471(c)(1)(ii) require those hospitals to comply with § 405.1038. Therefore, we do not believe it is necessary to revise §405.471 to restate the requirement explicitly.

6. Long-Term Hospitals (§ 405.471(c)(6))

Comment—A commenter noted the difference between the criteria for determining long-term hospitals for purposes of exclusion from the limits on inpatient operating costs under section 1886(b) of the Act and from the prospective payment system. The commenter suggested that we clarify the distinction and that accurate provider numbers be issued as soon as possible.

Response—We will not apply the inpatient operating cost limits in determining a hospital's reimbursable costs if the hospital is considered a long-term hospital. The final notice of the cost limits, published in the **Federal Register** on August 30, 1983 (48 FR 39430) permits a hospital to establish long-term status, for purposes of exclusion from the cost limits, by meeting one of the following criteria: (1) The hospital has a provider number that identifies the hospital as a distinct type facility; or (2) the hospital has an average length of stay of more than 25 days for more than 50 percent of its patient population.

Under the prospective payment system, a hospital must have an average length of stay greater than 25 days for all its inpatients in order to be excluded as a long-term hospital. Generally, the average length of stay will be based on a hospital's most recently filed cost report. The other criteria for distinguishing long-term hospitals that were used under the inpatient operating cost limits will not justify exclusion of the hospital under the prospective payment system. However, those hospitals that have been excluded from the operating cost limits under the cost limit criteria will continue that exclusion until their first cost reporting period beginning on or after October 1, 1983.

We have issued instructions to our regional offices on assigning provider numbers to excluded hospitals. Hospitals should be assigned a provider number accurately reflecting their status under the prospective payment system at the time of their first cost reporting period beginning on or after October 1, 1983.

7. Comments on Other Issues

Comment—We received a large number of comments regarding recreational therapy. Many of those who commented on this issue made general statements regarding the value of these services and the need for Medicare payment for them, but did not request specific changes in the interim final rule. Other commenters recommended adding recreational therapy on an "as needed" basis to the list of services that help us to distinguish rehabilitation hospitals and units. These commenters stated that recreational therapy services should be included because these services are ordered by physicians, benefit inpatients in daily living after discharge, and are listed as daily required (not "as needed") treatments in the CARF accreditation requirements.

Response—We have not revised the interim final rule based on these comments. We wish to note that, in establishing the lists of services that help us to distinguish rehabilitation hospitals and units, our purpose was to include only those core services that typically are required by inpatients of hospitals and units that primarily engage in intensive inpatient rehabilitation. Although we recognize that recreational therapy services may benefit many inpatients, we do not agree that their provision is so indicative of intensive inpatient rehabilitation that we should refuse to exclude hospitals and units that do not provide them. Therefore, we have not included recreational therapy among the services that must be offered to permit a hospital or unit to qualify for exclusion.

Comment—We received some comments suggesting that the interim final rule would lead to denial of Medicare payment for recreational therapy services. Several commenters expressed concern that the cost-saving incentives of the prospective payment system would lead hospitals paid under the system to stop providing recreational therapy services. Other commenters stated that if rehabilitation hospitals and units are not required to furnish recreational therapy services, they will stop doing so and the costs of the services will not be included in the data used to develop prospective rates for those hospitals and units when they are brought under the prospective payment system. The commenters believe this result would severely restrict the future availability of the services, since hospitals and units have a financial disincentive to incur expenses for types of services not covered by their prospective rates.

Response—Neither the implementation of the prospective payment system nor the criteria for excluding certain hospitals and units from it will prohibit the provision of recreational therapy services to hospital inpatients. In particular, the absense of these services from the list of rehabilitative services in rehabilitation hospitals and units does not indicate that Medicare will no longer pay for them in those hospitals and units that provide them. On the contrary, these services will continue to be covered to the same extent they always have been under existing Medicare policies.

Comment—One commenter noted that the criteria for excluded units (§ 405.471(c)(4)(i) of this final rule) are similar to, but not identical with, the provisions of the Provider Reimbursement Manual (HCFA Pub. 15–1) that deal with separate cost entities (section 2336.1D). The commenter stated that some hospitals could be confused regarding which criteria they may meet, and recommended that we avoid this confusion by specifying that only the criteria in the interim final rule will be used to determine whether a part of a hospital qualifies as a "distinct part unit" for purposes of exclusion from the prospective payment system.

Response—As the commenter correctly stated, only the criteria in § 405.471(c) will be used to determine whether a part of a hospital qualifies as a "distinct part unit" for purposes of exclusion from the prospective payment system. Those hospitals that wish to establish a "separate cost entity" for cost reporting purposes may continue to use the criteria in section 2336.1D of the Provider Reimbursement Manual for this purpose. However, the establishment of a separate cost entity, generally, will not affect Medicare payment. An exception to this general rule exists in the case of separate cost entities established in hospitals that are excluded from the prospective payment system (that is, long-term, children's rehabilitation, and psychiatric hospitals). In these cases,

separate rate of increase limits will be applied to the hospital and unit.

Comment—Some commenters noted that the Conference Committee that recommended enactment of the prospective payment legislation deleted the provision of the House bill that would have conditioned granting of an exclusion on receipt by the Secretary of a request from the hospital. These commenters reasoned from this that we cannot require hospitals to submit requests in order to qualify for exclusion, and that we must exclude hospitals or units prospectively from the earliest date on which they met the criteria. The commenters objected in particular to the statement in the interim final rule that a hospital or unit ordinarily will be included in (or excluded from) the prospective payment system only for entire costs reporting periods.

Response—While we have requested hospitals and units that believe they meet the exclusion criteria to identify themselves, we do not believe this voluntary self-identification contradicts any provision of the prospective payment system or is inconsistent with its legislative history. On the contrary, we believe the procedure is the only administratively feasible approach to implementation of the exclusion provisions with respect to categories of statutorily excluded hospitals and units that have not previoulsy been identified separately, and cannot be found to qualify for (or be disqualified from) exclusion based on the information we or our intermediaries already have. Therefore, we have not changed the procedure based on this comment. Of course, this procedure would not be required for categories of hospitals, such as long-term hospitals, that can be excluded based on information already available to us.

For similar administrative reasons, we believe it is necessary to require that, in most cases, changes in a hospital's (or unit's) exclusion status be made only for entire cost reporting periods. Serious billing, cost reporting, and other payment problems could arise if a hospital (or unit) were paid under different systems during different parts of the same period.

Comment—One commenter asked whether hospitals or units that initially are excluded based on self-identification but later are found not to meet the exlusion criteria will have their status adjusted as soon as the finding is made.

Response—To avoid the administrative problems that could arise from changes in status made during a cost reporting period, we plan to adjust the payment status of such hospitals and units only prospectively, starting with the beginning date of the next cost reporting period.

Comment—Several commenters requested clarification of the application of the rate of increase ceiling for excluded hospitals. Specifically, these commenters questioned the establishment of base periods for excluded hospitals and units.

Response—Section 405.463(b)(1) defines base period as the 12-month cost reporting period immediately preceding the first cost reporting period subject to the rate of increase ceiling. Generally, this is the cost reporting period ending on or after September 30, 1982, and before October 1, 1983.

For those hospitals and previously separately certified subprovider units that will be excluded from the prospective payment system, there should be no change in base periods and the rate of increase limit will apply as it did in the first year subject to the rate of increase ceiling except that the inpatient operating cost limits will not be applied.

For newly identified units excluded from the prospective payment system, there is no previously identified base period cost per discharge as the unit's costs were included with the hospital's total costs reported. Therefore, newly identified units will establish a base period as the first 12-month cost reporting period for which they are excluded from the prospective payment system (generally, the cost reporting period ending on or after September 30, 1984, and before October 1, 1985). The rate of increase ceiling will apply to all subsequent periods for which they remain excluded from prospective payment.

B. Excluded Hospitals Paid Under Alternative Payment Programs

In addition to exclusions under section 1886(d)(1)(B) of the Act, the law also excludes the following hospitals from the prospective payment system:

- Hospitals paid under State cost control systems authorized by section 1886(c) of the Act.
- Hospitals paid in accordance with demonstration projects authorized by section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)).

Comment—One commenter requested that we specifically identify which regulations will affect or will not affect hospitals that are excluded because they are paid under alternative programs.

Response—We are currently developing regulations for alternative programs and we will provide specific information in those regulations.

C. Other Special Exclusions

Regarding the implementation of the prospective payment system, three types of services require special treatment as follows:

- Payment for emergency services, furnished by hospitals not participating in the Medicare program, will not be based on the prospective payment system, but will continue to be made under § 405.152.
- Payment for services provided by Veterans Administration hospitals that furnish services, not otherwise available in the community, to Medicare beneficiaries will be determined, as it has been in the past, in accordance with 38 U.S.C. 5053(d).
- Payment for hospital services provided to a beneficiary through a risk-based health maintenance organization (HMO) or competitive medical plan (CMP), when the HMO or CMP elects to have us pay the hospital directly, will be made either under the prospective payment system or on a reasonable cost basis if the hospital is excluded. In either event, payments made directly to the hospital, plus administrative costs for paying hospitals directly, will be subtracted from the Medicare capitation payments made to the HMO or CMP. Regulations addressing HMOs and CMPs are currently being developed.

III. BASIS OF PAYMENT UNDER THE PROSPECTIVE PAYMENT SYSTEM

All hospitals subject to the prospective payment system will be paid, for inpatient services provided, a specific amount for each discharge based on the case's classification into one of 468 diagnosis-related groups (DRGs).

A. Discharges and Transfers (§ 405.470(c))

The terms "discharge" and "transfer" are defined, for purposes of the prospective payment system, in § 405.470(c) of the regulations. It was necessary to distinguish between discharges where patients have received complete treatment and discharges where patients are transferred to other institutions for related care. Generally, a patient is considered discharged when the patient:

- Is formally released from the hospital (Release of the patient to another hospital as described in § 405.470(c)(2) of these regulations will not be recognized as a discharge for the purpose of determining payment under the prospective payment system.);
- Dies in the hospital; or

• Is transferred to another hospital or unit that is excluded from the prospective payment system.

Hospitals releasing a patient under circumstances constituting a transfer as defined in § 405.470(c)(2) are paid a per diem amount. The per diem amount is determined by dividing the appropriate prospective payment rate by the geometric mean length-of-stay for the specific DRG into which the case falls.

We received numerous comments involving various aspects of our discharge/transfer policy as presented below.

Comment—We stated in the preamble to the interim final rule (48 FR 39759) that "a patient on a leave of absence from a hospital will not be considered discharged." A few commenters noted that this policy was not stated explicitly in the regulation concerning discharges in § 405.470(c).

Response—To avoid further concern or questions regarding the intent of our policy, we are amending § 405.470(c) to state explicitly that a leave of absence will not be considered a discharge.

Comment—Several commenters stated that our transfer policy is inconsistent with our payment for DRGs 385 and 456 (for neonates, died or transferred, and burns, transferred to another acute care facility, respectively). The weighting factors for these two DRGs are based on the assumption that the patient will be transferred. Therefore, paying a per diem amount for these cases to a transferring hospital will result in underpayment to the hospital.

Response—The rationale for per diem payments as part of our transfer policy is that the transferring hospital generally provides only a limited amount of treatment. Therefore, payment of the full prospective payment rate would be unwarranted. While this policy is generally appropriate, we agree that its application to a discharge assigned to DRG 385 or 456 will result in underpayment to the transferring hospital. An expected transfer is built into the weighting factors for these DRGs. Accordingly, we are revising § 405.470(c) to provide for payment of the full prospective payment rate to a transferring hospital for discharges assigned to DRG 385 or 456.

Comment—Several commenters questioned the applicability of our transfer policy to multiple transfer cases, as for example, where a patient is transferred more than once among the same facilities.

Response—Multiple transfers may occur for numerous reasons. For example, patients are transferred to other hospitals for highly specialized diagnositc or therapeutic services and transferred back to the original community hospital for the convalescent portion of treatment.

In accordance with § 405.470(c), only the discharging hospital is paid the full prospective payment rate, while all transferring hospitals are paid a per diem amount. This policy was adopted in recognition of the fact that a transferring hospital generally provides only limited services, whereas the discharging hospital generally provides the bulk of services during the course of a patient's treatment. With a multiple-transfer situation, there is concern that the first transferring hospital may also be the discharging hospital, thus unjustifiably receiving the full prospective payment rate in addition to the per diem amount.

We do not believe that the policy contained in the interim final rule will result in unjustified payment in the majority of situations. No evidence has been submitted that the amount or intensity of treatment by the transferring hospital, which is not the discharging hospital, is greater than that of the other hospital. It must also be noted that the second transferring hospital may receive, on a per diem basis, total payments up to the full amount of the DRG payment, depending upon the length of time it treats the patient. Therefore, this hospital also will receive payment commensurate with the services it furnishes to the beneficiary.

For the above reasons, we do not believe it is necessary at this time to revise the policy on transfers included in the interim final rule regarding multiple transfer situations. In this connection, we emphasize again, as we did in the preamble to the interim final rule, that the policy on transfers included in § 405.470(c) is meant as an interim policy. Thus, we will be closely monitoring data on discharge/transfer patterns, for example, through medical review activities, and will revise our policy as appropriate.

Comment—Some commenters asked for clarification of our policy on transfers under the prospective payment system. Specifically, these commenters were concerned about the policy expressed in §§ 405.470 (c)(2)(iii)(A) and (c)(2)(iii)(B) in that a transfer from one hospital to another is not considered a discharge if the second hospital is either excluded from the prospective payment system because of participation in an approved statewide cost control program or demonstration, or is a hospital whose first cost reporting period under the prospective payment system has not yet begun. The commenters believe that this policy would produce inequitable results where the second hospital is one which, were it not included in a waiver State, or its first cost reporting period under the prospective payment system had not yet begun, would be an excluded hospital under the prospective payment system. In that situation, the transfer would be considered a discharge, and the first hospital would be paid the full DRG payment.

Response—We agree that this interpretation of the policy would produce an inequitable result. However, it was not our intention that the policy would produce this result. In the interim final rule, transfers from hospitals paid under the prospective payment system to hospitals excluded from the system are treated differently for payment purposes than transfers to other hospitals included under the prospective payment system.

The reason for this difference is due to the difference in the types of treatment furnished in the two classes of facilities. As we stated in the interim final rule, we believe that hospitals and units excluded from the prospective payment system are organized for treatment of conditions distinctly unlike treatment encountered in short-term acute care facilities. Therefore, the services obtained in excluded facilities would not be the same services obtained in transferring hospitals (that is, paid under the prospective payment system), and payment to both facilities would be appropriate, with the transferring hospital paid at the full DRG prospective payment rate.

Thus, the significant factor in determining the payment to a transferring hospital is the type of hospital to which the patient is transferred. The type of hospital is independent of that hospital's particular cost reporting period beginning date, or whether it is located in a waiver State. Thus, in the preamble to the interim final rule, it is stated that payment to the transferring hospital is on a per diem basis if the transfer is to a hospital that would ordinarily be paid under the prospective payment system, but is not at the time the transfer occurs because the hospital's first cost reporting period under prospective payment has not begun, or the hospital is located in a waiver State. Similarly, full DRG prospective payment should be made to a transferring hospital where the patient is transferred to a hospital that would be excluded from the prospective payment system, regardless of that hospital's location or its cost reporting period. We have clarified the regulations

at § 405.470(c) to avoid further misinterpretation.

There may be situations where the status of the receiving hospital or unit is unclear regarding exclusion from the prospective payment system. This would be the case where a patient is transferred to a hospital unit that, while it may be excluded from the prospective payment system once the hospital itself becomes subject to prospective payment, there is no indication presently that the unit will be excluded. For example, the unit may be a rehabilitation unit within a short-term hospital. However, the unit is currently part of the hospital and is not separately certified as a distinct part. Since no determination has yet been made as to whether the unit would qualify under the regulations for exclusion as a distinct part rehabilitation unit, to prevent overpayments it would be necessary to consider the transfer as being to a short-term acute care hospital which subsequently will become subject to prospective payment. A similar situation would occur in the case of a rehabilitation hospital. Since prior to the implementation of the prospective payment system the Medicare program did not separately certify or recognize rehabilitation hospitals, it may not be clear with respect to a transfer to a rehabilitation hospital that has not yet begun its first cost reporting period under prospective payment whether in fact that hospital will quality for exclusionary status under the regulations. Payment of the full DRG amount to the transferring hospital in this situation would risk overpayments being made, since the hospital or unit may actually become subject to prospective payment if it does not meet the established criteria for exclusion. We do not believe it is in the best interests of the Medicare Trust Fund for the program to incur overpayments in this way. Therefore, in situations such as those illustrated above, payment to the transferring hospital will be on a per diem basis.

Comment—We received a number of recommendations on revising the policy contained in the interim final rule for payment of transfers. Some commenters stated that the beginning of a patient's course of treatment is the most resource intensive, and therefore, the transferring hospital should receive the full prospective payment rate, or should be paid in some other manner, such as on a sliding scale, that reflects this resource intensive phase of treatment. It was also suggested that regional rather than national average lengths-of-stay for the DRGs should be used in computing the per diem payments, and that outlier payments, where appropriate, be permitted for the transferring hospital. Another commenter called into question the basis for the transfer policy by stating that the DRG prices themselves already take transfers into consideration. This is because, in the data base, transfers are considered as discharges. It was also stated that hospitals will be reluctant to transfer patients due to the perceived inequity of the policy for payment of transfers. The reluctance will not be in the best interest of the patient whose medical condition indicates that he or she could best be treated at another hospital.

Response—While some issues were raised concerning the resource intensive nature of the first part of a patient's treatment, little or no data were provided in support of this position. We believe that in many cases the bulk of a patient's treatment is received after he or she is transferred. That is, the transferring hospital merely stabilizes a patient in preparation for his or her transfer to a second hospital, where the bulk of the diagnostic and therapeutic services are furnished. It should also be noted in this regard that even if we were to concede the logic of the commenters' arguments that in a transfer situation, the most resource intensive services were provided by the transferring hospital at the beginning of the patient's course of treatment, there is still no generally acceptable, objective method of measuring this resource intensity. For example, while charges could be used in this way, there is some question whether in many instances a "charge" is an objective measure of resource consumption. This is because in particular hospitals the charge structure reflects cross-subsidization among departments, so that a charge may not represent actual resources consumed in particular instances. Therefore, computation of an appropriate payment based on resource intensity is problematic. The per diem method, on the other hand, is a generally recognized and accepted method of payment.

With respect to the use of the national average length-of-stay for a DRG in deriving the per diem payment amount, we note that the ultimate purpose of the prospective payment system is to pay for treatment using national standardized costs that are adjusted for area wages. More importantly, we note that the weighting factor for each DRG reflects the relative cost, across all hospitals, of treating cases classified in that DRG.

The DRG weighting factors are national weights, and are based on average standardized costs for each DRG developed from cost data from all hospitals. The average standardized cost for each of the 468 DRGs was calculated by summing the standardized adjusted costs for all cases in the DRG and dividing that amount by the number of cases classified in the DRG. The average standardized cost for each DRG was then divided by the overall average standardized cost to determine the weighting factor. In sum, the DRG weights are national weights, and reflect the cost of all hospitals without regard to the differing lengths-of-stay that may exist regionally.

Therefore, use of regional measures of length-of-stay for developing the per diem DRG payments would be inappropriate, since they could overstate or, in areas with longer lengths-of-stay, understate the payment appropriate for a particular DRG. We would note, however, that our studies have demonstrated an extraordinarily high correlation between regional weights and national weights.

In regard to outlier payments for the transferring hospital, we believe these are clearly inappropriate. In a transfer situation, we would not expect a patient to be present in the transferring hospital long enough to qualify as an outlier. If this situation were to arise, there would then be some question as to whether the case were a transfer case at all. Also, if a patient needs to be transferred, but is kept in the first hospital long enough to qualify as an outlier case, this would also raise questions as to whether the patient is receiving the most appropriate care. As we gain additional experience with the prospective payment system, we will continue to analyze the situation on an ongoing basis to determine whether any further refinements in this policy are necessary.

Finally, we do not believe that the transfer policy contained in the interim final rule will affect the quality of care furnished to Medicare inpatients. The decision on whether to transfer a patient will ultimately be made on the basis of medical considerations, with the welfare of the patient being the primary consideration. In any event, as indicated above, we do not believe that our transfer policy is either disadvantageous to the transferring hospital or results in any danger of declining quality of care.

With respect to the data used in computing prospective payment rates, we recognize that transfers were previously considered as discharges. Under the interim final rule, the transfer of a patient between two hospitals, each of which is subject to the prospective payment system, will not be considered

a discharge for the transferring hospital. This type of a transfer would have been a discharge under the reasonable cost reimbursement system. However, no data were presented to indicate the actual effect, if any, that this difference between the definitions of discharge under the old and new payment system might have on the DRG rates.

With respect to the Federal rates, we would expect any discrepancy between the "old" and "new" definitions of discharge to have no significant effect on the rates. This is because patients transferred to another hospital constitute only a small fraction of the total number of discharges. It should also be noted that certain transfers under the prospective payment system will still be considered discharges, namely, transfers between a hospital subject to prospective payment and an excluded hospital. This would reduce even further the already small discrepancy between the definition of discharges under the old system and the definition under the new system.

In discussing the transfer policy with respect to the difference in the definition of "discharge", a distinction must be made between the computation of the Federal rates, and the payments made to a particular hospital under the prospective payment system. While we would expect, as stated above, that there would be little effect of the difference in definitions on the rates, individual providers could receive a signfficant amount of unjustified payments, if they had a large number of transfers and we paid for each transfer at the full prospective payment rate as if it were a discharge.

With respect to the hospital-specific portion of the blended rates, we note that the purpose of this portion during the first three years of the prospective payment system is to ease a hospital's transition from the cost-based reimbursement system to a fully Federal prospective payment system. We do not believe it was the Congressional intent that the hospital-specific portion recognize every detail of a hospital's cost situation, since the hospital is not being paid, under the prospective payment system, based on its actual costs incurred. In addition, the hospital-specific portion constitutes a decreasing portion of the blended rate as the transition period progresses. On the other hand, the Federal portion becomes a larger share of the prospective payment rate, to the point that beginning in fiscal year 1987, it will constitute 100 percent of the prospective payment. Therefore, the significance of our transfer policy is mainly related to the Federal rates and as we indicated above, we believe our current policy is an appropriate response until we are able to restructure the payment method so that we are recognizing one payment to the final discharging hospital.

Finally, we wish to reiterate that the transfer policy contained in the interim final rule was intended as an interim policy. As we stated in the preamble to the interim final rule (48 FR 39759), our ultimate goal, which we expect to implement within the next few years, is to pay a single rate to one hospital for a given course of treatment to a given patient. Therefore, we believe that hospital managers should begin to anticipate our final transfer policy and to incorporate this eventual change into their financial and management planning.

B. DRG Classification

The DRG classification system, based on the case classification system developed at Yale University, results in the assignment of each patient discharge to one of 467 DRGs. DRG 468 may also be assigned when valid discharge records contain only operating room procedures that are unrelated to the principal diagnosis. Based on information contained in each patient's bill, the fiscal intermediary assigns the proper DRG using the Grouper program. This program screens the essential information from the inpatient bill against criteria that distinguish DRGs, inlcuding principal diagnosis, secondary diagnoses, procedures performed, and the patient's age, sex, and discharge status. When bills contain certain errors, DRGs 469 or 470 may be assigned. When this occurs, the bills are returned to the hospital for correction.

A wide variety of comments have been received charging that DRG classifications are inaccurate or inappropriate, or that the weighting factors should be recalculated.

Comment—Several commenters challenged the general framework of the DRG classification system and weighting factors.

Response—In enacting the prospective payment system, Congress was plainly aware that the Secretary would have to use available data in setting the DRG prices. Both the House Ways and Means Committee (H.R. Rep. 98–25, 98th Congress, 1st Session 133 (1983)) and the Senate Finance Committee (S. Rep. 98–23, 98th Congress, 1st session 47 (1983)) recognized the need to use the data currently available. In complying with congressional intent, we have used the 1981 MEDPAR data and data from Maryland and Michigan hospitals for the same period to construct the weights for all 468 DRGs. (A full discussion of the methodology used in constructing the weights is presented in the preamble of the interim final rule (48 FR 39768).)

As explained in the same Federal Register issuance (48 FR 39760), the DRG classification system that was developed for prospective payment is based on a universe of 1.4 million records selected from a nationally representative sample of 332 hospitals participating in the Commission on Professional and Hospital Activities Abstracting Service. Using a combination of clinical judgment and statistical analysis, the study staff at Yale University developed the 468 DRGs currently used for computing prospective payment rates.

Although Congress recommended using currently available discharge data for constructing the DRGs and the most current DRG classification system for grouping discharges into DRGs, Congress recognized the need to periodically recalibrate the DRG weights and to reevaluate the methodology for classifying discharges. Therefore, in section 1886(d)(4)(C) of the Act, Congress directed the Secretary to recalibrate the DRG rates ". . . to reflect changes in treatment patterns, technology and other factors which may change the relative use of hospital resources." This recalibration is to be performed no later than fiscal year (FY) 1985 to appear in the notice of rates effective for FY 1986 and to be performed at least every four years thereafter. Additionally, Congress provided for the establishment of a "Prospective Payment Assessment Commission" to advise the Secretary on issues affecting rate-of-increase factors, DRG weights, and diagnostic classification systems.

In our regulations we have followed Congress' expressed intentions and have set forth in § 405.473(a)(4) the schedule for recalibrating the DRG weights. Although we could recalibrate and reclassify the DRGs prior to FY 1986, we do not anticipate doing so. The DRG weights are an index of the resources consumed in treating the various types of cases relative to the national average. Therefore, recalibrating or reclassifying one DRG necessarily has an impact on all other DRGs. Also, because the DRGs are related to each other as an index, attempting to correct inequities in one DRG through recalibration may produce inequities in other DRGs. We also note that the Prospective Payment Assessment Commission, under the statute, is responsible for assessing the

entire DRG system and reporting its findings to the Secretary. The Department of Health and Human Services will be working with the Commission in this matter. Since the entire DRG system of classification will be under review, we believe that would be the most appropriate time to make any changes, particularly in view of the interrelatedness of all the DRGs, as discussed above.

Congress also realized that no system of classifying diagnoses would be perfect. Thus, the Conference Committee Report accompanying section 101 of Pub. L. 97–248 states the following:

> It is understood that initially the Secretary will need to rely on a currently available indication of case-mix complexity such as the system developed at Yale University. It is expected that the Secretary will continue to evaluate possible methods for adjusting for case-mix and will adopt an improved method when it becomes available. (H.R. Rep. 97–760, 97th Congress, 2d Session 417 (1982)

Comment—Some commenters questioned our use of the actual indirect teaching adjustment factor of .05795 in computing the DRG cost weights instead of the doubled teaching adjustment factor of .1159 that Congress directed the Secretary to use when determining additional payments to cover indirect costs of medical education.

Response—Section 1886(d)(5)(B) of the Act provides for additional payments to be made to hospitals under the prospective payment system for the indirect costs of medical education. This payment is computed in the same manner as the indirect teaching adjustment under the notice of hospital cost limits published September 30, 1982 (47 FR 43310), except that Congress specifically directed that the educational adjustment factor is to equal twice the factor computed under that method.

If a hospital has a graduate medical education program approved under § 405.421, an additional payment will be made to the hospital equal to 11.59 percent of the aggregate payments made to the hospital, based on the Federal portion of prospective payment and outlier payments, for each .1 increase (above zero) in the hospital's ratio of full-time equivalent interns and residents (in approved programs) to its bed size. Because we are paying a hospital with an approved education program on the basis of a double indirect medical education adjustment factor, we had to standardize the hospital costs in our data base by using a double teaching adjustment. This was to insure that a teaching hospital does not receive more than it is entitled to under the law for indirect teaching costs. However, section 1886(d)(4)(B) of the Act requires that each DRG be assigned an appropriate weighting factor which reflects the relative hospital resources used for treating patients classified within each DRG as compared to the resources used for discharges classified within other DRGs. Since, under the law the DRG weights are to reflect the relative hospital resources *actually* consumed in treating patients assigned to different DRGs, we have used the actual indirect medical education cost adjustment factor of .05795 to remove the effects of the indirect cost of medical education from all teaching hospitals. To have used a double indirect educational cost factor would have removed more costs than the amount that could be attributed to the indirect effects of teaching activity based on our empirical estimates. The resulting DRG weights would then be understated with respect to the relative resources consumed for those more complex DRGs which teaching hospitals regularly treat as compared to the less complex DRGs treated in nonteaching hospitals.

The effect of understating the relative resources involved in treating patients classified into the more complex DRGs would have been a reduction in the payments to teaching hospitals. The intent of Congress, however, was to provide teaching hospitals with more rather than less payment in recognition of the indirect effects of graduate medical education programs. The policy would have essentially controverted the additonal recognition for indirect medical education had we standardized the weighting factors using a double indirect education cost factor.

Comment—Comments were received concerning patients who are on dialysis. It was pointed out that these patients, when admitted to a hospital for other reasons, generally experience more costly complications and have longer lengths-of-stay than other patients. Since individual DRG payments do not recognize these complications, the commenters suggested that a payment mechanism be developed that would fairly compensate hospitals for services rendered to inpatients who are on dialysis but who are admitted for other reasons.

One commenter felt that if additional payments cannot be made for patients who are on dialysis but are admitted to a hospital for another reason, then a hospital that is not a certified renal dialysis institution should be allowed to have the dialysis billed separately by the organization performing the service.

Response—The DRG weighting factors were constructed with the intention of reflecting the relative resource consumption associated with the cases falling in each DRG. Therefore, whenever kidney dialysis services were provided to an inpatient in the data base, whether that patient has been diagnosed as having end-stage renal disease and, thus, requires a regular course of dialysis or the patient requires dialysis services only on a limited basis, those services were included in the DRG weighting factor. This is true of those DRGs that are specifically directed to renal failure (DRGs 316 and 317) as well as any other DRG with cases where dialysis was provided. In addition, the program recognizes the extra resource consumption and complicated medical management required in cases where dialysis is provided. If either the costs of these services or length of the stay meet the "outlier" criteria, extra payment can be made.

It is important to distinguish between dialysis services furnished to non-ESRD beneficiaries that occur intermittently and are widely dispersed throughout the 1981 MEDPAR data base and those dialysis services furnished to ESRD beneficiaries. Since dialysis services to the latter population are furnished routinely and these inpatients could be concentrated in particular hospitals, there may be a significant disparity between the average amount in the rates attributable to dialysis services and the actual average amount of dialysis services that certain hospitals provide to ESRD beneficiaries. We believe we have a special legislative responsibility to ESRD patients who require a regular course of dialysis to maintain life, and we will monitor payment for their inpatient care to assure that it is equitable and does not diminish the availability of the services they require. At this time, however, the suggestions made by the commenter regarding extra payment or separate billing for dialysis services cannot be accepted, because, absent a specific adjustment to the rates, these recommendations could result in the program paying twice for dialysis services and would be in direct violation of the rebundling provision of the statute. However, we will continue to review this issue and will actively consider alternative solutions, if appropriate.

Comment—Approximately 900 comments were received concerning payment for the treatment of alcoholism. The commenters felt that the DRG for alcohol dependency reflected two different treatment modalities, alcohol detoxification and rehabilitation, resulting in inequities in payment. The

commenters felt that the average length-of-stay and the payment is too high for detoxification and inadequate for rehabilitation.

Response—First, we would like to point out that the prospective payment system makes no change in the types of services covered by Medicare, nor does it place new limits on the number of days for treatment for any illness. Under the prospective payment system there are four alcohol-related DRGs. The payment for each of these has been developed based on hospitals' specific experience with each type of case. The "alcohol-dependence" DRG payment has an average length-of-stay of 8.1 days The others, "alcohol use without dependency" and "alcohol and drug use with organic mental syndrome," have average lengths-of-stay of 3.5 and 6.5 days, respectively. Under the prospective payment system, cases that have either an extremely long length-of-stay or extraordinarily high costs when compared to most discharges classified in the same DRG are known as "outliers". In the case of the alcohol dependency DRG, outlier payments would begin on day 29. It should be noted that the average lengths-of-stay are the geometric means used in determining outlier cutoffs.

As stated previously, the statute requires the Director of the Congressional Office of Technology Assessment to appoint an independent Prospective Payment Assessment Commission. One of the functions of this commission will be to review medical treatment and technology and make recommendations for changes in DRGs. Any changes the Commission recommends in the alcohol DRGs, will receive every consideration. In the meantime, we have temporarily excluded alcohol units from prospective payment, and we will review DRGs with a view toward making modifications.

Comment—Several commenters recommended that we permit the assignment of a patient with multiple diagnoses to a DRG based on the patient's "primary" rather than "principal" diagnosis.

Response—The basis for this proposal is concern that use of the Uniform Hospital Discharge Data Set (UHDDS) definition of "principal" diagnosis may result in DRG classification (and, therefore, prospective payment) that does not properly reflect the cost of services actually provided. The recommendation would permit hospitals to report the most resource intensive condition as the principal diagnosis rather than "the diagnosis established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care" (*Uniform Hospital Discharge Data, Minimum Data Set*, April 1980, p. 12). Adopting this recommendation would presumably result in a case being appropriately assigned to a more costly DRG, yielding a greater prospective payment rate. The proposal would permit the assignment of a multiple diagnosis case to any number of DRGs depending upon the selection of the "primary" diagnosis. Patients with otherwise identical principal diagnoses would be assigned to different DRGs solely because of differing hospital or physician judgments as to which diagnosis was "primary." This would result in our inability to accurately classify a multiple diagnosis case to a specific DRG because of the requirement to accept the hospital's judgment as to which diagnosis was the most resource intensive. We believe this would create a powerful incentive for providers to select as the primary diagnosis the condition which would result in assignment to a DRG with the highest prospective payment rate.

Although several commenters reasoned that the same incentive exists in selecting the principal diagnosis, we believe permitting the use of a primary diagnosis would effectively remove the objective standard which the UHDDS definition of principal diagnosis affords. We have, therefore, not adopted the recommendation. We also wish to point out that no data base exists in which primary diagnosis has been used for assignment of cases. Therefore, relative weights for DRGs appropriate to the use of primary diagnosis could not be developed.

The Uniform Hospital Discharge Data Set can be obtained by writing to the National Center for Health Statistics, Room 1–57, 3700 East West Highway, Hyattsville, Maryland 20782.

Comment—Some commenters expressed concern regarding the processing of bills for cases that fall into DRG 468. These commenters believe that the method of processing these inpatient bills contained in the interim final rule is unnecessarily cumbersome, and they recommended that the procedures in § 405.473(a)(3)(iii) of the interim final rule be revised.

Response—DRG 468 represents a discharge in which all operating room procedures, present on the discharge record, are unrelated to the principal diagnosis.

This does not necessarily represent an invalid record. For example, a patient may be admitted for cataract surgery, but have a coronary bypass operation rather than the cataract procedure. In this instance, the procedures established in the interim final rule require the intermediaries to return the claims to the provider for clarification. If the accuracy of the discharge data is affirmed, the prospective payment rate will be paid as for any other DRG classification. Otherwise, the case will be reassigned to the appropriate DRG using corrected data.

We recognize that the method contained in the interim final rule may in some instances have cash flow consequences for some hospitals, especially those not receiving periodic interim payments. However, we note that DRG 468 has a relatively high weighting factor of 2.1037. In view of this high weighting factor, we believe the intermediary must have assurances before making payment that the assignment of the case is not the result of an error either in the coding of the principal diagnosis or the surgical procedure. We believe the potential for errors in cases assigned to this DRG is high, since the criteria for the assignment of a case to this DRG is an inconsistency between surgical procedures and the principal diagnosis. Therefore, we believe that retaining the procedure contained in the interim final rule is necessary to ensure that hospitals do not submit incorrect bills, and that the intermediary does not make an improper payment. We also believe that retaining this procedure may act as an incentive for hospitals to submit accurate bills, thus ensuring that payments are not made for erroneously coded claims falling into DRG 468.

We recognize that in many cases intermediaries receive claims on magnetic tape or on other computer generated formats. In these situations, it would not be feasible to actually return the claim to the hospital since there may in fact be no claim form. Therefore, the requirement, stated in § 405.473(a)(3)(iii), for returning the bill to the hospital for validation and reverification, will be satisfied if a written notification of the case being classified into DRG 468 and a request for verification of the claims data is sent to the hospital.

Comment—One commenter emphasized the need for the rapid merging of new technologies into the DRG payment system. It was explained that new products must be approved by the Food and Drug Administration, they must meet Medicare's safety and efficacy review criteria for coverage, and now under the prospective payment system, they must also be incorporated into the DRG weighting factors. It was emphasized, therefore, that criteria on which such coverage and reimbursement decisions are made should be clearly communicated, that

affected parties have opportunities for comment and appeal, and that the evaluations are prompt and thoughtful.

Response—While DRGs must be recalibrated regularly, we see no need to force more frequent changes than required to take technological changes into account. We believe that in most cases the effects of technological advances will be offsetting. While some advances increase the cost of treatment, others dramatically reduce the cost of treatment. An example of the latter case is the introduction of percutaneous transluminal coronary augioplasty resulting significant savings in open heart surgery. It is emphasized that one of the major incentives under the prospective payment system is for the hospital to become more efficient through the introduction of cost-saving procedures, such as technological advances, resulting in the generation of additional revenue to the hospital. Immediate recalibration of DRGs may, to some extent, work against this incentive. Additionally, to the extent that advancements in medical technology require initial investment in equipment, the current regulation permits recognition under Medicare of full capital costs.

Comment—A number of commenters have challenged the weight of .0510 assigned to DRG 39 "Lens Procedures." These commenters believe that as a result of a significant shift toward the use of intraocular lens implants (ILI) in the removal of cataracts since 1981, the DRG weight published in the interim final rule understates the relative amount of resources consumed in performing procedures grouped into this DRG. Commenters generally recommended that we either increase the weight or permit the cost of ILI to be paid for under Part B.

Response—As explained earlier, the Congress was aware of the limitations inherent in the data used in constructing the DRG weights and for classifying discharges by DRG. Moreover, in establishing the prospective payment system, Congress acknowledged the fact that evolving medical technology and new treatment methods and procedures would result in changes to both the DRG weighting factors and the classification of discharges. To help the Secretary determine the nature and extent to which the DRGs need to be recalibrated, Congress provided for the establishment of the Prospective Payment Assessment Commission which is to advise the Secretary on issues such as that connected with DRG 39. Based on the requirements in the law, we do not anticipate recalibrating the DRGs prior to FY 1986.

In regard to the suggestion that payment for the ILIs be covered under Part B of the Medicare program, we do not believe that such a suggestion is in keeping with the general format of the prospective payment system, that is to pay a fixed rate per discharge depending upon the diagnosis of the patient. The fixed rate is meant to represent payment in full for all services rendered during a particular inpatient stay, regardless of the costs incurred in treating a particular patient. To the extent that we allow certain services to be billed separately to Part B, the fixed rate pricing system is compromised. We would expect that under the prospective payment system hospitals will have the opportunity to offset cases in which their costs exceed the rate by other cases where the amount of payment exceeds the actual costs incurred.

We agree that changes in the DRG categories and weighting factors may be necessary in order to recognize events such as changes in medical technology. However, given the interrelatedness of the DRG weighting factors, we believe that changes would be most appropriate in connection with the overall review and, if necessary, recalibration of the DRGs required under the law. Accordingly, we have not adopted the commenter's suggestion.

Comment—One commenter charged that the methods used in calculating the DRG weighting factors create a bias across all DRGs in that "the weights do not accurately reflect the actual relationships among the DRGs." This commenter recommended a modification of the mathematical formula for the weighting factors so that the average cost per case values in both the numerator and denominator would be weighted only by the number of cases falling into each DRG.

Response—This proposal amounts to merely substituting one constant for another in the denominator of the relative weight ratios for all DRGs. However, the relative structure of an index (for example, the DRG relative weighting factors) is mathematically invariant with respect to multiplication or division by a constant, such as the substitution of one constant denominator for another. Therefore, this suggestion would not alter the relationship between the DRGs. Given the methods we used, the DRG payment amounts for individual hospitals would remain unchanged. Therefore, we have not adopted this suggestion.

Comment—One commenter suggested that the compression of the DRG weighting factors caused by the presence of various reporting errors in the HCFA billing data could be relieved by adjusting the DRG weights. The suggested adjustment would raise the relative weight to a power where the exponent is the estimated elasticity of the case-mix index with respect to operating costs-per-case, as determined in an average cost function based on Medicare data.

Response—This suggestion is based on a previously published cost function analysis of 1980 Medicare data ("Reliability and Validity of Hospital Case Mix Measurement," *Health Care Financing Review*, December, 1982) in which the estimated elasticity of the case-mix index was 1.081. More recent unpublished results based on 1981 Medicare data show an estimated elasticity value of 1.012. The difference in the elasticity is most likely the result of a change in the methods used to develop the DRG relative weights in 1981 compared to the methods used in 1980. In particular, the 1981 DRG weights are based on operating costs, excluding capital and medical education costs, while the 1980 DRG weights were based on total costs. In addition, the 1981 DRG weights cover all DRGs rather than the 358 categories used in the 1980 TEFRA case-mix indexes. Given an elasticity of 1.012, which is not significantly different from the expected value of 1.0, we have not adopted this suggestion.

C. Costs Included Under the Prospective Payment System

The statute requires that the prospective payment rate serve as total Medicare payment for inpatient operating costs for all items and services furnished, other than physicians' services associated with each discharge. As set forth at § 405.407(b)(3), these costs include Part A operating costs for routine services, ancillary services, intensive care type unit services, and malpractice insurance costs. Capital-related costs, direct medical education costs, kidney acquisition costs of approved renal transplantation centers, and the costs of direct medical and surgical services of physicians in teaching hospitals are paid for on a reasonable cost basis.

A wide variety of comments were received regarding the inclusion or exclusion of costs of various services or items under the prospective payment system. Many of these concerns are discussed under other sections in this preamble in the context of requests for adjustments or special considerations. Because the statute is clear as to the

intent of Congress regarding what is to be included under the prospective payment system, most requests for special handling of certain costs must be denied. These comments and our responses are presented below.

Comment—A number of commenters were concerned with the inclusion of allowable malpractice insurance costs under the prospective payment system. The point was made that since Medicare reimbursement is based on Medicare malpractice claims history, those hospitals that had a poor claims history in the base year will be advantaged, while a hospital with a good history will be disavantaged. It was also pointed out that numerous hospitals are appealing the current malpractice regulations which are used to determine allowable costs.

It was recommended that malpractice premiums be included in costs through the normal stepdown methodology or considered as a pass-through until the appeal issues have been resolved. Another recommendation was that base year costs should be adjusted to include malpractice costs on a utilization rather than a claims paid basis.

Response—We do not agree that malpractice insurance costs should be excluded from the prospective payment system. Section 1886(d) of the Act requires the Secretary to determine the payment rates with respect to the operating costs of inpatient hospital services. Operating costs are defined as all routine operating costs, ancillary service operating costs and special care unit costs. The only costs that are specifically excluded are the costs of educational activity and, for cost reporting periods beginning before October 1, 1986, capital-related costs.

Regarding the recommendation to change the methodology for determining allowable malpractice insurance costs, the current methodology reflects Medicare's share of these costs, and we do not believe a change is warranted. As stated in § 405.452(b), "Total allowable costs of a provider shall be apportioned between program beneficiaries and other patients so that the share borne by the program is based upon actual services received by program beneficiaries."

Comment—One commenter stated that DRG payments should be treated as including payment for emergency room and preadmission testing services furnished prior to admission by the same hospital if (1) the services were directly related to the condition for which the patient was admitted, and (2) the preadmission testing was provided on the day prior to admission to the same hospital.

Response—Section 3608 of the Intermediary Manual provides that when an individual is furnished outpatient hospital services and is thereafter admitted as an inpatient of the same hospital before midnight of the next day, the outpatient hospital services furnished to him/her are treated as inpatient services unless the patient does not have Part A coverage. We require that these outpatient services be included in the hospital's bill submitted for payment under Part A. Because this has been a longstanding policy, the related costs have been built into the cost base and DRG weighting factors, and are appropriately compensated for under the prospective payment system. Therefore, such services may not be billed separately and payment is included in the prospective payment rate.

D. Cost Reporting Periods

Hospitals paid under the prospective payment system will be paid for inpatient services effective with the hospital's first cost reporting period beginning on or after October 1, 1983. If a patient is admitted before and discharged after the beginning of the hospital's first reporting period under the prospective payment system, the reasonable costs for the portion occurring before the hospital begins prospective payment are subtracted from the prospective payment rate for the applicable discharge (but not below zero). Additionally, for all cost reporting periods ending on or after September 1, 1983 (the date of publication of the interim final rule), changes in cost reporting periods will be recognized only if good cause is found for the change (see § 405.453(f)(3)). To establish good cause, a hospital must show that there were specific circumstances that support and explain the basis for requesting the change in the cost reporting period. Good cause does not exist where the effect of the change is to delay or expedite the date by which a hospital becomes subject to the prospective payment system. The hospital's written request must be received by the intermediary 120 days before the close of the new reporting period requested.

Comment—One commenter expressed concern that § 405.453(f)(3) may be interpreted to mean that the new owner of a hospital is bound to the same cost reporting period as the previous owner.

Response—The purpose of § 405.453(f)(3) is to establish good cause for a provider requesting a change in cost reporting periods so that the effect is not to change the date by which a hospital would be affected by the rate-of-increase ceiling or be paid under the prospective payment system. However, we recognize that the regulation could be interpreted as stated by the commenter. Therefore, we are changing the regulation to add that a cost reporting period may be changed if a change in ownership is experienced.

E. Conditions for Payment

The interim rule included certain conditions, set forth in § 405.472, that a hospital is required to meet to receive payment under the prospective payment system. These conditions included requirements related to charges to beneficiaries, admissions and quality review, furnishing all services to hospital inpatients either directly or under arrangements, and reporting and recordkeeping. Section 405.472(a) established the general requirement that hospitals meet these conditions, and provided for withholding of payment or termination of provider agreements in cases in which a hospital did not meet these requirements.

Specifically, § 405.472(a)(2) provided that, if a hospital fails to comply with those conditions with respect to a particular inpatient hospital stay for a single individual, we could deny payment for that case. Alternatively, § 405.472(a)(3) provided that, if a hospital's noncompliance affects Medicare beneficiaries generally, we could, as appropriate, either terminate the hospital's provider agreement or withhold all Medicare payment until the hospital provides adequate assurances of future compliance.

These provisions were, inadvertently, stated in terms that are inappropriately inflexible. A strict reading of these provisions might lead to the conclusion that if a hospital had a pattern of noncompliance that affected some of its Medicare patients, but not "Medicare beneficiaries generally", our only permissible course of action would be to identify individual beneficiaries affected, and withhold payment only for those cases. Alternatively, if a hospital's noncompliance was general, but of a relatively minor nature, our sanction options would be limited to withholding all payments, or terminating the hospital's provider agreement. Therefore, as permitted by statute, and as originally intended, we are revising § 405.472(a) to clarify that, if a hospital violates any conditions for payment in one or more cases, we may, as appropriate—

- Withhold payment in full or in part; or
- Terminate the provider agreement.

IV. DETERMINATION OF THE PROSPECTIVE PAYMENT RATES

This section contains a discussion of the assumptions used, changes in those assumptions, and the comments and responses concerning the methods used to determine the basic prospective payment rates and how rates are calculated during the three-year transition period. This basic methodology is set forth in regulations in §§ 405.473 and 405.474.

A. Calculation of Adjusted Standardized Amounts

The methodology for arriving at the appropriate rate structure is essentially prescribed in the Act in section 1886(d)(2). It requires that certain base period cost data be developed and modified in several specified ways. In summary, this methodology includes:

- Development of base year cost data for individual hospitals from the best data available and deriving an average cost per Medicare discharge (cost reports for reporting periods ending in 1981 were used);
- Updating the above amounts to account for inflation through fiscal year 1984;
- Standardizing the data by removing the effects of variations in case mix, indirect medical education, variations in hospital wage levels, and the high (nonlabor) cost-of-living in Alaska and Hawaii;
- Grouping the data from individual hospitals both nationally and according to nine census divisions, and calculating urban and rural averages for each census division and for the nation as a whole; and
- Adjusting the average standardized amounts to account for an approximation of costs of services provided to inpatients but previously billed under Part B, increased FICA taxes for hospitals required to enter the Social Security system, an estimation of outlier payments (6.0 percent of total payments for fiscal year 1984), and an estimation of an adjustment necessary to maintain budget neutrality (applicable only for fiscal years 1984 and 1985).

1. Access to Data

Comment—Several commenters stated that the hospital industry should have timely access to the data and methodologies used to construct the prospective payment rates, case-mix indexes, DRG weighting factors, and adjustment factors, especially the budget neutrality adjustment. Also, it was recommended that all data be released at the time of the publication of payment rates in the **Federal Register**. Some commenters recommended that the data used to determine the budget neutrality adjustment be published for review and comment, or that we at least offer additional opportunity to comment on the budget neutrality methodology.

Response—We agree hospitals should have access to the data used in connection with the development of the prospective payment system. We would like to point out that public access to disclosable information is provided under the Freedom of Information Act (5 U.S.C. 552). While we cannot guarantee that all requested information will be disclosed in the format desired by the requester, we will continue to respond promptly to all information requests and provide all available data to assist the hospital industry and other interested parties in the evaluation of the prospective payment system.

In fact, much of the applicable data has already been made available to requesters. For example, the cost report file used as a basis for determining the budget neutrality adjustment factor and other factors had already been made available for public use before publication of the interim rule. This data, together with our descriptions of the budget neutrality determination published in section VIII of the Addendum to the interim rule, should allow our budget neutrality determination to be replicated.

We do not agree that all data should be released simultaneously with the publication of prospective payment rates in the **Federal Register**. The data are voluminous, and would be of no interest to many hospitals and individuals that are otherwise involved in hospital payments. In addition, we believe the lengthy and detailed description of the data and the development of rates contained in the **Federal Register**, along with the many examples furnished, afford the reader all the information necessary for an understanding of the prospective payment system. Those individuals, hospitals, or associations desiring additional data and other material, either for verification of rates or for other purposes, may request this data under the Freedom of Information Act.

Similarly, we do not agree that it is necessary to afford further opportunity for comment on the adjustment methodologies, such as for the budget neutrality factor. Section VIII of the Addendum to the interim rule included an explanation of the budget neutrality determination, including descriptions and interpretations of special studies, sufficient to permit replication of the determinations, as noted above. We believe this explanation meets the requirements of section 1886(d)(6) of the Act, which requires that the published notice of methodology, data, and rates include an explanation of any adjustments. We fully expect to be actively involved in dialogue with hospitals and other parties during the implementation of the prospective payment system. Further, we will publish future notices of methodology, data, and rates for public review and comment on an annual basis. Accordingly, we have not offered further opportunity for comment on this rulemaking, as commenters suggested.

2. Base Year Costs

Comment—One commenter was under the impression that Medicare costs from hospitals in the four waiver States (Massachusetts, New York, New Jersey, and Maryland) were not included in the development of the standardized amounts. It was suggested that exclusion of these data would distort the standardized amounts.

Response—As stated in the preamble of the interim final rule, we constructed the Federal standardized rates using costs from the cost reports of all hospitals in our data base. The costs from hospitals excluded under section 1886(d)(1)(B) of the Act (psychiatric, rehabilitation, childrens', and long-term hospitals) and all subproviders were excluded, while the costs from hospitals located in the four waiver States were included. We agree that exclusion of these data would have an impact on the determination of certain regional rates. For example, excluding data from New York and New Jersey hospitals would have meant that the Federal rates for the Middle Atlantic region would have been based entirely on data from hospitals in Pennsylvania. Because the number of Medicare waiver States can change over time, we believe that the Federal rates should reflect all available data from the hospitals not otherwise excluded from the system.

Inclusion of data from the waiver State hospitals is, we believe, supported by the law. While the law specifically states that the costs of excluded hospitals are not to be used in calculating the standardized amounts, it is silent with respect to the costs of hospitals located in waiver States. Section 1886(d)(2)(D) of the Act states that:

> The Secretary shall compute an average of the standardized amounts determined under subparagraph (c) for the United States and for each region—

(i) For all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) For all subsection (d) hospitals located in a rural area within the United States or that region, respectively. (Emphasis added.)

Therefore, under this section of the law, subsection (d) hospitals must include hospitals located in the waiver States which would otherwise qualify for that designation. Presumably, had Congress wished to exclude costs of waiver State hospitals from the data base, it would have expressly indicated so, either in the law itself or the accompanying Committee reports. Absent such specific directive and following the reasoning discussed above, we agree with the commenter that such an exclusion would be inappropriate.

Comment—Several commenters felt that hospital base period costs used to determine the hospital-specific portion and the Federal portion of the rate should not be reduced by excluding costs in excess of the routine per diem cost limits authorized by section 223 of Pub. L. 92–603. One commenter stated that Pub. L. 98–21 indicated that base year costs are to be the "hospital's target amount for the cost reporting period" determined "without application of" the subsection of the Act that authorizes limits on inpatient operating costs.

Response—We do not agree that costs in excess of the routine cost limits should be included in determining either the hospital-specific rate or the Federal rate. Inclusion of costs in excess of the limit would result in recognition of costs that had been legitimately found to be unnecessary and unreasonable in the efficient delivery of hospital services under section 1861(v)(1)(A) of the Act. If we included costs in excess of the limits, the method included in the law for inflating both the hospital-specific portion and the Federal portion would compound the excess costs by carrying them forward into future years. Not only would they be carried forward into future years, they would also be inflated by the applicable percentage increases. In addition, because of the budget neutrality requirements, any increase in costs due to the inclusion of costs in excess of the routine limits must be offset against all hospitals' costs. Therefore, inefficient hospitals would be advantaged at the expense of efficient hospitals.

The exclusion of excess costs is also justified by reference to the statutory language in Pub. L. 97–248 and Pub. L. 98–21. Pub. L. 98–21 specifies only that the sections 1886(a) limits do not apply. That is, the limits on total inpatient operating cost effective for periods beginning on or after October 1, 1982, do not affect the prospective payment system. The original bill, H.R. 1900, would have set the hospital-specific portion of the prospective payment rate at 75 percent of the lesser of the hospital's target amount for the cost reporting period or the section 1886(a) cost limit. In other words, the original bill would have included total inpatient operating cost limits in the determination of the prospective payment rates. The Senate bill dispensed with the application of the section 1886(a) total operating cost limits. The conference agreement followed the Senate amendment and so included language making clear that the limit on total inpatient operating costs would not apply along with the rate of increase as they would have under the original version.

Section 1886(d)(1)(A) of the Act states that the hospital-specific portion of the prospective payment rates is based on section 1886(b)(3)(A). Exclusion of excess costs is consistent with section 1886(b)(3)(A)(i) of the Act, which defines the hospital target amount (the basis of the hospital-specific portion) for the first year of the rate of increase provision as the "allowable operating costs . . ." of the preceding 12-month cost reporting period (base year). The phrase "allowable operating cost of inpatient hospital services" is used in both sections 1886(b)(3)(A)(i) and 1886(a)(1)(C) of the Act. In reference to the latter section, the Conference Committee Report on Pub. L. 97–248 clearly states that "in no case would reimbursement on a cost-per-case basis be reduced below the allowable cost-per-case *reimbursement* for the hospital's cost reporting period that immediately precedes the first cost reporting period to which the new limitation is applicable." (H.R. Rep. No. 97–760, 97th Congress, 2d Session (418) (1982.) (Emphasis added.) By applying this explanation of "allowable operating costs" to both contexts in which the identical language is used, it is clear that, for purposes of setting target amounts, only base year costs that were actually reimbursed should be considered, thus excluding any costs in excess of the cost limits in that year.

3. Updating for Inflation

Section 1886(d)(2)(B) of the Act requires that base year cost data be updated. Therefore, we updated through fiscal year 1983 by using actuarial estimates of the rate of increase in hospital inpatient operating costs nationwide, and further accounted for inflation through fiscal year 1984 by using the estimated annual rates of increase in the hospital market basket plus one percentage point.

Using the data available to us in August 1983, we estimated the calendar year 1983 rate of increase in cost per discharge to be 11.7 percent. More recent data available to us have lead us to revise our estimate of the calendar year 1983 rate of increase in cost per discharge to 10.9 percent. We have decided to revise the actuarial estimate of the rate of increase in hospital operating costs nationwide that was used in computing the adjusted standardized amounts. This produces a decrease in those amounts. The revised adjusted standardized amounts are set forth in Table I of the Addendum to these regulations.

Comment—Several commenters recommended that we provide for retroactive adjustments of the prospective payment rates if our market basket estimates of inflation prove to be inaccurate.

Response—One of the purposes of the prospective payment system is that hospitals will know in advance of each discharge the amount of Medicare payment. Using the latest available market basket projections prior to the beginning of a particular Federal fiscal year is consistent with this concept. To permit retroactive adjustments of the market basket inflation rates would erode the prospective nature of the system. We believe this would introduce an element of uncertainty incompatible with the very purpose of the prospective payment system. Therefore, we have not adopted the suggestion that the rates be adjusted if market basket projections prove to be inaccurate.

Moreover, section 1886(d)(2)(B)(ii) of the Act specifically requires that the hospital costs in the data base be projected for FY 1984 by using the "applicable percentage increase (as defined in subsection (b)(3)(B))." In accordance with section 1886(b)(3)(B), the update factor is the percentage increase, estimated by the Secretary "before the beginning of the period or year," by which the cost of the market basket of goods and services "will exceed" the cost of such goods and services for the preceding 12-month period. Therefore, the law requires that the inflation estimates be set before the beginning of the period. There is no authority for retroactive adjustment of the inflation adjustment.

During our continuing analysis of the requirements of the section 601(b)(7) of Pub. L. 98–21, it became apparent that, while the target rates for rate-of-increase purposes (as well as for purposes of setting the hospital-specific

portion of the prospective payment rate) must be prospective, there is no requirement in the law that we publish quarterly notices of market basket rates. The law requires only that the Secretary estimate the percentage change in the market basket before the beginning of the period or year.

Congress determined that certain hospitals will be excluded from the prospective payment system. Under the law, these hospitals will continue to be paid on a reasonable cost basis and will be subject to target rate ceilings under § 405.463 of the regulations.

In addition, we believe that the requirement to issue notices on a quarterly basis constitutes an unnecessary administrative burden on providers, the intermediaries and HCFA as a result of the constant monitoring and responding to changes in the market basket, that underlies the quarterly notice procedures.

Accordingly, we are amending section 405.463(c)(5)(iii) of the regulations to eliminate the quarterly estimates.

It should be noted, however, that in order to allow hospitals the opportunity to adjust to this change in policy, we are, in a separate notice, providing the target rates based on the latest available data since the interim final regulations and notices were published on September 1. However, these will be the final rates that will be used by all hospitals whose cost reporting periods begin on or after January 1, 1984 and before October 1, 1984.

We realize that certain providers (primarily those whose cost reporting periods began 10/1/83, 11/1/83, and 12/1/83) were assigned updating factors which appeared in the September 1, 1983 interim final regulation and notice of target rates. Normally, the updating factors already assigned for these providers would remain in effect throughout their entire cost reporting periods. However, this first year is unusual with respect to the prospective payment system due to the necessity of our publishing an interim final regulation and then a final regulation. Under these circumstances, we are publishing updated target percentages for those hospitals whose cost reporting periods begin on or after January 1, 1984. The latest market basket rates are reflected in these target percentages. Since these market basket rates in the aggregate are lower than the rates which were used for the interim final regulations, we believe it is appropriate to also adjust the updating factors for those hospitals whose cost reporting periods began prior to January 1, 1984 for discharges occurring after 30 days following publication of the final regulations. If we were not to take this action, hospitals whose cost reporting periods begin prior to January 1, 1984 could receive a windfall vis-a-vis other hospitals, since their rates would have been computed using higher market basket rates. We do not think this is a desirable outcome from the point of view of consistent and equitable treatment. Accordingly, the updating factors contained in section V. of the addendum will be used in computing the hospital-specific portion, for discharges occurring after 30 days from the date of publication of the final regulations, for providers whose cost reporting periods began prior to January 1, 1984. (Note also that these rates have been revised to reflect a reduced budget neutrality adjustment factor.

4. Grouping of Standardized Costs

Several comments were received regarding the grouping of costs per discharge into urban and rural averages.

Comment—We received a number of comments suggesting alternative ways of grouping hospitals for purposes of computing the standardized amounts. For example, one commenter suggested that the standardized amounts be determined by hospital bed size or by the services offered.

Response—In calculating the standardized amounts which were published in the interim final rule, we followed the detailed requirements for such calculations that are contained in section 1886 (d)(2)(C) and (d)(2)(D) of the Act. Under these provisions, the costs of each hospital in our data base were standardized to eliminate the effects of indirect medical education costs, area wages, and the mix of cases treated by each hospital. We then computed average standardized amounts for each urban and rural within the nine census divisions, as well as for the United States as a whole. We have not seen objective data indicating that there is a better system that does not advantage on particular group of hospitals or segment of the industry.

Comment—Several commenters asked how we will recognize revised Metropolitan Statistical Area (MSA) designations announced by the Executive Office of Management and Budget (EOMB).

Response—Changes in MSA designations will not affect the prospective payment rates until the beginning of the Federal fiscal year (October 1) following the changes announced by EOMB. At the time of the update of the standardized amounts, we will recognize the revised status of those hospitals which have been reclassified by paying at the appropriate standardized amount for their revised status of those hospitals which have been reclassified by paying at the appropriate standardized amount for their revised urban or rural status as adjusted by the revised wage index. For example, if a hospital is reclassified as urban in June 1984, it would be paid using the rural standardized amount until October 1, 1984 (that is, the beginning of the next Federal fiscal year).

According to EOMB. new MSA designations do not become effective until official notification is given of the change in status. Thus, in no case will we recognize a change in MSA designation, or the creation of a new MSA, prior to the effective date announced by EOMB. Since EOMB is responsible for these designations, it would be improper for us to recognize an effective date which is other than the date announced by EOMB.

We also do not believe it would be appropriate to change a hospital's prospective payments retroactively to take account of revised MSAs. We agree that adopting new MSA designations retroactively generally would benefit providers in areas that have newly acquired MSA status. However, it should be noted that as a result of a new census, MSAs are both added and deleted. This means that providers in locales that have lost or are about to lose their MSA classification, as a result of EOMB's continuing analysis of factors such as commuting patterns, would have their payments retroactively reduced.

Also, it is important to note that the prospective payment system, as legislated by Congress, was meant to set payments in advance. That is, hospitals would know in advance of services being furnished what price would be paid for those services. In this regard, the Congress recognized in both Pub. L. 98–21 and the Conference Committee Report accompanying the law that prices would often have to be computed using data that, later in the period, could be changed or supplemented by more recent data. However, it was not Congress' intention that the prices would be changed immediately to reflect that new data, or that retroactive changes in prices would be made. Rather, the law is specific as to when updates of averages of standardized amounts will be made, that is, effective with the beginning of each new Federal fiscal year.

Comment—Some commenters expressed concern that the census region boundaries may be inappropriate where an MSA, including counties from more than one State, is split into

different census regions. It was suggested that all hospitals within a designated MSA should be paid a standardized payment rate based on MSA designation since these hospitals not only share the same labor market (as recognized by the wage index), but also incur the same costs for services and supplies.

Response—The law provides that, during the transition period, a portion of the prospective payment rate will be based on standardized regional Federal rates. The problem is one of transition. When the prospective payment system is fully implemented, payment will not be dependent upon census regions. However, Congress did believe a transition system using regional averages was needed to make the move to the permanent system of national rates more gradual. The very nature of these two different systems creates a few awkward situations, but we believe they do not detract from the basic intent to soften the movement to the national system. It should be noted in this connection that the issue raised by these commenters applies only to the transition period payment system, under which regional rates will gradually be phased out.

We believe the problem posed by the commenters is one which is inherent in any situation where geographic boundaries must be established. Unfortunately, it is impossible to designate boundaries that will be completely satisfactory to all hospitals. We believe that the classification system contained in the law producers reasonable results in its overall application.

We recognize that the Secretary has broad authority under the law to provide for exceptions or adjustments as deemed appropriate, and that the Conference Committee Report accompanying Pub. L. 98–21 ". . . clear that this authority permits the Secretary to provide for such exceptions and adjustments as may be appropriate with respect to hospitals experiencing special problems because of their location in a particular census division." (H.R. Rep. No. 98–47, 98th Congress, 1st Session (23) (1983).) However, to provide exceptions in this area would require that there be objective criteria that would allow us to determine whether and to what extent hospitals located in one region should more appropriately be paid using the standardized amounts from another region. To date, there are no such objective criteria. As we stated above, we believe the current classification method to be reasonable in its outcome, since it does not systematically discriminate for or against particular groups or classes of hospitals.

Comment—Several comments were received from providers in rural areas that border urban areas stating that their rural classification producers an inequitable result. They allege that while the rural standardized costs are lower than the urban costs, the generally higher costs of urban areas have a large impact on the costs of these rural providers.

Response—Section 1886(d)(2)(D) of the Act details the specific definitions to be used in determining urban and rural areas. An urban area means an area within an SMSA as defined by EOMB, or a similar area that we have recognized for hospital cost limits under regulations. (Effective June 30, 1983, the MSA designation replaced the Standard Metropolitan Statistical Area (SMSA) designation.) A rural area is defined as any area outside an urban area. We do not independently make the urban/rural determinations. Rather, we use the EOMB designations of metropolitan areas, that is, MSAs. The EOMB definitions that were published on June 27, 1983, and became effective June 30, 1983, are based on the best information currently available.

In administering a national payment system, we must have a national classification system built on clear, objective standards. Otherwise, the program becomes increasingly difficult to administer because the distinction between rural and urban hospitals is blurred. To date, we believe that the MSA system is the only one that meets the requirements for use as a classification system in a national payment program. The MSA classification is a statistical standard developed for use by Federal agencies in the production, analysis, and publication of data on metropolitan areas. The standards have been developed with the aim of producing definitions that will be as consistent as possible for all MSAs nationwide. These definitions are based on the 1980 census data, which is the most recent and accurate population data available. Until a better classification system is devised, we will continue to use the EOMB definitions as expected by Congress.

We do not believe a general exception or adjustment is appropriate at this time for other rural hospitals that border an urban area. Any such exception or adjustment would have to be based on objective criteria that indicate the nature and extent of the dependence of the hospital on the economic life of the urban area. To date, we have no such generally accepted criteria except for the EOMB designations of urban areas, which were used in determining the urban/rural location of hospitals.

5. Adjustments to Average Standardized Amounts

The methodology for computing prospective payment rates includes adjustments to the average standardized amounts to take into account shifts of Part B payments, FICA taxes, outliers, and budget neutrality. In reviewing the methodology, adjustments, and comments, we have decided not to make any changes to the methodologies on which these adjustments to the standardized amounts are based. However, as explained in the discussion of updating base year costs for inflation, we have revised our inflation estimate, resulting in slightly lower average standardized amounts. This does not affect most of the factors used to adjust those amounts, but it does affect the budget neutrality adjustment factor.

We have not changed the methodology by which we determined the budget neutrality adjustment factor. However, that methodology includes a comparison of estimated average per case payments under Federal rates, hospital-specific rates, and the case-mix adjusted cost limits and rate of increase ceiling established by Pub. L. 97–248. Since revision of our inflation estimate for 1983 affected the assumptions that we used in this comparison, we had to recompute the budget neutrality adjustment factors. This recomputation is explained and illustrated in the Addendum to these regulations. The revised budget neutrality adjustment factors are set forth at the end of the Addendum.

A number of comments addressed the bases and methodologies for determining the various adjustments to average standardized amounts. Most of these comments also addressed the technical discussion of the methodology for determining the budget neutrality adjustment factor, published as section VIII of the Addendum to the interim rule, which included a comparison of projected payment levels using Federal rates based on the adjusted standardized amounts with projected hypothetical payment levels based on hospital-specific rates and on the law in effect as of April 19, 1983 (that is, the Social Security Act as amended by Pub. L. 97–248). To avoid repetition, the comments and responses below deal with adjustments to the hospital-specific rates and TEFRA estimates, as well as to average standardized amounts.

Comment—Many comments addressed the basis, for, methodology of, and consistency of application of adjustments to the payment rates. Several commenters supported increasing payment rates to take into account FICA taxes for nonprofit hospital entering the Social Security system as of January 1, 1984, Part B costs shifted to Part A as a result of rebundling, and the shift of costs of hospital-based physicians' services to providers from Part B to Part A as a result of regulations published March 2, 1983 (48 FR 8902). In addition, some commenters suggested additional adjustments to the payment rates, such as an upward adjustment to anticipate successful appeals related to costs disallowed in hospitals' base periods.

Response—In developing the prospective payment rates, we computed several adjustment factors, some of which were applied to the average standardized amounts, and some of which were used solely for adjusting the Federal, hospital-specific, and TEFRA projections for purposes of determining budget neutrality adjustments.

As explained in the interim rule, we did make upward adjustments to the average standardized amounts to reflect expanded coverage for FICA taxes and the shift from Part B to Part A resulting from rebundling. However, as some commenters noted with objections we did not increase the average standardized amounts to reflect the costs of hospital-based physicians' services shifted from Part B to Part A as a result of the regulations published March 2, 1983, although we did increase the average per case payments, estimated for budget neutrality purposes, based on hospital-specific rates and payments under Pub. L. 97–248.

Our reasons for making this adjustment in only the latter two cases are quite specific. First, the hospital-based physician regulations were primarily intended to implement section 108 of Pub. L. 97–248. As such, they are clearly related to the Social Security Act as it stood on April 19, 1983, and should be included, with the case-mix limits and rate of increase limit, among provisions affecting payment levels under previous law. (Conversely, since, Pub. L. 97–248 did not provide for hospitals being newly subject to FICA or for rebundling, we did not apply these adjustments to the TEFRA estimates.) Second, the methodology used by intermediaries to determine each hospital's hospital-specific rate permits hospitals to submit data on this shift from Part B to Part A for purposes of adjusting base-year costs. Thus, the hospital-specific estimates would be inaccurate if we failed to take into account the hospital-based physicians regulation.

Finally, applying such an adjustment to the average standardized amounts (and, by extension, to the per case budget neutrality estimates of Federal rate payments) would not actually increase the level of payments under budget neutrality. If we were to increase the initial standardized amounts to reflect this shift, the budget neutrality adjustment factor would have to be recalculated, would accordingly be increased, and the net result would be virtually identical. As a result, such an adjustment would have no effect on payment levels during FYs 1984 and 1985, which are subject to budget neutrality. Since we expect to reexamine the basis for the level of rates for FY 1986, we believe there is no justification for adding this unnecessary step to the rate calculations at this time.

Regarding additional adjustments recommended by commenters, we made no adjustments to either the adjusted standardized amounts or to the budget neutrality estimates for conditions that could not be quantified on the basis of currently available data, even if there were a likelihood that these conditions might exist under prospective payment. For example, no adjustment was made for the likelihood that admissions would increase more rapidly under prospective payment than under the provisions of Pub. L. 97–248, or for costs that might be disallowed as a result of audit or desk review by the intermediaries. Likewise, we made no attempt to quantify adjustments for the likelihood of transfers under prospective payment, emergency room services, and disallowed costs which are successfully appealed.

Comment—One commenter suggested that the adjusted average standardized amounts and hospital-specific rates not be adjusted downward for outlier payments since the outlier cases, which represent unusual, extremely atypical cases, would have been eligible for additional payments under Pub. L. 97–248.

Response—The law specifically requires that the payment amounts be adjusted downward for outliers. Furthermore, since Pub. L. 97–248 applied a limitation on the average cost of all cases in a hospital, a few atypical, high cost cases would have only a small impact on the overall average cost per case, and a substantial portion of this impact would be offset by cases with lower than average cost.

Comment—A number of comments addressed the assumptions underlying the development of the various adjustment factors used in both the rate-setting methodology and the budget neutrality determination. One commenter expressed concern that the assumptions employed in the determination of the budget neutrality factors were different from those used in updating the prospective payment standardized amounts. Another commenter, concerned about determining budget neutrality adjustments by comparing average per case payments, suggested that we should provide to the hospital industry "bottom line" FY 1984 outlay estimates and supporting details under Pub. L. 97–248, Federal rates, and hospital-specific rates.

One other comment inquired about the assumptions, data, and estimates used in computing FY 1984 nonoperating costs per discharge for purposes of the budget neutrality determination. This comment expressed concern that inaccuracies in these estimates would affect the budget neutrality factors.

Response—With the exception of those cases addressed specifically in the explanation of the budget neutrality determination, we used no assumptions in estimating the payment rates under Pub. L. 97–248 that were different from those used in updating the payment rate under the prospective payment system. For example, the inflation rates and market basket increases used in estimating payments made under Pub. L. 97–248 were the same as those used to update the prospective payment rates.

As we explained in the interim rule, the assumption that admission increases will be equal under prospective payment and under the provisions of Pub. L. 97–248 makes admission increase assumptions irrelevant to the determination of budget neutrality. Moreover, because of hospital accounting year distributions, because some hospitals are exempt from the system, and because some hospitals are in States that operate alternative reimbursement systems, less than half of the hospital payments during FY 1984 are affected by the budget neutrality determination. Therefore, "bottom line" outlay estimates are not relevant to the determination of budget neutrality.

The nonoperating costs per discharge wer computed using data from the same cost reports and the same increase assumptions as for operating costs. Hence, any inaccuracies in nonoperating cost assumptions would also affect the

operating cost estimates in the same manner, so that the effect on the budget neutral factors would be negligible. Further, only the *difference* between prospective payment nonoperating costs and TEFRA nonoperating costs affects the budget neutrality factor. Since the difference is extremely small, the impact of any inaccuracies is minimal.

Comment—Some comments inquired whether, for purposes of budget neutrality, the costs per case were unweighted, or weighted by discharges. One commenter expressed concern that prices based on unweighted means would be lower than necessary for budget neutrality.

Response—For purposes of budget neutrality, we weighted both costs and unadjusted payment rates by discharges, as described in the explanation of the budget neutrality determination addendum. Since the budget neutrality determination sets the final average cost per discharge, if the level of the prospective payment means were too low, the budget neutrality factor would be too high, so that average payment rates after the budget neutrality factors are applied would be set at the correct level to achieve budget neutrality.

Comment—In the interim rule, we explained how we adjusted the budget neutrality estimates for Federal and hospital-specific rates, increasing them by 3.38 percent, to take into account expected improvements in hospital coding of diagnoses and procedures on their bills. One commenter asked for our assumption with regard to the pace at which coding errors could be eliminated by hospitals. Another commenter asked if the 3.38 percent coding improvement factor was built into the base and if no further adjustment would be made in this factor for the FY 1985 budget neutrality determination.

Response—For purposes of the FY 1984 budget neutrality determination, we have assumed that coding would be correct on all bills submitted under prospective payment. However, based on actual experience, we may change or replace the factor for the FY 1985 determination.

Comment—One comment inquired what was meant by budget neutrality adjustment on a "periodic payment" rather than "total end-of-year" cash basis.

Response—"Periodic payment" is the value of services when provided or incurred. "Total end-of-year" reflects the time delays in actual cash payments for services provided. If the budget neutrality determination had been made on a cash basis, a downward adjustment in the rates would have been necessary to account for the fact that, under Pub. L. 97–248, a portion of payments to hospitals would have been delayed until after the settlement of the cost report.

Comment—One commenter suggested that the budget neutrality factor should be adjusted to prevent the reallocation of funds from teaching hospitals to nonteaching hospitals.

Response—The budget neutrality factor is not related to the teaching adjustment. The budget neutrality factor is applied uniformly over all hospitals and results in no reallocation of funds among hospitals.

Comment—Several comments expressed concern that we were removing "section 223" per diem penalties from the data used to make the budget neutrality comparisons.

Response—In the interim rule, we explained that we computed FY 1984 TEFRA limits, for purposes of making the budget neutrality estimate, using the same method as we used for the actual FY 1983 limits, except that we appropriately revised the applicable percentage level of the limits to 115 percent of the mean, as required by section 1886(a) of the Act. Since the section 223 per diem penalties were not removed in determining or applying the FY 1983 TEFRA limits under Pub. L. 97–248, we did not remove them from the estimated FY 1984 limits either.

Comment—Several comments inquired about the mean and distributions of the empirical data used to derive the standard deviation of 12 percent used in the budget neutrality determination.

Response—We developed two empirical distributions, each one covering a two-year period, of hospitals' percentage rates of cost increase from the available data for 1978 to 1981, inclusive. The means of the two distributions differed, but, for both distributions, the best-fit normal distribution had a standard deviation of 12 percent. In addition, for both cases the standard error of the fit was less than 0.2 percent. Hence, both empirical distributions showed a close fit to normal distribution. In addition, their standard deviations were equal, even though the means were different.

B. Adjustments for Area Wage Levels

Two types of adjustments are made to the adjusted standardized amounts by the fiscal intermediaries. The labor-related portion (that is, 79.15 percent) of the adjusted standardized amount is multiplied by the appropriate wage index for the area in which the hospital is located. (The wage indexes applicable for FY 84 were presented in Tables 4.a. and 4.b. of the addendum to the interim final rule (48 FR 39871).) The nonlabor-related portion (that is, 20.85 percent) of the adjusted standardized amount is then multiplied by the appropriate cost-of-living adjustment factor for hospitals in Alaska and Hawaii. (We received no comments on the cost-of-living adjustment.)

Comment—We received comments concerning the inclusion of professional fees, business services, and miscellaneous expenses in the labor-related portion of the market basket. This portion, which amounts to 79.15 percent under the interim final rule, is adjusted by the area wage index. The commenters argued that professional fees and business services are not always based on local wages, since these services are often provided by companies that are regional or national in scope. The commenters also questioned whether the miscellaneous category is truly labor-related.

Response—The decision to include professional fees, business services, and miscellaneous expenses along with wages and fringe benefits in the labor-related portion of the market basket was made in recognition of the fact that most items purchased by a hospital have a wage component. In the promulgation of the hospital cost limits for cost reporting periods beginning on or after July 1, 1980, we increased the percentage of the labor portion to include employee benefits, professional fees, business services, and other miscellaneous expenses. The data used to develop these limits showed that variations among hospital costs are closely correlated with area variations in prevailing wage levels.

In particular, we believe business services and services furnished by professionals are labor intensive. Since the purpose of the wage index is to take account of the variations in wages, we believe it is appropriate to consider these services as labor-related and thus subject to the wage index. We also believe it is appropriate to include the miscellaneous category in the labor-related portion. As indicated above, most items purchased by a hospital have a wage component. We believe it is appropriate to continue under the prospective payment system with the same components of the labor-related portion of the market basket, since we do not expect that there have been substantial changes in the relationship between costs and area variations in prevailing wage levels. Therefore, we do not agree with the recommendations that professional fees, business services,

and miscellaneous expenses be removed from the labor-related portion.

Comment—Several commenters recommended that rural hospitals be permitted to use the higher of the rural wage index or the index for a neighboring urban area if they can demonstrate that their wage levels parallel those for the urban locale.

Response—This suggestion presumes that hospitals located just outside an MSA or the New England County Metropolitan Area (NECMA) compete in the urban area's labor market. However, the recommendation fails to recognize that the wage index is not meant to reflect the wage levels of any one hospital. Rather, it is a measure of how hospital wages paid in a "local area" compare to a national average. A rural hospital paying higher wages may merely be out of line with its local market (not necessarily the adjacent urban area), in which case permitting the use of the higher urban wage index would not be appropriate.

The basis for the recommendation is the belief that application of a single rural wage index does not recognize the widely varying labor market conditions that may prevail throughout a State. However, simply permitting rural hospitals the use of the generally higher urban wage index would not properly address this problem. The comments concerning the accuracy of the rural wage indexes imply that a better means for aggregating rural counties to obtain indexes more reflective of economically integrated rural areas should be investigated. We acknowledged this in the final rule published August 30, 1983 which implemented the Medicare provisions of Pub. L. 97–248 (see 48 FR 39433).

We will be working with the hospital industry to evaluate alternative data sources for the wage index and alternative methodologies for computing the indexes. One of the issues that will be explored is the development of a more refined wage index for rural areas.

Comment—Several commenters suggested that we modify the present hospital wage index to recognize the generally higher labor costs associated with hospitals within the more economically interdependent central counties of each urban area. These commenters recommended that we apply separate wage indexes to urban areas subdivided into "core" and "ring" (that is, suburban) counties.

Response—Because of their greater specificity, the use of "core/ring" urban distinctions would, in principle, recognize labor cost differences within large urban areas. However, we believe adoption of such a measure is not feasible in the near future because of certain limitations of the BLS data used to construct the wage indexes. Although BLS records are the best presently available for the development of hospital wage indexes compatible with the prospective payment system, these data are limited in their usefulness when broken down to small areas. For example, the data are not sensitive to differences in the proportion of part-time employees, area differences in occupational mix, hospital variation in overtime utilization, and length of work week.

The current use of aggregated BLS ES 202 data from all non-Federal hospitals within the specific urban areas mitigates the effect of these uncontrolled variables, particularly in large metropolitan areas with many hospitals. We believe disaggregating these urban data further would only magnify the inherent limitations of the BLS data and increase the potential for distortion in core/ring wage indexes, particularly in those areas with few hospitals. We would also note that the use of the "core/ring" concept would exacerbate the already existing problem of creating geographic boundaries.

Comment—We received a number of comments that question the reliability of the Bureau of Labor Statistics (BLS) data used to construct the wage indexes. For example, it was mentioned that the data do not take into account part-time employees and overtime work, both of which may distort the wage index. Some commenters suggested that we use full-time equivalents (FTEs) from the Medicare cost report, rather than the number of hospital workers, as the basis for computing average monthly employment.

Response—We recognize that the data are not controlled for variations in occupational mix, area variations in the proportion of FTEs, and differences in reporting compliance, all of which are relevant factors. However, we believe the BLS data are the best currently available for the development of a wage index compatible with a national payment system.

We currently do not have a data base other than the BLS data which is sufficient for computing accurate wage indexes. While it has been suggested that data currently on the cost report could be used, we do not believe that these data are sufficiently accurate and detailed to be used in constructing a wage index. For example, the number of FTE employees is often missing from the cost report or that the data are inaccurate. This occurs because the particular data item has not usually been used for reimbursement or payment purposes. Accurate reporting by all providers would be necessary for purposes of establishing a wage index. As another example, the salary information on the cost report is currently reported in total. However, a total figure is not sensitive to distortions from factors such as overtime, bonuses, and severance pay. It is the actual payment rates that are significant in deriving an index that is more accurate than the index based on BLS data and overcomes the shortcomings of that index. Generally, FTEs and salaries should be broken down into occupational categories, in addition to the cost center categories that currently exist on the cost report.

There is a common realization on the part of both the hospital industry and the Federal government that an improved wage index is needed, since the payment to every hospital for each discharge is adjusted by the index. Therefore, we will be participating with the hospital industry in a workgroup to investigate and analyze alternative data sources and methodologies for constructing a hospital wage index. Any changes will be adopted on a prospective basis. However, we note that certain changes, if recommended by the workgroup, may require legislation to be implemented.

Comment—Several commenters objected to the continued exclusion of (BLS) wage and employment records from Federal hospitals to derive the wage index. These commenters stated that Federal facilities compete in the same labor market as other hospitals but typically have higher pay scales. This forces non-Federal hospitals to raise their own wage levels to remain competitive or risk deterioration in their quality of care.

Response—We have found that the exclusion of Federal wage and employment records from the BLS data used to construct the hospital wage index has led to higher index values in some areas and lower index values in others. Where local Federal hospital wages are higher than those paid by non-Federal facilities, the exclusion of Federal wages has generally yielded a lower wage index value. In localities without Federal hospitals, the exclusion of Federal data yields a higher index value due to the corresponding reduction in the national average. Thus, exclusion of Federal data does not result in lower wage indexes across the board. If we agree with the assumption that Federal hospital wage rates are generally higher than those for non-Federal facilities, differences between Federal and private sector employment

practices may be an important cause. Such differences could include the filling of most Federal jobs through competitive examination, and the Federal requirement to compile national registers of eligible candidates prior to selection, and the frequent use of uniform national pay scales. To the extent this occurs, then Federal hospitals are, by definition, not in the same labor market. Therefore, continuing to exclude Federal hospital statistics from the BLS data used to construct the wage index is appropriate. In addition, if area hospitals pay employees wage rates similar to those of Federal hospitals to attract qualified personnel, this would be reflected in the non-Federal BLS data used to develop the index, and the exclusion of Federal data would have little effect on the measure. We expect to examine these issues as part of the study mentioned above currently underway to examine the adequacy of the hospital wage index.

Comment—One commenter recommended that the hospital wage indexes be recomputed to exclude BLS data from New York, New Jersey, Massachusetts, and Maryland, the four "Medicare waiver" States. It was argued that use of these data violates the budget neutrality provisions of the Act.

Response—The wage index relates each area's average hospital wage level to a national average wage level. As explained previously, BLS data from the four waiver States were included in calculating the national average. Because these four States tend to have higher than average hospital wage levels, the effect of this inclusion is a higher BLS national average than if these data were excluded. The basis for the suggestion is the belief that the published wage indexes are inappropriately smaller than they would be if the waiver States were excluded in deriving the BLS national average. The commenter maintains that this exclusion would comport with the budget neutrality provisions of the Act.

It should be noted that, in accordance with section 1886(d)(2) of the Act, we constructed the Federal rates using standardized costs from all available hospitals not otherwise excluded from the prospective payment system under section 1886(d)(1)(B) of the Act. This included hospitals located in the four waiver States. We do not believe it would have been desirable to exclude data from waiver State hospitals to develop the Federal rates in view of the significant impact such an exclusion would have had on the determination of certain regional rates. For example, excluding New York and New Jersey hospitals would have meant that the Federal rates for the Middle Atlantic region would have been based entirely on data from hospitals in Pennsylvania. Because the list of Medicare waiver States can change over time, we believe that the Federal rates should reflect all available data from hospitals not otherwise excluded from the system under section 1886(d)(1)(B) of the Act in order to avoid the potential for regional bias in those rates.

Since data from the waiver States were used to develop the Federal rates, BLS data from these States should also be used to construct the hospital wage indexes. The commenter recognized that the adjustments for budget neutrality were computed excluding estimates of reimbursement to providers located in the four waiver States. This is technically appropriate in view of the present exclusion of hospitals in those States from the prospective payment system. The commenter reasoned that in view of this exclusion, BLS data from Medicare waiver States should not be used to construct the hospital wage indexes.

We point out that the inclusion or exclusion of these data has no effect on a hospital's otherwise applicable prospective payment rate (other than perhaps very slight differences due to rounding). This occurs because any net increase in an area's wage index resulting from the exclusion of BLS records from waiver States would be offset by a corresponding *reduction* in the regional standardized rates (see Table 1, Adjusted Standardized Amounts, Labor/Nonlabor, in the addendum of the interim final rule, 48 FR 39844). The following example demonstrates this:

Wage index Constructed	Average regional cost per discharge		Wage index (WI)	Average regional cost per discharge (WI deflated)		Prospective pmt. for DRG (excludes all constant subsequent adjustments), Federal rate only
	Labor	Non-labor		Labor	Non-labor	
Including waiver State wage data	$2,000	$500	0.9500	$2,105.26	$500	$2,105.26 x .9500 + $500 = $2,500.
Excluding waiver State wage data	2,000	500	1.0450	1,913.88	500	$1,913.88 x 1,0450 + $500 = $2,500.

Because the Federal rates would be the same in both instances as demonstrated in the above example, we have not adopted the recommendation.

Comment—We received a number of questions concerning the effective date for recognizing wage index corrections to derive revised prospective payment rates. The commenters believed that the interim final rule was unclear on this issue. It was suggested that any corrections to the wage index should be applied retroactively to the beginning of the hospital's first cost reporting period under the prospective payment system.

Response—The interim final rule provides (48 FR 39765) that where a hospital's wage index is incorrect due to an error that we or the BLS have made, we will direct the Medicare intermediary to recalculate the payment rates. However, BLS has advised us that they are unable to correct any inaccuracies in the wage index that may result from a hospital's failure to report the required wage and employment data.

Where errors are identified and corrections are made to the wage index, we believe the appropriate policy is to apply the revised index prospectively to payments for discharges occurring after the date the correction is made. However, any revisions in wage indexes will only apply to the area wage adjustment to the standardized amounts. We will not recalculate the standardized amounts themselves based on revised wage indexes. We considered retroactively adjusting the prospective payment rates for corrections in the wage index. However, for a number of reasons we did not adopt this approach. Application of a retroactive adjustment to the rates would erode the basis of the prospective payment system that payment will be made at a predetermined, specified rate. We also believe hospitals will have less incentive to report accurate ES 202 data if we guarantee a retroactive correction to the wage index.

We also considered implementing corrections to the wage index effective with the next Federal fiscal year. However, this approach effectively provides no relief at all in view of the fact that the FY 1985 prospective payment rates will not reflect the current wage indexes, which are based on 1981 BLS data. We would expect to use 1982 BLS data to develop the FY

1985 rates, and presumably that data will already reflect corrections.

Therefore, we believe that application of corrected wage indexes on a prospective basis effective with discharges occurring after the date the correction is made is the more appropriate approach since it coincides with the basic concept of a prospective payment system. Also, since a correction to the wage index could decrease as well as increase a hospital's prospective payment rate, we believe we should maintain the prospectivity of the system when making any revisions to the payment rates.

C. Prospective Payment Rates During the Transition Period

For the first three years under the prospective payment system, hospitals will be paid a prospective payment rate that is a blend of a hospital-specific portion and a Federal portion.

1. Hospital-Specific Portion

Fiscal intermediaries estimate the hospital-specific rate using the best data available prior to the hospital's entry into the prospective payment system. Once the amounts are calculated, they will be applied throughout the three-year transition period except for adjustment as allowed under § 405.474

The hospital-specific rate is an amount derived from the following formula:

$$\frac{\text{(Base year costs per discharge)}}{\text{(Case-mix index)}} \times \text{Outlier adjustment} \times \text{Updating factor}$$

- Base year costs per discharge are developed from operating cost data for the 12-month (or longer) reporting period ending on or after September 30, 1982 and before September 30, 1983. Total allowable Medicare operating costs for each hospital are divided by the number of Medicare discharges during the applicable base year.
- Base year operating costs per discharge are divided by the hospital's case-mix index to neutralize them for the effects of the complexity of the mix of patients.
- The intermediary reduces the case-mix adjusted base year costs to take into account outlier payments.
- The case-mix adjusted base year costs are multiplied by an updating factor that is equal to the compounded applicable target rate percentage, multiplied by the adjustment factor necessary to maintain budget neutrality, and added to 1.0.
- The resulting hospital-specific rate is multiplied by the appropriate transition period percentage (see section D.3. below) and multiplied by the weighting factor corresponding to the DRG assigned to the discharge. The final amount is the hospital-specific portion of the prospective payment rate.

Comment—Numerous comments were received that objected to prospective application for future transition years of adjustments to base year costs resulting from successful appeals. Most commenters believe the adjustment to the hospital-specific portion should be applied retroactively to the beginning of the fiscal year the hospital first becomes subject to prospective payments. Some of the commenters were confused by the provision in § 405.474(b)(1)(v) regarding the finality of the intermediary's estimate of base year costs for purposes of determining the hospital-specific rate.

Response—In light of these comments, we have reviewed and clarified our interpretation of the provisions on administrative and judicial review of base year costs. A variety of issues are encompassed within this subject. Disputes may arise over the amount of costs incurred during the base year, including amounts that were disallowed for purposes of base year reimbursement. In addition, disputes may arise with respect to adjustments made to these base year costs for purposes of implementing the prospective payment system; for example, elimination of direct medical education costs, the adjustment for payment of FICA taxes, etc. With respect to the latter category of adjustments, there is a question whether the provider is entitled to present new information in support of its position after the intermediary's determination has become final. With respect to both categories of disputes, there is a question whether relief should be made retroactive in the event that the provider eventually prevails.

The starting point for resolving these issues is the prospective nature of the system and congressional recognition that, during the transition period, establishment of the prospective rates would have to be done rapidly based on the data available. The conference committee stated, "Since the hospital-specific portion of the rate must be determined in advance of the hospital's first fiscal year under the system, the managers expect that the Secretary will use *the best data available at that time* to determine operating costs for the purposes of the phase-in" (Joint Explanatory Statement of the Committee of Conference, Item 3.B, Congressional Record—House, page H1773, March 24, 1983) (emphasis added). In short, the determination of a particular provider's hospital-specific portion was not to be subject to subsequent revision—either up or down—since such revision would defeat the prospective nature of the system and would be inappropriate fine-tuning of an inherently crude transitional payment factor. Moreover, subsequent revisions of the hospital-specific portions could upset the budget neutrality adjustment upon which the levels of the rates were set. At the same time, we recognize that a provider is entitled to have its hospital-specific portion calculated in accordance with law, and we do not wish to preclude rectifying calculations that were made contrary to law.

To fulfill these statutory objectives, we are articulating in the regulations the standard for administrative and judicial review of adjustments to base year costs. In view of the prospective nature of the payment system and the conference committee's expectation that final determinations would be made on the basis of the best information available at a time prior to a hospital's entering the system, we believe that the proper scope of review of adjustments to base year costs is extremely narrow. Review will be limited to the question of whether the adjustments were made in accordance with the statute and regulations, for example, whether an adjustment was made for FICA taxes where a hospital was entitled to such an adjustment. As to the amount of any adjustment, review will be limited to whether the intermediary was unreasonable and clearly erroneous in its assessment of the information then before it. The intermediary's judgement is entitled to substantial deference in these cases and should be subject to revision only in cases of egregious error. Additional data, information, and arguments cannot properly be subsequently developed and presented during the review process, since such a procedure would be inconsistent with the requirement for a final determination prior to the beginning of the phase-in period based on the best available information.

In the event that a provider demonstrates during the review process that the calculation of its hospital-specific portion was contrary to law or clearly not based on the best data available at the time, a revision retroactive to the beginning of the transition period would be appropriate and is authorized by the regulations. When the statute has been violated or the best data clearly not used, equity suggests that full relief should be afforded to the provider.

In the case of disallowed base year costs that are successfully appealed by the provider, we do not believe that retroactive revision of the hospital-specific portion would be appropriate. Before an intermediary disallows costs, it carefully assesses the circumstances and the applicable law. In such situations, we believe that there is sufficient formality to ensure that the intermediary has exercised a good faith judgement and hence every reason to believe that it has acted on its assessment of the best data available. Since a later determination that the disallowance was incorrect does not impugn the validity of the intermediary's prior efforts to make a good faith assessment on the data then available, a retroactive revision would be inappropriate. A prospective revision for subsequent years is appropriate, however, because of the better information then available as the hospital's base year costs.

It might be argued that revised adjustments to base year costs should be allowed prospectively even if based on new information, but we do not think that such an approach would be consistent with the statute. As indicated in the conference committee statement quoted above, it was anticipated that the hospital-specific portion would be finally determined before the beginning of the transition period. Accordingly, it would generally be improper to allow subsequent recalculations. Where, however, better information is developed for reasons independent of the prospective payment system, that is, the appeal of disallowed base year costs, we believe that it is acceptable to consider that information on a prospective basis.

We have revised § 405.474(b) to reflect the above policies.

Additionally, we noted an inconsistency between program instructions which allowed hospitals until November 15, 1983 to request the intermediary to recompute their hospital-specific portions to take into account inadvertent omissions in their previous submissions to the fiscal intermediary and the interim final regulations which allowed until November 15, 1983 for the recomputation to be completed. Since the instructions served as the basis for determining target amounts for hospitals entering the system on October 1 and intermediaries as well as hospitals will of necessity have performed in good faith based on the instructions, we are revising the regulations at 405.474(b)(1)(iii)(B) to clearly reflect the policy as stated in chapter 28 of the Provider Reimbursement Manual (HCFA-Pub. 15-1).

Comment—Several commenters suggested that we allow a recalculation of a hospital's case-mix index, based on 100 percent of its 1981 discharges, such as was allowed with respect to the inpatient operating cost limits promulgated under Pub. L. 97-248.

Response—We do not believe that permitting a recalculation of a hospital's cases-mix index would be appropriate. Congress was clearly aware that only limited data were available to us at the time we needed it to set prospective payments rates. The best available data are contained in the 1981 MEDPAR file. In addition, it should be noted that under prospective payment the case-mix indexes are used in setting prospective rates for discharges. This is unlike the use of the case-mix indexes under the system of reimbursement prompted by Pub. L. 97-248. That is, under that law, payments were determined retrospectively based on an individual provider's costs, and subject to subsequent adjustment at settlement of the final cost report. Under such circumstances, recalculation of an individual hospital's case-mix index was not unreasonable, and was consistent with a system based on actual costs and circumstances at individual providers. However, under the prospective payment system, payments are established prospectively and represent full and final Medicare payment for individual beneficiary stays. The purpose of the hospital-specific portion, which is adjusted by the case-mix index, is to ease the transition of a hospital from the reasonable cost system to a fully national prospective system. As such, it is meant to represent only an estimate of costs, based on the best available data at the time the rate is set. It is not meant to guarantee reimbursement of actual costs incurred.

Finally, recalculation of provider case-mix indexes—whether up or down—would make the budget neutrality calculations problematic, since it would be difficult to estimate in advance the changes in payments that would result from such recalculations.

Comment—There were several comments suggesting that in determining the hospital-specific rate and case-mix adjustment, consideration should be given to significant additions in services provided, expansions, relocations and other changes which affect the comparability of a hospital's base period experience to its transition period hospital-specific rate.

Response—The hospital-specific portion of prospective payments must be based on each hospital's allowable inpatient operating costs for the 12-month or longer cost reporting period ending on or after September 30, 1982, and before September 30, 1983. The hospital-specific amount must be based on the best evidence available at the time of the hospital's inpatient operating cost in the applicable base period. Once the costs for that base period are established based on the allowable costs in the pertinent cost reporting period, adjustments are limited to those authorized by the law and regulations.

In addition, the resulting base year costs per case are adjusted by dividing it by the hospital's 1981 case-mix index. This adjustment is made to neutralize the hospital-specific amount for its base year case-mix so that the actual case mix during the transition period can be used to determine payment amounts. Thus, to the extent that additions in services provided are reflected in changes in case mix, and patient services continue to be provided with comparable or improved efficiency, the DRG-specific payment amounts based on the hospital-specific portion will reflect the effects of these changes automatically in a manner that is both accurate and appropriate. This conforms with the congressional intent ". . . that some portion of the prospective payment rate will be related to each hospital's own experience in the base cost reporting year." (Joint Explanatory Statement of the Committee of Conference, Item 3.B., Congressional Record-House, p. H1773, March 24, 1983.) In this regard, it is important to recognize that the purpose of the hospital-specific portion is to moderate the impact of change to a fully national system. There is no indication of an intention to continue the determination of reasonable costs for periods subject to the prospective payment system.

However, we are aware as a result of comments received, in certain isolated instances changes in the organization, management and operation of a hospital between the 12-month reporting period used as the base period and the first prospective payment year may be of such magnitude as to make the base period entirely unrepresentative of historical experience. This can occur where, for instance, a hospital's services are substantially curtailed in anticipation of closing except that the hospital is purchased prior to an actual shut-down taking place. Under such circumstances, substantial layoffs of employees during the curtailment and suspension of certain services, for example, could artificially supress base year experience relative to the scope of

operations during the transition years so that the hospital-specific portion of the rate would not effectively serve its intended purpose. We are, therefore, modifying our policy to allow hospitals, which can demonstrate to their intermediaries' satisfaction that the base period reflects previous ownership and control under which the hospital's operations were being deliberately phased out in expectation of sale or termination of operations, to use the Federal DRG rate as the basis for payment. This would allow the same treatment accorded new hospitals in cases where a hospital technically had never ceased operations but could prove that the base year represented a curtailed level of operations. In order to meet these conditions, a hospital would have to document to the intermediary's satisfaction that occupancy during the current period was more than 150 percent of base year levels, that previous ownership and management had taken deliberate steps to curtail services in the base period by reducing operations, laying off or transferring employees to non-inpatient areas, reducing physician staff and reducing inpatient admissions. The hospital would also need to show that a change in ownership and management along with a corresponding growth in inpatient services and occupancy had occurred between the base period and the first prospective payment period. We wish to emphasize that this provision is intended to prevent the hospital-specific portion from working an unwarranted hardship on a hospital which, except for deliberate actions by a predecessor, would be able to function successfully within the transition payment formula. It is not intended to afford hospitals a choice of the Federal rate merely as a source of additional revenue. We wish to emphasize that a change in ownership, in and of itself, is not sufficient to warrant use of the Federal rate as the basis of payment.

Comment—We received several comments asking for elimination of, or changes to, the provision requiring exclusion of costs in the base period resulting from higher costs incurred for purposes of increasing base year costs, or having the effect of distorting base year costs or as a result of a change in hospital accounting principles in the base year. Some commenters felt that base year costs should include accounting principle changes that were based on necessary management decisions. Two comments suggested that this type of modification to the hospital base year experience should be made for one-time, nonrecurring reductions in cost. Also, objections were raised over the lack of instructions in the regulations as to how these modifications would be applied by intermediaries.

Response—We believe the Congress intended to assure, by giving us broad authority under the law to provide for exceptions, exclusions and adjustments, that some hospitals are not advantaged or disadvantaged by unique circumstances in their base year that do not reflect their usual cost of operation per case. This intent is indicated in section 1886(b)(4)(A) of the Act. We believe that current program operating instructions provide adequate description of its implementation.

However, we agree that one-time, nonrecurring experiences which decrease costs should also be acknowledged as inappropriately distorting a hospital's cost experience. Therefore, we are incorporating a change to § 405.474(b) to require modification of the base period costs in such circumstances as well. We advised our intermediaries of this policy shortly after the publication of the interim final rule and they have made the necessary adjustments where appropriate. Therefore, although retroactive adjustment of the hospital-specific rate is not permitted under the regulations, we believe those hospitals which began prospective payment prior to the publication of this regulation change were able to make the appropriate adjustment based on intermediary instructions.

Comment—We received one comment suggesting a change to the requirement that if a hospital's last cost reporting period ending before September 30, 1983 is less than 12 months, the hospital's base period will be the most recent preceding 12-month or longer cost reporting period. The commenter recommended allowing use of short periods, which are at least seven-months in duration, in order to fulfill the congressional intent to use the best evidence available as represented by the most recent cost reporting period for which data is at hand.

Response—We have rejected this comment because distortions of cost experiences are much too readily amplified by using shorter time periods. For example, many hospitals experience seasonal variations in hospital occupancy and costs. Were we to compute a hospital's cost per case during a period of peak occupancy, we would not have an accurate representation of their true average cost per case. Such situations could occur which would benefit some hospitals while penalizing others. We believe it is more fair and accurate to go back to the hospital's last 12-month or longer cost reporting period. We wish to point out that in updating costs from base year cost reporting periods that occur earlier than the most recently completed cost reporting period, we have used the inflation estimate for the hospital industry rather than the market basket inflation figure. In this way, we do not believe that hospitals are disadvantaged when we use prior periods as base years.

Comment—Several comments were received asking for clarification of how base period costs should be treated to consider the distinct costs involved with hospital psychiatric and rehabilitation units, which are excluded from the prospective payment system.

Response—Differing treatment of a hospital's base year costs for units that may be excluded from the prospective payment system at a later time is not appropriate since the hospital's experience in the base year must serve as the basis for determining the hospital-specific rate, notwithstanding subsequent changes in the hospital's operation. If hospitals provided such services prior to the creation of the distinct unit, the services were billed as acute care and were not accounted for separately. Since the hospital-specific portion is case-mix adjusted and the DRG weights include cost for such services, it would not be practical to adjust the hospital-specific portion when the other elements will not also be adjusted.

Comment—Several commenters stated that the hospital-specific portion of the prospective payment rates should not be reduced for the estimated costs of outlier cases. These commenters believe that reducing the hospital-specific portion for outliers is not in accord with a strict interpretation of sections 1886(d)(2)(E) and 1886(d)(3)(B) of the Act, which discuss the reduction only in connection with the "average standardized amounts" (that is, the Federal portion of the rates). It was argued that the outlier reduction should be applied only to the standardized amounts, which determine the Federal rate.

These commenters further contended that the 5.7 percent reduction for outlier payments on both the Federal and hospital-specific portions of the prospective payment rates implicitly assumes that outlier cases are more or less uniformly distributed across all hospitals. However, they argued that certain hospitals, particularly large urban teaching hospitals, are likely to

have a higher incidence of outlier cases than other providers. Because the outlier reduction is uniformly applied to the base period costs of all hospitals, these commenters concluded that the uniform 5.7 percent reduction acts to benefit facilities with a greater concentration of outliers and penalize those hospitals with relatively few outliers.

Response—In the interim final rule we provided that the hospital-specific portion of the prospective payments would be standardized for case mix by dividing it by the hospital's case-mix index. Standardizing the hospital-specific portion of the prospective payment rate to remove the effect of case mix has the advantage of relating the entire payment to the actual mix of discharges which will occur after a hospital becomes subject to the prospective payment system. This is conceptually consistent with the intent of prospective payment and is an approach supported by major segments of the hospital industry. Because the hospital-specific portion is paid on a DRG-specific basis, we believed that it was appropriate under the law to provide for full payment of outlier cases based on the full prospective payment rate, rather than limit outlier payments only to the portion of the payment derived from the Federal regional/national standardized amounts (that is, 25 percent in the first year). This decision required an adjustment to remove the effect of outliers in the base year in order to avoid duplicate payments for outliers in the hospital-specific portion of the prospective payment rate. Because the blended rates are DRG-specific (that is, both the hospital-specific and Federal portions are multiplied by the weighting factor for the appropriate DRG to determine payment), we believe that reducing the hospital-specific portion for outliers conformed with the intent of section 1886(d)(5)(A)(iv) of the Act, which requires that payment for outlier cases be "based on DRG prospective payment rates for discharges in that year."

In light of the comments received, we have reconsidered our position and believe that a literal interpretation of sections 1886(d)(2)(E), 1886(d)(3)(B) and 1886(d)(5)(A) of the Act requires that we restrict the reduction for outlier payments to the Federal share of the prospective payment rates. Accordingly, we will limit the reduction for outliers to the Federal rates and apply the 5.7 percent reduction factor only to the standardized amounts used to compute the Federal portion of the blended rates. The hospital-specific portion of the prospective payment rate will not be reduced for outliers. Because the hospital-specific portion will now include the cost of outlier cases in each provider's base period, and because of the requirement for maintaining budget neutrality, the outlier payment amount in the first transition year must be reduced to 25 percent of the Federal rate that otherwise applies after application of the 60 percent marginal cost factor. In the second transition year, the payment would be 50 percent of the applicable Federal rate, in the third year, 75 percent, and by the fourth year the payment will be 100 percent of the Federal rate. We have revised § 405.475 of the regulations to reflect this change.

In addition, we wish to point out that there were many significant comments received on this issue. As a result of our analysis of these comments, we believe that it is in the interests of equity to implement this change retroactive to cost reporting periods beginning on or after October 1, 1983. Thus, the base period cost per discharge for all hospitals that have become subject to prospective payment since its implementation on October 1, 1983 will be increased to reflect this change in policy. Since these amounts were previously reduced (by 5.7 percent) by multiplying them by .943, we will restore those outlier-adjusted amounts by multiplying them by 1.0 divided by .943, or 1.06045.

Appropriate instructions will be issued to the intermediaries to ensure that each hospital's base period cost per discharge is increased by 5.7 percent (that is, the amount of the outlier reduction reflected in the interim final rule) to take into account this change in outlier payment policy.

The following is an example of how the additional payment will be determined for a length-of-stay (day) outlier:

Assume the following:

DRG Rate (Based on Tables 1 and 5)=$3,800

Geometric Means LOS for the DRG (Table 5)=10.0 days

Per Diem Rate=$380

Marginal Cost Factor=.60

Federal Portion of Prospective Payment Rate=25 percent

Actual LOS for Discharge=14 days

DRG Outlier Threshold=12 days

Calculation:

Outlier Days (14−12)=2 days

Outlier Payment=2×($3,800 divided by 10.0)×.60×.25=$114*

* This payment will be included in total Federal DRG revenue for purposes of the educational adjustment.

The following is an example of how the additional payment will be determined for a high cost outlier:

STEP 1—DETERMINATION OF THE HOSPITAL'S COST

Billed charges	$35,000
National Ratio of Cost to Charges	.72
Educational Adjustment Factor	1.1924

Hospital's Cost=$35.000×.72÷1.1924=$21,134

STEP 2—DETERMINATION OF OUTLIER THRESHOLD

(Discharges prior to October 1, 1984)

DRG rate (Based on Tables 1 and 5	$3,800
Wage Index	1.10
Labor-Related Portion	.7915
Nonlabor-Related Portion	.2085

Wage Adjusted Threshold=
($12,000×.7915×1.10)+
($12,000×.2085)=$12,950

Step 3—Determination of Outlier Payment

Outlier Cost ($21,134−$12,950)=$8,184

Federal Portion of Prospective Payment Rate=25 percent

Marginal Cost Factor=.60

Outlier Payment=$8,184×.60×.25=$1,228*

2. Phase-In Period

The Federal portion of the prospective payment rate during the transition period is calculated by multiplying the Federal rate (after adjustments have been made to the rate for area wages and cost-of-living increase for hospitals in Alaska and Hawaii) by the appropriate transition period percentage and then multiplying by the weighting factor corresponding to the DRG assigned to the discharge.

During the first year of the transition period, the Federal rate is derived from the regional urban and rural standardized amounts. During the second and third year of the transition period, the Federal rate is comprised in part from regional standardized amounts and in part from national standardized amounts as shown in the following table.

Federal fiscal year beginning	Regional rate percentage	National rate percentage
Oct. 1, 1983	100	
Oct. 1, 1984	75	25
Oct. 1, 1985	50	50
Oct. 1, 1986		100

The table below provides the transition period percentages for the hospital-specific and Federal portions.

Cost reporting period beginning on or after	Hospital-specific portion percentage	Federal portion percentage
Oct. 1, 1983	75	25
Oct. 1, 1984	50	50
Oct. 1, 1985	25	75
Oct. 1, 1986		100

It is emphasized that, while the hospital-specific portion of the prospective payment rate is determined on the basis of cost reporting periods, the blend of regional and national amounts in the Federal portion is determined on the basis of the Federal fiscal year.

New providers, because there is no historical cost experience on which to base a hospital-specific rate, will be paid totally on the basis of the Federal rates, with the appropriate regional and national blending.

Comment—Several commenters expressed a belief that the regional/national proportion of the Federal DRG rate during the transition period should change according to hospital accounting cycle rather than the Federal fiscal year. They believe the change in the regional/national blend should be consistent with the hospital-specific/Federal blend of the rate, which changes according to hospital accounting cycle.

Response—Since the standard payment amounts are calculated according to the Federal fiscal year, we believe it is more appropriate to change the national/regional blend of the Federal portion of the rate at the same time that the standardized amounts are updated. To a large extent, the requirement that the standard amounts be set and updated according to Federal fiscal year and that outlier and budget neutrality determinations be made for the Federal fiscal year predisposes the change in the regional/national blend on the basis of the Federal fiscal year.

We also do not believe that changing the regional/national blend according to Federal fiscal year will defeat the purpose of the transition period, which is to moderate the immediate impact of the prospective payment system. Hospitals whose cost reporting periods begin later than October 1, do not enter the prospective payment system until a future date. Therefore, they remain under cost reimbursement for a longer time relative to hospitals whose accounting periods begin October 1 and have greater opportunity to adapt to the new system. Since these hospitals have had the advantage of additional months of cost reimbursement, with the greater opportunity to plan for prospective payment, having somewhat less of a regional weight in the blend is not unwarranted.

In addition, the prospective payment rate is intended to be predictable and represent full payment for inpatient hospital services. We believe that the Federal DRG portion of the payment should be the same for all hospitals in an area. Changing the regional/national blend according to hospital accounting year would put neighboring hospitals in the position of receiving different Federal DRG rates for identical services purely because of their accounting cycle. It would be quite possible for two hospitals in the same city to deliver identical services on the same day and have one hospital receive a lower Federal DRG rate. This is not consistent with a system designed to achieve similar revenue for similar services. If hospitals are to operate in a competitive market environment and maintain efficient operations, it is more equitable that the Federal portion of the payment rate be the same for all hospitals in an area. This will ensure that all hospitals have the same objective standard against which to measure their performance, and will not accord any hospital an unwarranted advantage with respect to prices merely because of the dates of its particular cost reporting period. The use of an objective standard becomes increasingly important as the transition period progresses and the Federal portion of the rate increases.

Comment—Some commenters questioned the decision explained in the interim final rule to pay new providers during the transition period using a blend of the national and regional Federal rates only. These commenters recommended that a hospital-specific portion of the rate be developed for new providers based on the section 223 hospital cost limits as suggested by the report of the Committee on Ways and Means.

Response—We believe it is inappropriate to apply the hospital-specific portion of the payment rate to new providers based on the section 223 hospital cost limits developed under section 1886(a) of the Social Security Act. The 223 limits were developed as an upper limit to hospital costs and were not intended to be used as a basis for payment to hospitals.

Application of the hospital-specific portion during the transition period was intended to minimize the initial impact of the new system on hospitals which had previously operated based on a cost reimbursement system. We believe that newly established hospitals will not be impacted by this change in reimbursement methodology since they will be entering the program under the new system with little or no prior experience under cost reimbursement. In addition, effective for cost reporting periods beginning on or after October 1, 1986 all hospitals (except those covered under § 405.476 of the regulations as well as hospitals excluded from the system under section 1886(d)(1)(B) of the Act) will be paid at the national Federal rate, and the hospital-specific portion will no longer be applied. Therefore, we believe that, because they have no history from which to make a transition, payment to new hospitals based on a blend of regional and national Federal rates, is more appropriate than applying the section 223 hospital cost limits as a proxy for hospital base period costs.

3. Update of Standardized Amounts

The average standardized amounts determined for FY 1984 will be updated for FY 1985 by the estimated percentage change in the cost of goods and services (that is, market basket) plus one percentage point. Additionally, the standardized amounts will be adjusted for outliers, for "unbundling," and to maintain budget neutrality.

Updates beginning with FY 1986 may take into account such factors as changes in the market basket, productivity, technological and scientific advances, quality of health care, the long-term cost-effectiveness of the program, and recommendations of the Prospective Payment Assessment Commission.

Section 1886(d)(4)(C) of the Act requires the appropriate adjustment to the DRG classifications and weighting factors for discharges in FY 1986 and every four fiscal years thereafter, to reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources.

Comment—Some commenters expressed concern about the policy stated in the interim final rule that if we fail to meet the September 1 publication date for a subsequent year's standardized rates, the prospective rates in effect on September 1 will be extended for the following Federal fiscal year. Commenters stated that this unduly places hospitals at increased risk for any unforeseen delays in the publication of the rates and limits hospital's and HCFA's recourse. It was suggested that if we do not meet the September 1 publication date, then we publish and pay interim rates based on the most current market basket projection prior to October 1. The actual rates would then be effective 30 days after their publication in the **Federal Register**, with a retroactive adjustment if the actual rates are higher than the interim rates.

Response—Our purpose in providing for this policy was to ensure that rates would continue in effect if there were no publication of updated rates. One of the basic tenets of the prospective payment system is that hospitals will know in advance the rates for services. Thus, if updated rates are not published by September 1, the policy contained in the interim final rule will act to ensure that the hospitals will still know what rates will apply. If we were to adopt the commenters' recommendation, it would be some time before hospitals knew what the actual final rates would be. With our policy, there would be no question after September 1 as to what rates would apply.

It should also be pointed out in this connection that the law *requires* rates to be published according to a specified schedule. Thus, timely publication of the standardized amounts by September 1 will have top priority, and we do not expect that we will miss this deadline. We have therefore not adopted this suggestion.

Comment—One commenter stated that hospitals with fiscal years that do not correspond to the Federal fiscal year (beginning October 1 of each year) will have difficulty with financial planning, since updated Federal rates will be unknown until after their cost reporting periods actually begin. It was suggested that we should provide the information needed by these hospitals to project the Federal component of the prospective payment rate.

Response—We believe the interim final rule does contain adequate information to enable hospitals with fiscal years beginning on other than October 1 to project the Federal rate changes for the hospital's next fiscal year. The Federal average standardized amounts determined for FY 1984 will be increased by the estimated applicable percentage change in the cost (excluding non-operating costs) of the mix of goods and services for FY 1985 over the cost in FY 1984 (i.e., the market basket), plus one percentage point. The schedule of Target Rate Percentages published in the interim final rule (48 FR 39774) provides the estimated market basket indexes through calendar year 1985. Although the estimates for FY 1985 are subject to change, the current figures provide reasonable guidance to hospitals in planning their Federal rate.

In addition to the market basket adjustment, the updated average standardized amounts for FY 1985 will be adjusted for items such as outliers, unbundling, and budget neutrality. The factors we used for making these adjustments to the FY 1984 average standardized amounts are provided in the interim final rule. Again, while these are subject to change in FY 1985, we believe that using these same factors for estimating purposes will provide a reasonable projection of the updated FY 1985 average standardized amounts.

Therefore, even though the interim final rule does not specifically address the methods and data that will be used to project the updated rates, we believe we have provided sufficient detail to enable hospitals to adequately estimate the FY 1985 Federal rates. We also note in this connection that under the law and regulations, proposed changes in the methods, amounts, and factors used to determine prospective payment rates will be published in the **Federal Register** not later than the June 1 before the beginning of the Federal fiscal year in which the proposed changes would apply. The proposed amounts would provide advance notice to the hospital industry of our estimate of rates for the next Federal fiscal year.

V. ADDITIONAL PAYMENT AMOUNTS

In addition to prospective payment rates per discharge, payments are made for items or services as specified below. Most of the approximately 60 comments received regarding additional payment amounts requested changes to the regulations.

A. Outliers (§ 405.475)

Section 1886(d)(5)(A) of the Act requires that additional amounts be paid for atypical cases known as "outliers". These are cases that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG.

A day outlier case is a discharge in which the length of stay exceeds the average length of stay for discharges in the DRG by 20 days or 1.94 standard deviations, whichever equals the fewer number of days. A per diem payment is made for each covered day of care beyond the outlier threshold.

A high cost outlier case is a discharge that does not qualify as a day outlier case but in which covered charges, adjusted to operating costs, exceed 1.5 times the Federal prospective payment rate (regional) for the DRG or $12,000, whichever is greater.

Comment—Several commenters suggested that payment for outlier cases should reflect a blend of the hospital's base year costs and the Federal payment rates. This would comply with the basis for determining the prospective payment rates during the three-year transition period.

Response—The hospital-specific portion of the prospective payment rate is derived from base year costs for reporting periods ending primarily in fiscal year 1982. The latest available data used to develop the Federal rates came from cost reports with fiscal years ending in 1981. In order to estimate the amount of outlier payments to ensure budget neutrality, we would have had to estimate the hospital-specific portion for each hospital using 1981 data. Unlike the Federal rate in which all elements used in its construction are known, estimating the hospital-specific portion using data at least one year older than the "real" base years would have been more problematic. Therefore, estimating outlier payments using blended rates would have substantially increased the uncertainty of the estimate for the budget neutrality adjustment.

Basing outlier payments on the blended rates would needlessly complicate their calculation. For example, payments for length-of-stay outliers would be determined by dividing the blended rate by the average length-of-stay for the DRG which is an average for all hospitals and does not represent the experience of any one provider. The hospital-specific portion, however, is unique to each hospital and reflects the cost per discharge based on the average length-of-stay for each hospital. Using the blended rate and average length-of-stay for the DRG would produce per diem outlier payments that are overstated for some hospitals and understated for others. While this could be remedied by computing a "hospital-specific portion per diem" based on the hospital's average length-of-stay, a "Federal per diem" based on the DRG length-of-stay and blending the two rates, we believe this would unduly complicate the computation of the outlier payments.

As indicated elsewhere, we have revised the outlier payment policy to provide, during the transition period, for payment only of the Federal portion of the outlier amount. The costs of outlier cases are already reflected in each hospital's base period operating costs used to compute the hospital-specific portion of the blended rate during the transition period.

Comment—We received several comments suggesting that the DRG length-of-stay outlier criteria unfairly discriminate against regions in which the average length-of-stay is below the national average. These commenters recommended that we either apply regional rather than national length-of-stay outlier criteria or revise the outlier criteria so that cost outlier criteria

rather than the length-of-stay criteria account for the major share of outlier payments.

Response—The basis for this suggestion is the fact that hospitals in some regions, notably in the West, have shorter average lengths-of-stay than hospitals in other regions, even after differences in case-mix are considered. Therefore, it is true that the length-of-stay outlier criteria that are based on the national average length-of-stay in each DRG, will identify fewer outlier cases in relatively short-stay regions than in relatively long-stay regions such as the East.

Several considerations are important in evaluating the proposed recommendation. First, section 1886(d)(5)(A) of the Act does not authorize outlier criteria based on regional length-of-stay means. If the Congress had intended that the length-of-stay outlier criteria should be based on regional length-of-stay means, then we believe that explicit language to that effect would have been included in clause (i) of that section.

Second, although Congress recognized the inherent ease of administration and reliability of patient length-of-stay as a basis for identifying atypical cases, it also recognized that length-of-stay criteria would not identify short-stay cases that are extraordinarily costly. Thus, section 1886(d)(5)(A)(ii) of the Act permits hospitals to request additional payments for cases that do not meet the applicable length-of-stay criteria but have charges adjusted to cost in excess of the cost outlier criteria. Since the cost criteria are based on the higher of 1.5 times the Federal DRG payment rate or $12,000 (adjusted for variations in area wages and cost of living), these criteria will reflect regional differences in treatment cost throughout the three-year transition period. Thus, even though a smaller percentage of cases may be identified as length-of-stay outliers in a short-stay region, a correspondingly higher percentage of cases will be eligible for consideration as cost outliers.

This suggests that the percentage of total outlier payments accounted for by the cost outlier criteria should vary across regions in response to regional differences in the distribution of cases by length-of-stay and cost. Although the length-of-stay and cost criteria were calibrated so that the national average shares of length-of-stay and cost outlier payments would be 85 and 15 percent, respectively, our projections show substantial variation across regions. For example, cost outlier payments are expected to account for less than 6 percent of total outlier payments in New England but nearly 29 percent in the Pacific Census Division. Thus, we believe that the combination of length-of-stay and cost criteria is responsive to regional differences in the incidence of extraordinarily long-stay or expensive cases.

Regarding the suggestion that we alter the outlier criteria to increase the relative share of cost outlier payments, our simulations of alternative outlier policies suggest that changing the shares of length-of-stay and cost outlier payments to 75 and 25 percent, respectively, would not substantially alter the distribution of outlier payments across regions or across types of hospitals. It may also create perverse incentives to manipulate charges or to maximize use of ancillary services in order to gain additional payment. Therefore, we believe that the current length-of-stay and cost outlier criteria provide reasonably similar protection to all hospitals against the financial consequences of outlier cases.

Comment—One commenter requested clarification as to the day in which outlier payments are payable for length-of-stay outliers.

Response—Payments for these length-of-stay outliers begin with the day *after* the threshold day for the appropriate DRG. For example, DRG 6 has an outlier threshold day of 8 days. Based on § 405.475(c)(1), outlier payments would be payable from the 9th day onward, subject to medical review. We are revising the column heading of Table 5 in the addendum of the interim final rule (48 FR 39876) from "OUTLIER CUTOFFS" to "OUTLIER THRESHOLD". For the convenience of the reader, we refer to the revised column headings in the addendum to this document.

Comment—Several commenters challenged the propriety of using the national cost-to-charge ratio of .72 to determine whether the cost of a discharge exceeds the outlier cost threshold. It was suggested that outlier costs and payments should be computed using hospitals' own ratios of inpatient costs to charges.

Response—The basis for this recommendation is the variability in hospital cost-to-charge ratios due to location, payor mix, and degree of cross-subsidization among hospital service departments. It was pointed out that providers with actual cost-to-charge ratios less than 72 percent could receive windfalls under the current policy while hospitals with ratios greater than the national average will be penalized. Although ease of administration was a factor in our decision to apply an overall national ratio to each hospital's billed charges to determine outlier payments, it was not the only one. Both the length of stay and cost outlier criteria were developed from national data. Therefore, use of a nationally based normative cost-to-charge ratio to compute outlier payments is not inappropriate. The use of hospital specific cost-to-charge ratios to compute outlier payments would require that they be frequently revised to account for changes in the mix and scope of services provided. Application of a national ratio derived from data aggregated from all available hospitals substantially reduces the need for periodic revisions in view of the decreased likelihood of overall change. For these reasons, we have not adopted the recommendation.

Comment—Several commenters questioned the likelihood that we would actually pay out the full six percent of total prospective payments set aside for outlier payments. These commenters suggested that we amend the regulations to consider the six percent outlier payment allocation as a "pool" of funds, from which distributions would be made of funds that were not actually paid for outlier cases.

Response—We disagree with viewing the money allocated for outlier payments as belonging to a "pool" of funds. To describe the allocation in this manner suggests that, should outlier payments exceed six percent of total payments, we would pay only up to the amount reserved for outlier payments and no more. However, section 1886(d)(5)(A)(iv) of the Act requires that outlier payments ". . . not be less than five percent nor more than six percent of the total payments *projected or estimated* to be made based on DRG prospective payment rates for discharges in that year". (Emphasis added.)

Using the data we had available, we set the outlier criteria so that an estimated six percent of total payments would be made for outliers. Nevertheless, there is no necessary connection between the amount of estimated outlier payments and the actual payments made to hospitals for cases that actually meet the outlier criteria. While we expect that under these criteria outlier payments will approximate six percent of total payments, we will pay for any outlier that meets the criteria, even if aggregate outlier payments result in more than six percent of total payments. Under such circumstances, we will continue to make these payments for the remainder of the Federal fiscal year without adjusting the DRG rates to compensate for the additional payments. Similarly, if we

overestimate the amount of outlier payments, we will not adjust the DRG rates to compensate hospitals for funds that were not actually paid for outlier cases.

Comment—Several commenters objected to the provision that the eligibility of a case for payment as a cost outlier can only be considered after eligibility for payment as a length-of-stay outlier has been ruled out. That is, length-of-stay outliers cannot be cost outliers. Because this policy could lead in isolated cases to significantly *lower* payment as a length-of-stay outlier if a case were also sufficiently expensive to qualify as a cost outlier, these commenters suggested that outlier payments should not be arbitrarily limited to one criterion. It was recommended that we provide outlier payments if cases qualified as *either* length-of-stay or cost outliers based on an appropriate combination of both criteria. Under this proposal, payment as a cost outlier would not be precluded if a case also qualified as a length-of-stay outlier.

Response—We recognize that providers may receive less payment in some cases under the length-of-stay outlier criteria for cases that otherwise qualify as both length-of-stay and cost outliers. However, paying for outliers using the more advantageous of either the length-of-stay or cost outlier criteria would result in the need for more stringent outlier criteria. Because outlier payments are limited to a fixed percentage of total estimated prospective payments, any increase in outlier payments would have to be offset by a compensating reduction in the number of outlier cases in order to maintain the system's budget neutrality. Adoption of the recommendation would also increase the share of outlier payments made on a cost basis, an outcome which we believe is inconsistent with the goals of the prospective payment system. A primary purpose of the prospective payment system is to replace the reasonable cost reimbursement system with one that pays a fixed rate per discharge. We do not believe we should be encouraging additional payments on a cost-related basis. In addition, allowing the more advantageous of the criteria to govern any given case could lead to perverse incentives to manipulate charges or to maximize use of ancillary services in order to obtain additional payment.

We also point out that the commenters' suggestion may be at odds with statutory intent. We believe that under section 1886(d)(5)(A)(ii) of the Act, a case is eligible for payment as a cost outlier *only if* it cannot be considered a length-of-stay outlier. This interpretation, which is reasonable and supportable, would preclude greater cost outlier payments if a case also qualified as a length-of-stay outlier. For these reasons, we have not adopted the recommendation.

Comment—One commenter suggested that the evidence cited in the preamble of the interim final rule (48 FR 39776) with respect to the ratio of marginal cost to average cost, as presented in the review chapter by J. Lipscomb, I. Raskin, and J. Eichenholz ("The Use of Marginal Cost Estimates in Hospital Cost-Containment Policy", *Hospital Cost Containment: Selected Notes for Future Policy*, ed. M. Zubkoff, I. Raskin, and R. Hanft (New York: Prodist, 1978), pp. 527–532), does not support the ratio of .60 adopted for making outlier payments to hospitals. The commenter said that this ratio is too low and recommended that the marginal cost estimate used in making length-of-stay outlier payments be revised upward to .85.

Response—The citation of the evidence from the marginal cost literature in the interim final rule was intended to make the point that the available estimates of the ratio of marginal cost to average cost vary quite substantially from one study to another. Moreover, as this commenter noted, none of the studies in the literature examined the type of data that would be needed to develop an accurate estimate of the short run marginal cost of an extra day of care. Nevertheless, the marginal cost to average cost ratio that we have adopted (.60) is in the upper range of the available estimates for per diem costs.

The marginal cost to average cost ratio may be somewhat higher for per diem operating costs than for per diem total costs, because of the exclusion of fixed costs of capital and medical education. However, we note that the estimate of interest here is the marginal cost of an extra day or an extra unit of service beyond a threshold that greatly exceeds the mean of the length-of-stay or cost distribution. Thus, the true value of the marginal cost to average cost ratio in this case may be expected to be below the marginal cost to average cost estimate that might be appropriate for an extra day (or service) at or near the mean of either distribution. Therefore, we are not adopting the suggestion to raise the marginal cost to average cost ratio from .60 to .85.

B. Alternate Placement Days

Under section 1861(v)(1)(G) of the Act, Medicare provides for continued coverage when a beneficiary who no longer requires an acute level of hospital care remains hospitalized because medically necessary SNF services are not available. These excess hospital days are known as alternate placement days. Medically necessary SNF-level days of care continue to constitute covered inpatient hospital services and qualify for prospective payment in the same manner as other inpatient stays as well as an outlier payment when the outlier threshold is exceeded.

Comment—One commenter questioned the basis for outlier payments for alternate placement days when the outlier threshold is exceeded.

Response—Section 405.475(c)(3) requires that the per diem payment for length-of-stay outliers be based on 60 percent of the average per diem payment for the applicable DRG for those days exceeding the outlier threshold. In developing the regulations for the interim final rule, we considered treatment of outlier days for the SNF level of care at the lower of the Medicaid rate or 60 percent of the mean daily rate for applicable DRGs. However, we decided to treat outlier payments for alternate placement days in the same manner as other day outliers.

C. Payments on Reasonable Cost Basis

1. Capital-Related Costs

Section 1886(a)(4) of the Act excludes capital-related costs (as described in § 405.414) from the definition of inpatient operating costs. Payment for these costs is determined on a reasonable cost basis.

Comment—We have received many comments from the health industry concerning the criteria listed in § 405.414(g)(2) for the recognition of capital-related costs to a provider when a supplying organization, not related to the provider, furnishes services to the provider. In particular, the criterion contained in § 405.414(g)(2)(ii) which states that "The capital-related equipment be located on the provider's premises . . ." is a major concern.

It is argued that this criterion inappropriately prevents unrelated shared service organizations that provide data processing, laundry and laboratory services at centralized sites, from structuring their rental and lease arrangements comparable to suppliers that use a decentralized (on-premises) method for providing like services.

Response—The criterion, "on the premises" was not intended to restrict capital-related equipment to be onsite of the provider. The provider's premises includes any real estate owned, leased

or rented by the provider regardless of the location. In regard to supplying organizations not related to the provider, regardless of where the unrelated supplying organization is located, a distinction has to be made as to what the unrelated supplying organization is actually offering to the provider. Where an unrelated supply organization is offering a service to a hospital (such as, laundry services, laboratory services or computer services) the use and possession of the equipment utilized for the service are with the supplying organization, not the hospital. For example, an independent service organization provides computerized-axial tomography (CT) scanner services to various hospitals via a mobile CT scanner unit. The mobile unit while providing services for the hospital is located on the hospital's premises. Even though the unit is located on the premises of the hospital, the hospital does not have use and possession of the unit. The independent service organization, in this case, cannot provide a capital-related cost breakout of its charges to the hospital. The organization is providing a service to the hospital and the service is not capital-related in nature. Unless the services, facilities or supplies of the unrelated supplying organization are capital-related in nature and the criteria for leases and rentals as stated in §405.414(b) are met, there will not be any recognition of capital-related costs to the provider.

We are revising the criterion in §405.414(g)(2)(ii) to clarify that capital-related equipment includes both property located on the provider's premises and offsite that is owned, leased or rented by the provider.

We are adding a cross-reference in § 405.414(g)(2)(i) to § 405.414(b) to clarify that the criteria under leases and rentals applies to capital-related equipment.

We are clarifying § 405.414(b)(2) to state that a nonrelated purchaser includes shared service organizations not related within the meaning of § 405.427 (Related organizations).

Comment—Two commenters requested that § 405.414(a) be modified to consider the costs of long-term service contracts and maintenance agreements, including initial operator training, as capital-related expenses. One commenter requested that § 405.414(a) be modified to consider the costs of product warranty coverage as capital-related expenses.

Response—The intent of § 405.414 was not to change existing policy on the treatment of capital costs. The conditions stated in the regulations represent existing policy and provide for the treatment of capital costs in a manner consistent with the way identical or similar costs were treated in the base period. We are not accepting the recommendation that § 405.414(a) be amended to include long-term service contracts, maintenance agreements, initial operator training or costs of product warranty. To the extent that these items are included in the arm's length purchase price of the capital-related item and capitalized and written off over the useful life of the assets, these items are considered capital costs with respect to depreciation.

Comment—One commenter stated that § 405.414(d), regarding minor equipment, does not adopt all three methods of accounting for minor equipment permitted under the cost reimbursement principles. This commenter suggests that minor equipment is an asset, and the associated utilization of the asset should be reflected as depreciation.

Response—Only the 3-year amortization method and the actual depreciation methods of accounting for minor equipment are considered as capital-related costs under the prospective payment system.

The base stock method is not considered depreciation because the cost of minor equipment is generally written off in the period purchased and is neither amortized nor depreciated.

Comment—One commenter requested that § 405.414(b)(4), regarding leases as capital-related costs, be modified to protect the lessee against technological obsolescence and the variables of risk in setting lease or rental charges.

Response—We do not agree. At a lease's inception, there is no way of determining when technological obsolescence will occur. The criteria that we have selected are objectively verifiable and are consistent with current policy in this area. As these criteria were not intended to represent absolute conditions, we are modifying § 405.414(b) to state that, "A lease that meets the following conditions will generally establish a virtual purchase".

2. Direct Medical Education

Section 1886(a)(4) of the Act excludes the direct costs of medical education (as described in § 405.421) from the definition of inpatient operating costs. Payment for these costs is determined on a reasonable cost basis.

Comment—A number of comments were received concerning whether the pass through of direct education costs is limited to only the costs of those approved medical education programs that a hospital directly operates itself. If this is the case, commenters were concerned that certain costs, such as the costs of clinical training for students enrolled in programs other than at the hospital, may not be excluded from the prospective payment system, but rather are considered to be normal operating costs.

Response—We believe that only the costs of those approved medical education programs operated directly by a hospital be excluded from the prospective payment system. If a program is operated by another institution, such as a nearby college or university, if must be noted that by far the majority of the costs of that program are borne by that other institution, and not by the hospital. While it is true that the hospital may incur some costs associated with its provision of clinical training to students enrolled in a nearby institution, the hospital also gains in return. For example, it obtains the services of the trainee (often at no direct cost to itself). We do not believe that this type of relationship was what Congress intended when it provided for a pass through of the costs of approved medical education programs. Rather, we believe that Congress was concerned with those programs that a hospital operates itself, and for which it incurs substantial direct costs.

We are revising § 405.421(d)(6) to clarify that the costs of clinical training for students enrolled in programs, other than at the hospital, are normal operating costs.

3. Direct Medical and Surgical Services of Teaching Physicians

Under § 405.465 of the interim final rule, payment for direct medical and surgical services of physicians in teaching hospitals is made on a reasonable cost basis, if the hospital exercises the election to receive reimbursement for these services on this basis (§ 405.521(d)). We received no comments on this issue and are, therefore, making no changes.

D. Bad Debts

We noted in the interim final rule that an additional payment will be made for bad debts attributable to deductibles and coinsurance as described in § 405.420. We received no comments on this issue and are, therefore, making no changes.

E. Indirect Medical Education

Section 1886(d)(5)(B) of the Act provides for additional payment to be made to hospitals under the prospective payment system for the indirect costs of medical education. If a hospital has a graduate medical education program

approved under § 405.421, an additional payment will be made equal to 11.59 percent, for each .1 increase in the hospital's ratio of full-time equivalent interns and residents to bed size, of the aggregate payments made to the hospital. Thus, this payment is calculated by multiplying the hospital's applicable medical education adjustment factor by the sum of the Federal portion of its prospective payments and its outlier payments which are based on the Federal rates. (We note that in the interim final rule (48 FR 39778) we incorrectly implied that the payment was based on the Federal portion of outlier payments, rather then on total outlier payments, which are computed on the basis of 100 percent of the Federal rates.)

For purposes of this adjustment, a hospital is allowed to count only interns and residents in teaching programs approved under § 405.421 who are employed at the hospital. The teaching adjustment factor applies only to hospitals paid under the prospective payment system.

Comment—We received a number of comments regarding the computation of the indirect teaching adjustment. Concern was expressed with respect to our use of the full-time equivalent employees concept, as well as the use of 35 hours per week as a basis for full-time status, in determining the number of interns and residents to be used in computing each hospital's adjustment for indirect medical education costs. The commenters argued that interns and residents in reality are students and not employees. Accordingly, they should be counted on the basis of "assigned time" rather than on the basis of full-time employee status, since payroll status is not an accurate determinant of the number of interns and residents actually working at the hospital.

Similarly, commenters objected to the restriction expressed in § 405.477(d) that interns and residents not on the payroll of a hospital are excluded from the number of interns and residents considered in the computation of the adjustment. It was stated that our policy does not recognize the various arrangements hospitals enter into for obtaining interns and residents. It was stressed in the comments that the purpose of the indirect teaching adjustment is to recognize the additional costs a hospital incurs as a result of its teaching program. These costs are incurred regardless of whether or not the interns and residents are actually on the hospital's payroll.

Response—The method for counting interns and residents which is detailed in § 405.477(d) was adopted under the hospital cost limits program, and is basically the same method used by the American Hospital Association (AHA) in its annual survey. We decided to utilize the same basic data collected as part of the AHA survey in order to prevent the imposition of an additional recordkeeping burden on hospitals. In addition, we have historically required interns and residents to be on the payroll of the institution where they perform their services in order to prevent an intern or resident from being counted by more than one institution.

As a result of comments received, we recognize that there may be other methods of counting interns and residents that would serve the dual purposes of accurately identifying interns and residents while at the same time maintaining the integrity of the prospective payment system. In this connection we are in the process of reviewing alternative data and methods for counting interns and residents and will make adjustments as appropriate. As part of this process we are working with representatives of the hospital industry. At this time we are able to make one moderate change based on the comments. Specifically, we have decided to revise § 405.477(d) to permit the inclusion of interns and residents employed by an organization with a long-standing historical medical relationship with the hospital. This revision is intended to accommodate those hospitals which have historically incurred the higher indirect costs of medical education programs although not actually employing the interns and residents themselves. It is clear that in some cases such an adjustment is needed to provide recognition of the fact that the operation of these hospitals is impacted significantly by teaching programs. In addition, we do not believe our adoption of this policy will impose an additional reporting burden on hospitals. To the contrary, it will prevent the need for some hospitals to significantly reorganize their employment relationship solely to meet the form of our requirement.

It is intended that the hospital and the organization employing the graduate medical students have an extensive and long-standing relationship, such as those that exist between suppliers and hospitals under § 489.23. The organization must be the sole employer of substantially all of the interns and residents furnishing services at the hospital. Fiscal intermediaries will verify through audit that the interns and residents are counted only for the one hospital in which they provide the majority of their services.

For other situations, we will make any necessary revision in the method of counting interns and residents in future updates of the prospective payment standardized amounts. Accordingly, should a future change in the method of counting interns and residents be necessary based on our further review of the alternative data, the effective date of such change would not be in fiscal year 1984. We believe that many hospitals with interns and residents would be affected by a revision to the method of counting interns and residents and, accordingly, a retroactive adjustment would require making additional payments to some providers and recouping overpayments from others. The most equitable method for all providers, therefore, is to make such changes on a prospective basis. It should also be noted that, while the regulations published on September 1 were interim regulations, they were also final regulations effective 10/1/83. Intermediaries are already making payments based on these regulations, and it is most appropriate that changes to them be on a prospective basis.

Comment—Section 1886(d)(5)(B) of the Act requires that the indirect teaching adjustment for hospitals be doubled under the prospective payment system. However, the adjustment under Pub. L. 97–248 was .0606 and doubling that amount would result in a factor of .1212. The commenter questioned why the teaching adjustment factor is .1159.

Response—Section 1886(d)(5)(B) states that the teaching adjustment factor must be doubled, and also requires that the adjustment be "computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) . . . ". Therefore, we have used the same methodology as was used to compute the teaching adjustment under Pub. L. 97–248 and we have doubled that adjustment as required by law.

However, we have used more recent data in computing the adjustment than was used under Pub. L. 97–248. We note that the definition of operating cost under the prospective payment system is different than it was under Pub. L. 97–248. For example, inpatient operating costs under Pub. L. 97–248 excluded malpractice insurance, whereas inpatient operating costs under the prospective payment system included the cost of malpractice insurance. These changes in the data base account for the difference in the amount of the factor under the prospective payment system from what that amount was under Pub. L. 97–248. Since the law states only that the amount for indirect teaching costs

will be computed in the same manner as under Pub. L. 97-248, we did not consider it appropriate merely to double the Pub. L. 97-248 factor. Rather, we used the most recent data, in the same manner as other facets of the prospective payment system are based on the most recent data.

VI. INTERIM PAYMENTS

Prior to implementation of the prospective payment system, hospitals received interim payments for their costs of covered inpatient and outpatient services furnished to Medicare beneficiaries as described in § 405.454 (a) through (j). Those interim payments are computed to approximate as closely as possible actual reimbursement, which is determined at year end based on the hospital's submitted cost report.

Effective with cost reporting periods beginning on or after October 1, 1983, hospitals paid under the prospective payment system are paid an amount for each discharge based on actual bills submitted. The payment constitutes final payment for each discharge claimed.

There are two methods of payment for inpatient hospital services. Under the first method, referred to as the periodic interim payment method, total payments for the year are estimated and periodic level payments are made to hospitals without regard to the submission of individual bills. To qualify for periodic interim payments, hospitals must meet the criteria in § 405.454(j). The second method, which applies to all other hospitals under the prospective payment system, requires that payment be made on the basis of a submitted bill. Under this method, payment for Part A inpatient services is based on a prospectively determined amount for each discharge. Payment for all services under the prospective payment system is described in § 405.454(m).

For items applicable to Part A inpatient hospital services not paid on a prospective basis (capital-related and direct medical education costs, kidney acquisition costs in hospitals approved as renal transplantation centers, and the indirect teaching adjustment), interim payments will be made subject to final settlement, using applicable Medicare principles of cost reimbursement.

We received several responses on interim payments.

Comment—A number of commenters requested that regulations at § 405.475 (c) and (d) should be modified so that prospective payments may be made prior to discharge in outlier cases. These commenters stated that without this modification, hospitals that do not receive periodic interim payments, would experience cash flow problems.

The specific request was to make biweekly or monthly payments of the non-outlier portion upon verification of the medical necessity of the admission.

Response—The standard DRG payment is payable upon submission of a discharge bill only since the appropriate DRG cannot be determined until the patient is discharged. However, we are revising § 405.475(c) regarding payment for day outliers so that the prospective payment for an appropriate DRG, including the outlier payment, may be made prior to medical review. We believe that there is little incentive for a hospital to inappropriately retain Medicare beneficiaries in order to obtain outlier payments because § 405.475(c)(4) prohibits payment to the hospital for noncovered days, and our requirement for review of all outlier days makes it likely that inappropriate outlier days will be identified and denied.

We are not revising § 405.475(d) regarding payment for cost outliers because hospitals must identify and specifically request payment for cost outliers, whereas the identification and payment determination for day outliers is an automatic feature of the intermediary bill processing system.

If the hospital does not have the capability to determine outlier status in advance of bill submission, because it does not have a Grouper program, or would otherwise prefer to have its claim for outlier payment considered separately, the discharge bill may be submitted and processed as a non-outlier case and an adjustment bill processed after the medical review entity has approved the medical necessity of the outlier claim. If the payment of the standard DRG payment on the basis of a discharge bill only, with or without the presence of an outlier situation, creates cash flow difficulties, a hospital has the option of electing periodic interim payment through meeting the criteria in § 405.454(m).

Comment—One commenter requested that § 405.454(m)(3) be modified to clairfy when payments will be made for inpatient hospital services not paid on a prospective basis (for example, capital-related costs or direct medical education costs).

Response—We are revising §§ 405.454(m) (2), (3) and (4) to state that we will make payments to providers two weeks following a two week period of services for inpatient services not paid on a prospective basis.

Comment—One commenter requested that § 405.454(m)(2)(iii) be modified to indicate that deductibles and coinsurance must be deducted before computing the bi-weekly periodic interim payment amount.

Response—We are revising § 405.454(m)(2)(iii) to state that deductibles and coinsurance are not included in the bi-weekly periodic interim payment amount.

Comment—One commenter requested that, for hospials electing to receive their prospective payments in the form of level payments, the payments be reviewed and adjusted quarterly rather than twice during the cost reporting period.

Response—We have provided that intermediaries must review the level payments at least twice during the cost reporting period. However, reviews may be made more frequently than twice during the cost reporting period at a hospital's request in accordance with § 405.454(c)(4) and (j)(5).

Comment—One commenter pointed out that the preamble (48 FR 39778) states that the indirect teaching adjustment is an annual lump sum payment but that § 405.454(m)(4) states that the payment is to be made not as a lump sum but rather through 26 equal biweekly payments. The commenter also states that the preamble indicates that the estimate is subject to year end adjustment but that the regulation fails to address the year end adjustment.

Response—Although the preamble states that the indirect teaching adjustment is an annual lump sum payment, it also indicates that, to alleviate cash flow problems for a hospital, the adjustment may be estimated and payable in interim payments. With regard to the second part of the comment, we are revising § 405.454(m)(4) to clarify that the estimate is subject to year end adjustment.

VII. CHANGE OF OWNERSHIP

Section 405.477(f) provides that, if a hospital undergoes a change in ownership, payment for inpatient operating costs, including outlier payments and payments for indirect teaching costs, is made to the legal owner or operator of the hospital as of the date of discharge, without proration between the buyer and seller. Compensation to the previous owner for inpatient services provided before the sale (for a case discharged after the sale) is to be negotiated by the former and new owners as they see fit, without Government involvement.

The capital-related costs and the direct costs of approved medical education programs continue to be

reimbursed on a reasonable cost basis. As such, the buyer and seller are reimbursed proportionally for the capital-related and direct medical education costs each incurred. Also, in the case of for-profit hospitals, the buyer and seller are reimbursed for the return on equity capital generated during each party's respective period of participation.

VIII. SPECIAL TREATMENT OF CERTAIN HOSPITALS

Section 1886(d)(5)(C) of the Act authorizes certain exceptions and adjustments to the prospective payment rates for the following facilities:

- Sole community hospitals (SCHs).
- Hospitals extensively involved in treatment for and research on cancer.
- Regional and national referral centers.
- Hospitals with disproportionate numbers of low income or Medicare beneficiaries or both.
- Hospitals in Alaska and Hawaii (see sections IV. A. and B. of this preamble).
- Other exceptions and adjustments as the Secretary deems appropriate.

Most of the approximately 125 responses we received regarding special treatment under the prospective payment system requested changes in regulations. However, all the commenters who addressed the treatment of kidney acquisition costs responded favorably.

We received two general comments regarding special treatment of certain hospitals.

Comment—A number of commenters suggested that we provide for additional exceptions or adjustments under the prospective payment system. In particular, several commenters suggested that particular groups or classes of hospitals be afforded special treatment because of perceived problems with particular DRGs that form a large percentage of the caseload in those hospitals.

Response—While Congress gave us the authority to provide for exceptions and adjustments as deemed appropriate, it was clearly congressional intent that all hospitals, to the extent feasible, be subject to the prospective payment system. Therefore, the interim final rule provided for only a limited number of special treatment hospitals (that is, SCHs, certain cancer hospitals, and certain referral centers) and specified stringent criteria to qualify for this treatment.

In determining whether exceptions or adjustments would be appropriate, we were particularly concerned with situations where broad classes of hospitals could be adversely affected by the prospective payment system. As we indicated both in the interim final regulations and elsewhere in these final regulations, cancer hospitals and referral centers, for example, because of the types of patients they treat and the types of services they furnish, could be disadvantaged by a formula-based prospective payment system that did not take into account the special and atypical features of these classes of hospitals. On the other hand, many of the comments we received advocated exceptions or adjustments to alleviate or ameliorate perceived undesirable consequences of the prospective payment system which individual hospitals might experience. However, it was not apparent from the comments that entire segments of the hospital industry, or broad classes of hospitals, would be adversely affected by particular features of the prospective payment system, or that beneficiaries would be unable to obtain particular types of services or levels of care solely because of the impact of the prospective payment system. Absent compelling evidence of broad-based inequities in the formula payment method of the prospective payment system, we did not consider it appropriate at this time to provide for additional exceptions or adjustments.

Comment—Several commenters asked for clarification as to which HCFA component will review and then approve or deny requests for SCH status, and for adjustments or exceptions for SCHs, cancer hospitals and referral centers under the prospective payment system.

Response—We stated in the interim final rule that we will make a determination as to whether a hospital qualifies for one of the special payment provisions for SCHs, cancer hospitals or referral centers.

Under procedures in effect prior to implementation of the prospective payment system, our central office made all final determinations on cost limit exceptions and exemptions except for SCH exemptions. Our regional offices had final approval authority on these exemptions.

We believe that under the prospective payment system it would generally be in the best interest of all parties to have the HCFA central office make the final determination in all cases involving whether a hospital qualifies for the special payment provisions available to cancer hospitals and referral centers. Placing authority for final approval with central office ensures consistent treatment nationwide. It will also enable us to keep apprised of current data on the number of hospitals that qualify for the special criteria, and alert us to potential problems with these criteria.

We believe it appropriate for the HCFA regional offices to continue to have the final authority for determining whether a hospital may be designated as a SCH under § 405.476(b). These offices are most familiar with hospitals in a particular area.

However, with respect to adjustments for SCHs experiencing a significant volume decrease during the transition period under § 405.476(d), we believe that our central office should retain the authority for making final determinations. This will enable us to gain experience with the types of situations faced by SCHs, with a view toward developing common rules for reviewing all the adjustment requests. This experience will also enable us to better prepare the report called for by section 603(a)(3)(A) of Pub. L. 98–21 dealing with recommendations for payment of SCHs.

Therefore, any hospital requesting status as a SCH, cancer hospital or referral center, or requesting special payments as a SCH, should submit its request with all supporting documentation to its intermediary. The intermediary, after reviewing the case, will forward it along with a recommendation to the HCFA regional office. The regional offices will review and make recommendations on requests for status as a cancer hospital, referral center or adjustments for SCHs for volume decreases under § 405.476(d), and forward the submittals to central office where the final decision will be made. The regional offices will retain and process requests for SCH status.

It should be noted that none of the procedures discussed above alters the procedures contained in §§ 405.460 and 405.463 for obtaining exceptions, exemptions or adjustments to the hospital cost limits or the target rate provision for hospitals not paid under the prospective payment system. For these hospitals the procedures contained in those regulations apply. The new procedures discussed above apply only to those hospitals paid under the prospective payment system.

A. Sole Community Hospitals (§ 405.476 (b), (c) and (d))

Section 1886(d)(5)(C)(ii) of the Act requires that the special needs of SCHs be taken into account by using a special payment formula for hospitals so classified. This section of the Act defines SCHs as those that, by reason of factors such as isolated location, weather conditions, travel conditions, or

absence of other hospitals (as determined by the Secretary), are the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under Part A of Medicare. Regulations regarding the special treatment of SCHs under the prospective payment system are set forth in § 405.476(b).

Hospitals classified as SCHs are paid in accordance with the methods used to establish rates for the first year of the transition period (that is, 75 percent of the hospital-specific rate and 25 percent of the Federal rate), and will continue to be paid on that basis of payment to SCHs indefinitely. During the transition period, SCHs may also receive an additional payment amount if the hospital has experienced a decrease of more than five percent in its total number of inpatient cases, due to circumstances beyond its control.

Comment—Several commenters objected to the exclusion of urban hospitals as SCHs. These comments pointed out that, especially in large counties, hospitals may be the sole source of services in a sparsely populated area of a county that contains a metropolitan area some distance away.

Response—Generally, we have found that because of population density, road conditions, availability of snow removal equipment, etc., hospitals in urban areas cannot be considered the sole source of inpatient services available. Therefore, we have ordinarily only designated hospitals in rural areas as SCHs.

Prior to implementation of the prospective payment system, in certain individual circumstances, we granted SCH exemptions to hospitals located in urban areas. In these instances there have been unusual situations, such as a hospital being located in an extremely remote portion of a large county that contains an urbanized area many miles away, to justify such action.

We do not wish to remove SCH designation from those hospitals where circumstances have not changed since they were granted their SCH status. Therefore, we are amending § 405.476(b)(3)(i) to provide that all SCH designations previously approved continue to be considered SCHs with respect to the prospective payment system.

However, we continue to believe that SCH status should not generally be available to those hospitals in urban areas. We note that these hospitals are being paid the higher urban rates. Therefore, the criteria for granting new SCH designations are not being altered.

Comment—One commenter noted that the grandfathering of SCHs was limited to those approved prior to October 1, 1983. The commenter objected to this aspect of the criteria stating that a hospital may be penalized for delays caused by the fiscal intermediary or regional office in processing the request.

Response—The commenter's point is well taken. We did not intend to penalize hospitals for delays in the processing of SCH requests. The intent of the October 1, 1983 date was to institute a common effective date for the new criteria. We do not wish to require that the SCH requests already in process be reworked under the new criteria.

Therefore, we are revising § 405.476(b)(3)(i) to permit the grandfathering of all approved SCHs whose requests were received by the fiscal intermediary prior to October 1, 1983 and subsequently approved.

Comment—Some commenters wrote objecting to the classification of like facilities in § 405.476(b)(5) as "hospitals furnishing short-term, acute care". These commenters suggested that specialty hospitals should be permitted SCH status if there were not hospitals in the area furnishing similar specialty services.

Response—The intent of the SCH provision is to ensure the availability of short-term acute care services to Medicare beneficiaries by providing special payment provisions for those hospitals located in remote areas. The statutory language (section 1886(d)(5)(C)(ii) of the Act) defines an SCH as a hospital that by reason of isolated location, weather conditions, travel conditions, or absence of other hospitals is the sole source of inpatient hospital services available. There is no indication in either the law or legislative history that Congress intended this provision to apply to specialty hospitals.

We believe the special treatment for referral centers is intended to provide relief for those hospitals that are so specialized that the kind of patients they treat do not come from the local community. For those hospitals that furnish general short-term acute care plus particular specialty services, we believe the prospective payment rates provide adequate payment for the services provided and no special treatment is required.

Comment—One commenter objected to the effective date of SCH status as stated in the preamble of the interim final rule (48 FR 39781). This commenter suggested that SCH designations should be effective on the date a hospital meets the criteria rather than 30 days after our approval.

Response—Often it is extremely difficult to ascertain the exact date that a hospital meets the criteria for SCH designation. This is particularly true of those hospitals qualifying because no more than 25 percent of the service area patients utilize alternative sources of care. Moreover, for those hospitals that first apply for SCH status during or after the second year of the prospective payment system, SCH designation will result in different prospective payment rates. If we were to make the SCH effective date retroactive, we would need to reprocess every inpatient hospital claim submitted for the hospital and make adjustment payments at a new rate.

It is not in keeping with the basis of the prospective payment system or the concept of budget neutrality to permit retrospective adjustment of Medicare prospective payment rates. Thus, we are not adopting this recommendation. We will, however, make every effort to process requests for SCH designations as soon as possible.

Comment—One commenter felt that there is no need to establish regulatory criteria for SCHs. This commenter supported the previous method of handling SCH requests.

Response—Prior to the interim final rule, the HCFA regional offices granted SCH exemptions using broad general program instructions. These Medicare program instructions are not binding upon the Provider Reimbursement Review Board or the courts. Consequently, this system provided insufficient basis for defending the regional office decisions upon appeal.

We believe that § 405.476(b) will resolve many of the previous problems associated with SCH designations by providing objective criteria that make it easy for both hospitals and regional offices to distinguish which hospitals may qualify. Additionally, a single set of objective criteria will promote uniformity throughout the nation in designating SCHs. Finally, the regulations provide a basis for adjudicators of SCH appeals to evaluate the appropriateness of HCFA regional office decisions.

Comment—Two commenters suggested that the payment adjustment for SCHs which experience a five percent volume decrease for reasons beyond their control, be made by adjusting the payment rate rather than by auditing fixed and variable costs.

Response—Although we recognize that the time lag between the period that a hospital experiences the volume decrease and the time that the program makes additional payments may be

problematic, we do not at present have any means of determining what the amount of the payment adjustment should be. Therefore, we are not adopting this comment.

After we have some experience with evaluating requests for this volume adjustment, we may consider some method of making interim adjustments on a discharge basis.

Comment—Several commenters suggested modifying § 405.476(d) to extend the volume adjustment beyond the transition period for SCHs experiencing a significant volume decrease.

Response—Section 1886(d)(5)(C)(ii) of the Act explicitly authorizes the volume adjustment for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1986. Therefore, we do not at the present time have the authority to extend the volume adjustment beyond the transition period.

We are required to report to the Congress no later than April 1, 1985 with respect to an equitable method of reimbursing SCHs that takes into account their unique vulnerability to substantial variations in occupancy. We will consider extending the volume adjustment based on fixed and variable costs when we are making recommendations for that report.

Comment—One commenter believes that a hospital may be denied SCH status because patients utilize services outside the service area due to unavailability of specialty services at the community hospital. This commenter suggested that the SCH criteria in § 405.476(b)(3) be revised to account for such occurrences.

Response—The commenter has made a valid point in that many small rural hospitals do not normally furnish many specialty services. Therefore, it is possible that a hospital would not meet the utilization criteria solely because of the special needs of the patient population and not because of the ready accessibility of alternative hospital services.

Accordingly, we are revising § 405.476(b)(3) to permit an under 50-bed hospital located between 25 and 50 miles of neighboring hospitals to be designated as an SCH if a PSRO or fiscal intermediary certifies that the hospital would have met the utilization criteria were it not for the fact that patients in the service area were forced to utilize alternative hospital services due to the unavailability of certain services at the requesting hospital.

Comment—One commenter described the difficulty in obtaining the data necessary to demonstrate that no more than 25 percent of the patients in a hospital's service area utilize alternative inpatient hospital services. The commenter suggested that hospitals requesting SCH status be permitted to show that no more than 25 percent of the Medicare beneficiaries utilize services outside the service area as this information would be more readily available from the intermediary.

Response—We recognize that utilization data on all patients may not be readily available or verifiable.

Therefore, we are amending the criteria for SCHs at § 405.476(b)(3) to permit hospitals an option of demonstrating the required utilization using either total patient population or Medicare beneficiaries.

Comment—One commenter requested clarification of the one-month inaccessibility criteria for approval as an SCH contained in § 405.476(b)(3)(ii)(C). Specifically, this commenter wanted to know if the one-month stated in the regulations must be 30 consecutive days.

Response—The intent of the inaccessibility criteria is to acknowledge that hospitals, which may not be isolated at certain times during the year, may be the sole source of inpatient services available in an area at other times due to prolonged severe weather conditions or other temporary but recurring external conditions.

Therefore, hospitals must be inaccessible for at least 30 full consecutive days in order to meet the criteria. Hospitals that are inaccessible for only a portion of a day during this period, such as early morning road freezes or fog, would not be considered inaccessible.

B. Christian Science Sanitoria (§ 405.476(e))

Section 405.476(e) provides that inpatient hospital services furnished to a beneficiary by a Christian Science sanitorium will be paid for on the basis of a predetermined fixed amount per discharge based on the sanitorium's historical inpatient operating costs per discharge.

Comment—One commenter requested that § 405.476(e)(3) be modified to establish standards under which a Christian Science sanitorium may become eligible for outlier payments.

Response—Outlier payments are additional amounts paid to hospitals for atypical cases that have either an extremely long length-of-stay or extraordinarily high costs. These payments are in addition to the prospective payment rates for discharges.

For hospitals not paid under the prospective payment system, outlier payments would be inappropriate because these hospitals are reimbursed for the reasonable costs of services provided. For Christian Science sanitoria that are not excluded from the prospective payment system, we believe that the predetermined fixed amount per discharge based on a sanitorium's historical inpatient operating costs per discharge takes into consideration the costs of atypical cases.

C. Cancer Hospitals (§ 405.476(f))

Section 1886(d)(5)(C)(iii) authorizes special treatment for hospitals involved extensively in treatment for and research on cancer. Cancer hospitals are given the opportunity, during their first cost reporting period under the prospective payment system, to opt for reimbursement on a reasonable cost basis subject to the target rate ceiling.

The criteria used in the interim final rule for defining cancer hospitals were as follows:

- The hospital must have been recognized by the National Cancer Institute of the National Institutes of Health as a Comprehensive Cancer Center or Clinical Cancer Research Center as of April 20, 1983 (that is, the date Pub. L. 98–21 was enacted).
- The hospital must demonstrate that the entire facility is organized primarily for treatment of and research on cancer.
- 80 percent or more of the hospital's total discharges must be classified in those DRGs reflecting the condition of cancer as the principal diagnosis.

Comment—Some commenters stated that the requirement that 80 percent of the hospital's discharges fall into DRGs incorporating a finding of cancer as the principal diagnosis is unduly restrictive. The commenters maintain that many patients are admitted to cancer centers for treatment of conditions that are either the result of cancer or cancer treatment, such as infections due to decreased immunity caused by chemotherapy or bone fractures resulting from radiation therapy. Because the principal diagnosis assigned to such cases may not necessarily indicate cancer, commenters suggested that the percentage criterion be lowered to 50 percent and that the criterion be expanded to include all diagnoses based on the *International Classification of Diseases, 9th Revision, Clinical Modification* (ICD–9–CM) codes rather than just the principal diagnosis.

Response—After consideration, we agree that the published percentage criterion does not adequately reflect the actual cases treated in cancer hospitals. Therefore, we are lowering the

percentage criterion in § 405.476(f)(1)(iii) from 80 to 50 percent in order to ensure that hospitals which are extensively involved in cancer treatment and research will be able to qualify for the exception. However, we continue to believe that the criterion must be based solely on principal diagnosis. Many patients in the Medicare age group have at some point in their lives received treatment for some form of cancer. To permit exceptions based on all diagnoses listed on the claim form would preclude identification of the principal reason for the admission and prevent verification that the hospital is primarily organized for cancer treatment and research. We believe that lowering the percentage from 80 to 50 percent will serve the purpose of identifying these hospitals, while at the same time preventing hospitals that are not primarily cancer hospitals from choosing the diagnoses most advantageous to them in trying to obtain cancer hospital status.

In addition to lowering the percentage requirement, we are modifying a criterion in § 405.476(f)(1)(iii) for classification as a cancer hospital by including principal diagnoses that reflect neoplastic disease, rather than a finding of cancer, as defined by the ICD–9–CM. We are making this change because the term "neoplastic disease" has a more precise meaning than does "cancer". We are also providing the range of diagnostic codes that must be used in determining the percentage of cases which reflect neoplastic disease. By specifying these codes in § 405.476(f)(1)(iii), we are ensuring that all hospitals, seeking this exception, are judged by the same standards.

Comment—Several commenters stated that they believed that exceptions should be provided for any hospital that participates in an organized cancer program. Others suggested that the exception process should be extended to include approximately 250 hospitals that admit 25 or more patients a year on NCI-approved clinical protocols. Still others suggested that a hospital should be required to show that treatment for and research on cancer is only *one* of the primary reasons for which it is organized. Finally, some commenters suggested that the April 20, 1983 date for qualification as a Comprehensive Cancer Center or a Clinical Cancer Research Center be dropped.

Response—Any of the definitions suggested above would extend the exception process far beyond what we believe Congress intended. Congress directed us (in section 1886(d)(5)(C)(iii) of the Act) to limit whatever exceptions or adjustments are granted to "hospitals involved *extensively* in treatment for and research on cancer" (emphasis added). At no other point in the statute is the intensity of a hospital's involvement in treatment of a particular disease so clearly qualified. Therefore, while we have broad discretion with respect to exceptions and adjustments, it was clearly Congressional intent that any exceptions granted to cancer hospitals be limited to only those hospitals that are "extensively" involved in cancer treatment and research.

We believe the qualification present in the law reflected an appropriate concern for certain hospitals which limit their admissions to cancer and would not experience a diverse range of both high and low cost cases. The exception has been structured to recognize that hospitals primarily devoted to cancer care do not usually admit a full range of patients and so may have a limited opportunity to take advantage of a main feature of the prospective payment system, the ability to obtain additional revenue in some DRGs to offset costs in other DRGs. We believe Congress intended, on the other hand, that an average or efficiently run facility that exercises sound judgment will not be *systematically* disadvantaged by the prospective payment system.

With these understandings, we limited the provision to those hospitals that have historically demonstrated an intensive commitment to cancer programs. We do not believe Congress intended that an exception or adjustment be granted to hospitals merely because they belong to a particular organization, because they participate in organized cancer treatment and research, or because they admit at least 25 patients annually under approved clinical protocols. In addition, as we stated in the interim final regulations, we believe Congress was concerned about reducing the number of current programs in cancer treatment and research. In order to assure that cancer treatment and research are maintained and that incentives for artificial expansion are avoided, we focused our attention on current programs that might be limited or curtailed as a result of the prospective payment system. Accordingly, we limited the exception to those facilities that met the requirements as a Comprehensive Cancer Center or a Clinical Cancer Research Center as of April 20, 1983, the date the authorizing statute was enacted. Finally, Congress indicated a desire to include as many hospitals as possible under the prospective payment system. To provide an exception to a hospital merely because it is recognized by NCI or because it treats 25 or more patients a year under certain conditions would defeat this intent.

Comment—Some commenters expressed the belief that the prospective payment system will jeopardize the research efforts of community cancer hospitals, or will limit the accessibility of such hospitals to Medicare patients.

Response—We do not believe that limiting the exception process to a select number of institutions will negatively impact the efforts of community hospitals engaged in cancer research or the accessibility of cancer treatment to Medicare beneficiaries. Under existing law and regulations, the Medicare program has always been prohibited from paying for research costs and for items and services that are either experimental in nature or that are paid for by another governmental entity. These restrictions in the Medicare law were not altered by Pub. L. 98–21. However, the costs of providing usual medical care for cancer patients *are* payable by Medicare and these costs are included in the data used to establish the Federal DRG payment amounts which form the basis of the prospective payment system. In addition, when warranted, the statute also provides for outlier payments for individual patients requiring exceptionally long or exceptionally costly inpatient stays compared to DRG norms. Thus, because the prospective payment rates reflect the only costs for which Medicare can legitimately pay, we do not believe that failure to grant exceptions to community hospitals involved in cancer research should curtail research or treatment of Medicare beneficiaries at the community level.

It is important to recognize that, apart from the Medicare program, there is substantial Federal support for research activities to assist cancer research through NCI's programs. Funding for these activities totalled an estimated $804 million in fiscal year 1983, and an increase to $825 million has been requested for fiscal year 1984.

Comment—Several commenters suggested that payment for cancer hospitals be based on twice the DRG rate for the cancer-related DRGs.

Response—As we indicated in a previous response to another commenter's recommendation for paying hospitals extensively involved in treatment for and research on cancer, we believe that these hospitals are unique because of the atypical services

they furnish that result in higher expenses which may not be recognized under a DRG-based prospective payment system. We also believe that the nature of the services furnished by these hospitals, as well as their use of rapidly changing treatment modalities, makes them particularly susceptible to changes in the types of costs they incur. Because of this volatility in the costs they incur, paying double the normal DRG payment, for cancer-related DRGs, would not necessarily result in equitable payment for these hospitals, since the double payments would still not be sensitive to their actual cost experience.

However, because it is based on actual costs incurred, the reasonable cost reimbursement system is sensitive to volatility in costs. Therefore, we continue to believe that offering cancer hospitals the choice of being paid under the prospective payment system or reimbursed under the reasonable cost system is the most equitable solution for the unique situation of these hospitals, since it offers them the opportunity to choose the system most suited to their needs. Accordingly, we have not adopted the suggested payment system.

Comment—One commenter suggested that cancer hospitals approved for an exception should be paid on the basis of a DRG prospective price schedule computed on the basis of the hospital component only. This commenter believes that merely granting the hospital the option of electing to remain under reasonable cost reimbursement places the hospital at risk for changes in length of stay and use of ancillary services, but limits its reward to the payment of the incentive under the rate-of-increase provision.

Response—The basis for allowing a cancer hospital the opportunity to elect reasonable cost reimbursement was to recognize that such a hospital may provide extremely intensive and costly services, for which payment may not be adequate under the prospective payment system. The reasonable cost reimbursement system will recognize the actual cost incurred for the more intensive, costly, and generally atypical services furnished by cancer hospitals qualifying for the exception. While it is true that these hospitals will be subject to the rate-of-increase control provision, this provision limits only the rate at which costs increase from year to year, not the costs themselves. However, to the extent a hospital experiences extraordinary cost increases in a particular year, § 405.463 provides for adjustments to take such increases into account to the extent warranted. Of particular interest to cancer hospitals is the adjustment that is provided to take account of significant distortions in cost from one year to another.

As we understand the commenter's suggestion, a cancer hospital would have its payment computed on the basis of the hospital-specific portion only. As such, the hospital's payment would be based on its base period cost per discharge increased from year to year by the appropriate target rate percentage. While this method would recognize changes in case-mix due to the multiplication of the cost per discharge by the appropriate DRG weighting factor, use of the base period cost is insensitive to any changes in actual cost experienced by the hospital. However, we believe that it is precisely these types of changes that a cancer hospital may experience as it implements new treatment modalities and accepts the sickest patients for treatment. The reasonable cost methodology, we believe, provides such flexibility within the overall constraints of the rate-of-increase control, and also provides for exceptions or adjustments where changes in cost affect the rate-of-increase of costs. There would be no such flexibility under the type of system recommended by the commenter. Therefore, we have not adopted the suggestion.

Comment—Some commenters questioned what was meant by the requirement that a hospital demonstrate "... that the entire facility is organized primarily for treatment of and research on cancer," and how we will determine whether this criterion is met. Others suggested that oncology units within acute general hospitals and at university-based medical centers be included in the exceptions process.

Response—If a cancer research and treatment center meets the other two criteria (that is, it was recognized by the National Cancer Institute as a Comprehensive Cancer Center or a Clinical Cancer Research Center as of April 20, 1983 and at least 50 percent of its total discharges have a principal diagnosis that reflects a finding of neoplastic disease), the third criterion will be met if the facility is not a subunit of a large acute general hospital. That is, oncological subunits of acute general hospitals and university-based medical centers will not meet this criterion and thus will not qualify for an exception.

We do not believe that Congress intended that oncological subunits be excepted from the prospective payment system because section 1886(d)(5)(C)(iii) specifically refers to "*hospitals* involved extensively in treatment for and research on cancer" (emphasis added). Congress did not mention subunits in relation to cancer hospitals, whereas it clearly excluded from the prospective payment system both psychiatric and rehabilitative units of general hospitals as well as hospitals devoted to psychiatric or rehabilitative care. Had Congress wished to make special provision for oncological subunits, clearly it could have done so. In addition, the language defining the exceptions or adjustments contains an explicit qualification directing appropriate exceptions and adjustments to those hospitals which are involved *extensively* in cancer research and treatment. We believe the qualification present in the law reflected an appropriate concern for certain hospitals which limited their admissions to cancer and would not experience a diverse range of both high and low cost cases. The exception has been structured to recognize that hospitals primarily devoted to cancer care do not usually admit a full range of patients and so may have a limited opportunity to take advantage of a main feature of the prospective payment system, the ability to obtain additional revenue in some DRGs to offset costs in other DRGs. However, a hospital with a cancer subunit would still be able to take advantage of this feature. To the extent that the hospital incurs costs in the cancer subunit that are greater than the DRG payments for the patients treated in that subunit, it will be able to offset these costs with revenue it obtains from discharges in other units of the hospital where its costs are less than the DRG payments. Accordingly, we are revising § 405.476(f)(1)(ii) to state that we will consider an entire facility to be organized primarily for treatment of and research on cancer if it is not a subunit of an acute general hospital or university-based medical center, and if it meets the other two criteria for qualification as a cancer hospital.

D. Referral Centers (§ 405.476(g))

Section 1886(d)(5)(C)(i) of the Act provides that the Secretary take into account the special needs of referral centers. To be considered as a referral center, a hospital must be a short term acute care hospital with a provider agreement in effect under 42 CFR Part 489 to participate in the Medicare program; and

- Not be located in a MSA or NECMA and have at least 500 beds (as that term is defined in section 2510.5 of the Provider Reimbursement Manual); or
- Have a patient population such that at least 60 percent of all Medicare patients reside out-of-State or more than

100 miles from the hospital (whichever is more stringent) and at least 60 percent of all services received by Medicare beneficiaries must be provided to Medicare beneficiaries residing out-of-State or more than 100 miles from the hospital.

For rural hospitals with 500 or more beds, we determine prospective payment rates on the basis of the urban, rather than rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index.

For rural referral centers with less than 500 beds, and for referral centers located in urban areas, there is no adjustment for the first year of the transition period.

Comment—We received a number of comments on the criteria for identifying referral centers. The comments received were uniformly critical of the criteria, emphasizing that the policy in the regulations was so restrictive that hospitals could not qualify. The comments reflected a particular concern for fairly large rural hospitals (100–400 beds) which served as a central source for specialized care. A major share of the comments focused on the inadequacy of a mileage/distance measure as a test for determining whether a hospital was engaged in treating referrals.

Response—In the interim final rule, we identified certain criteria that we believe would establish a hospital as a referral center as contemplated in the law. Since the law specifies "regional and national" referral centers, we concluded that Congress intended that such referral centers would serve a substantial number of patients from a very broad geographical area.

The present criteria were constructed based on our best understanding from limited source materials as to the purpose for the provision which we believe is to provide special recognition for hospitals which draw patients from widely diverse geographical locations and afford the broader range of highly sophisticated services. For this reason we specifically encouraged comment on the criteria in the interim final rule. Given the scarcity of any material on identification of referral centers, we wanted to obtain public comment and suggestions as to ways in which the criteria could be modified.

As a result of the comments received, we agree that the criteria at § 405.476(g) should be revised. As pointed out by commenters, we believe that we should adopt criteria that give weight to the actual fact of referral from other hospitals or physicians. Accordingly, we are eliminating the present criteria with respect to out-of-State status and mileage. We are adopting a new criterion that identifies a referral center as being a hospital which obtains a certain proportion (that is, at least 50 percent) of its patients from other hospitals *or* from physicians *not* on the staff of the hospital. We believe that this criterion establishes a measure of those hospitals that treat the *sickest* patients, since presumably it is those patients that will be sent to the hospital by other hospitals and physicians. (The notion of a referral center being a hospital that treats the "sickest" patients was specifically mentioned in the congressional debates on this provision as being a key characteristic of a referral center (Congressional Record, Vol. 129, No. 34, March 17, 1983. S3224.).) In addition, we believe 50 percent to be an optimal figure, since it is high enough to exclude those hospitals which do not receive substantial numbers of referrals from other hospitals or physicians. Also, the percentage is not so high as to preclude hospitals from qualifying as a referral center.

We are also substituting a lower mileage criterion. Thus, at least 60 percent of the Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services the hospital furnishes to beneficiaries must be furnished to beneficiaries who live more than 25 miles from the hospital. We believe a mileage criterion that provides a margin for patient residence is still needed in order to conform with congressional intent that referral centers should serve a substantial number of patients outside the local area. However, lowering the criterion to "more than 25 miles" will enable hospitals to qualify that are truly referral centers, but which because of population dispersion in parts of the country, will obtain most of their patients from areas relatively close to the hospital. Also, we believe it is still necessary to incorporate the criterion of "60 percent of all services," which permits a provider, for example, to consider 60 percent of the aggregate inpatient hospital charges in lieu of itemized services. This criterion was established in order to preclude a hospital from qualifying as a referral center because it obtains referred patients only in one or two specialties, since that is the only hospital in the area offering those specialties. We do not believe this type of hospital is what Congress intended as a referral center, since it does not furnish extraordinary medical and surgical care to the sickest and most resource intensive patient populations, but merely particular services for those who must go to that hospital for particular services because no other hospital in the area offers them.

Comment—Several commenters requested clarification as to which wage index should be used in determining the prospective payments for rural referral centers. Under the regulations, the prospective payments for these hospitals are computed using the urban DRG adjusted standardized amounts. One commenter suggested that we use the wage index of the MSA closest to the hospital.

Response—Referral centers located in rural areas and having 500 or more beds must use the rural wage index applicable to that hospital. This is explicitly stated in § 405.476(g)(2). Using the wage index of the MSA closest to the hospital would pose difficulties in administration, since in many cases it would be difficult to determine which MSA was closest to the hospital. Also, and more importantly, applying an urban wage index makes an unwarranted assumption that these hospitals are entirely divorced from their local environments. The adjustment provided in the regulations recognizes that because of the type and sophistication of their services, we would expect that the standardized costs of very large rural hospitals would be similar to the costs of large urban hospitals. However, we would not expect that in all cases the wage scales paid by the large rural hospitals would be on a par with large urban hospitals. Rather, we would expect that much of the labor force of large rural hospitals would be drawn from the local area, and that therefore the wage scale would be sensitive to local economic conditions. If a particular institution has high wages, this may mean that it is paying wages that are unreasonable in view of the local labor market. Applying an urban wage index to the standardized costs of that institution would result in our recognizing the unreasonable wage scale. We do not believe this is what Congress intended when it established the prospective payment system and included an area wage adjuster. Accordingly, we have not adopted the recommendation that we adjust the standardized cost of rural referral centers by using the wage index of the closest MSA.

Comment—Several commenters observed that the interim final rule did not address definitively the issue of the payment adjustment that would be appropriate for rural referral centers with less than 500 beds, and for referral centers located in urban areas.

Response—As we indicated in the interim final rule (48 FR 39783), we were

particularly interested in receiving comments on our referral center criteria. While we believed at that time that our criteria were appropriate, we were also cognizant of the fact that there was no generally accepted and recognized definition of referral centers. We stated in the interim final rule that during the second six months of the first transition year, we would analyze all data submitted during the first six months of the first transition year by hospitals seeking referral center status to determine which payment adjustments may be appropriate beginning with the second transition year.

Since there is no generally accepted definition of referral centers, it is not possible at this time to determine which payment adjustments are appropriate. This is because we will not know how referral center costs are atypical when compared to other hospitals until we have an opportunity to examine and analyze in detail the data pertaining to those hospitals (other than large rural hospitals) which apply for referral center status. Only when we have completed an analysis will we be able to determine in what ways referral centers are atypical when compared to other hospitals with respect to their costs, and to then develop an appropriate adjustment.

E. Hospitals with Disproportionate Numbers of Low Income Patients or Medicare Beneficiaries or Both

Section 1886(d)(5)(C)(i) authorizes adjustments to the propsective payment rates in consideration of the special needs of certain classes of hospitals that incur additional costs because they serve a significantly disproportionate number of low income patients or Medicare Part A beneficiaries or both. We did not make special provisions for these hospitals in the regulations (§ 405.476) because our current data do not show that an adjustment is warranted.

Comment—A number of commenters stated that hospitals with disproportionate numbers of low income patients or Medicare beneficiaries or both should receive special treatment because of the excess cost of providing health care to this group resulting from additional staffing, supplies and lengths of stay. The commenters believe that a review and analysis of bad debt and charity cases should be undertaken in addition to the studies of Medicaid recipients which may vary from State to State.

Response—We have previously responded to this issue in the following documents:

Interim final notice on Schedules of Limits on Hospital Inpatient Operating Costs (47 FR 43296);

Final notice on Schedule of Limits on Hospital Inpatient Operating Costs (48 FR 39426); and

Interim final rules on Prospective Payment for Medicare Inpatient Hospital Services (48 FR 39752).

We direct you to our responses published in these documents for a complete discussion of the reasons for our decision not to make special provision in such cases.

In summary and after a careful review of all comments received, we repeat that the data now available to us do not indicate that Medicare cost is generally affected by disproportionate numbers of low income patients or Part A beneficiaries. Therefore, there is not a sufficient basis for providing for an exception or adjustment at this time for hospitals that treat these patients. These hospitals may have a problem with bad debts. However, under the Act and long-standing regulations, Medicare is prohibited from reimbursing for bad debts other than uncollectible deductible and coinsurance amounts attributable to Medicare beneficiaries. This part of the law was not altered by Pub. L. 98–21.

We are continuing to examine this issue further to determine what action may be appropriate with respect to these types of hospitals. After consultation with industry representatives, we have agreed to an independent study of our data. As of this date, the study is still ongoing. Preliminary analysis of 487,706 1980 discharges across the nation's large urban hospitals is yielding results which differ greatly from other studies. Our preliminary work shows that:

- Large urban non-public general hospitals have an average length-of-stay for their Medicare patients that is .63 days greater than the average length-of-stay for Medicare patients at a public general hospital.
- Nineteen out of the 20 most common DRGs at large urban hospitals had greater Medicare average lengths-of-stay at the non-public general hospitals than at the public general hospitals.
- For the DRGs where discharge data is available, the majority of the DRGs have a longer Medicare average length-of-stay at the large non-public general urban hospitals compared to the public general hospitals.
- The percentage of Medicare average length-of-stay long-stay cases to hospital discharges is greater at the large non-public general urban hospitals compared to the public general hospitals. This conclusion was consistent across five separate definitions of long-stay case boundaries.

Our preliminary data analysis is using 1980 data from MEDPAR, the Medicare Cost Reports, the Office of Civil Rights hospital survey and other previously generated HCFA data such as the Medicare Case-Mix Index, the Bureau of Labor Statistics hospital wage index and the ratio of interns and residents to beds. These data are the best available data we have to conduct our analysis. We will evaluate the results once the final report is completed. If this evaluation shows there is a need and basis for an adjustment, we will take appropriate action.

Comment—One commenter suggested that the study we are conducting should not examine public general hospitals as a group, but rather those hospitals (both public general hospitals and private hospitals) which have a disproportionate number of low-income patients.

Response—Our current public general hospital analysis has examined a hospital's percentage of Medicaid admissions as an indicator of its proportion of low-income patients. This is the best surrogate variable available to use as an indicator of a hospital's proportion of low-income patients. Our current study results to date show that a significantly higher percentage of Medicaid patients are served by the public general hospitals compared to the other large urban hospitals. This finding leads us to believe that the public general hospitals as a group treat a higher proportion of low-income patients than do the private hospitals. We have not pursued a study which specifically examines low income patients independent of their Medicaid status because we do not have a measure of patients' incomes.

Comment—One commenter stated, that in their study, hospitals serving disproportionate numbers of low-income patients or Medicare beneficiaries have the following characteristics:

- Municipal hospitals have a greater concentration of more complex cases attributable to the variety of diagnoses within DRG's.
- Voluntary hospitals perform more surgery; however, the performance of surgery is not automatically associated with a higher level of complexity.
- A significantly greater proportion of outlier admissions occur through public hospital emergency rooms and these may be associated with a significantly larger average length-of-stay.
- Cost alone may be inadequate to measure the special need of low-income

patients. Additional focus is required on the needs of these patients, not merely the costs.

Response—Contrary to this commenter's study, preliminary findings from our current analysis indicate the following:

- Our 1980 national data for large urban hospitals has shown that the Medicare Case-Mix Index (MCMI) at the public general hospitals is 1.114. The MCMI at the other non-public general hospitals is 1.111. This difference is slight and was not statistically significant.
- Our study of large urban hospitals using 1980 data concludes that the non-public general hospitals have a longer Medicare average length-of-stay than the public general hospitals do. Our data show that these non-public general hospitals had an average length-of-stay of 11.59 days for their Medicare patients compared to the average length-of-stay for Medicare patients of 10.96 days at the public general hospitals. Our data also show that Medicare length-of-stay long-stay cases represent a higher percentage of Medicare discharges at the non-public general hospitals compared to the public general hospitals.
- The study is also looking at Medicare average cost per case and Medicare average length-of-stay. However, other "need" variables such as a hospital's percentage of patients having surgery, and the percentage of a hospital's inpatients admitted from the emergency room are being examined descriptively. As many low-income patient resource need variables as are available are included in our current research.

F. Kidney Acquisition Costs Incurred by Renal Transplantation Centers (§ 405.476(h))

Kidney acquisition costs incurred by renal transplantation centers (RTCs) are treated as an adjustment to prospective payments. The payments to a hospital are adjusted in each cost reporting period to compensate hospitals for reasonable expenses of kidney acquisition, and costs of this type will not be included in determining the prospective payment rates.

Kidney acquisition costs have been removed from the standardized amounts and from cost weight for DRG 302 (Kidney Transplant).

We received five favorable comments on our adjustment for renal transplantation centers to remove the estimated net expenses associated with kidney acquisition and are, therefore, making no changes to the final rule.

IX. APPEALS

The interim final rule provided that disputes concerning the prospective payment system will generally be resolved under the administrative and judicial appeals procedures and authorities already established under the Medicare Program.

A. Beneficiaries

We explained in the interim final rule that the procedures described in Subparts G and H of 42 CFR Part 405 for beneficiary appeals will remain in effect under the prospective payment system. Also, we noted that the waiver of liability provisions of section 1879 of the Act (§§ 405.330–405.332 of the regulations) continue to apply and that under section 1866(a)(1)(G) of the Act, hospitals receiving payment under the prospective payment system cannot charge beneficiaries for inpatient hospital services furnished when payment for the services is denied under section 1886(f)(2) of the Act (unnecessary admissions or inappropriate practices).

We did not receive any comments on beneficiary appeals under the prospective payment system. Accordingly, we have made no changes to the regulations text.

B. Hospitals

In the interim final rule, we dealt with three areas of hospital appeal procedures that are necessary to accommodate the prospective payment system. These areas involved: (1) Provider Reimbursement Review Board procedures, (2) appeals relating to DRG coding, and (3) appeals relating to outlier claims.

We received several comments from hospitals, professional associations, individual physicians, and law firms concerning these matters. As discussed below, the issues raised by the commenters involve a variety of concerns about appeals procedures and matters that may be appealed.

1. Provider Reimbursement Review Board (the Board)

Comment—One commenter asked that we clarify whether providers in group appeals may join issues that are not common to all in the group. Another commenter believes that § 405.1837(b) of the regulations should be amended to eliminate the requirement that a provider file a separate appeal and separately meet the requirements for Board review, when some issues are not common to the other providers in the group. The latter commenter recommended that this section merely require the provider to identify any separate issues in the group appeal.

Response—Section 1878 of the Act and the implementing regulations in § 405.1837 preclude a provider in a group appeal from joining issues not common to the other providers in the group. The law and regulations provide for a group appeal before the Board only with respect to matters that involve a common question of fact or interpretation of law, regulations, or HCFA Rulings. This language was in effect prior to the interim final rule published on September 1, 1983, and we believe that it clearly prohibits a joinder of issues not common to all providers in a group appeal.

Section 1878 of the Act also requires that the amount in controversy, which determines Board jurisdiction, be satisfied for each hearing granted by the Board. Thus, when a group appeal is permitted or required and includes a provider that also wishes to file an appeal on issues not common to the others in the group, the appeal of these additional issues constitutes an independent hearing request. Accordingly, the amount in controversy requirement of $10,000 for a Board hearing must be met separately and independently, without any consideration of the group appeal issue dollar amounts.

Comment—One commenter stated that it is not clear from the definition of "intermediary determination" in § 405.1801 whether the initial determination of an exclusion or adjustment is to be made by the intermediary. If that is the intent, the commenter believes the regulations should state that intermediaries have the function of determining the status of a hospital as this determination will affect the amount of reimbursement the hospital is to receive.

Response—In the process for determining a hospital's status under the prospective payment system, a hospital could certify that it meets the criteria for exclusion from the system. If a hospital seeks to be excluded, the determination of status is made by the HCFA regional office serving the State in which the hospital is located. For all other cases, the determination of status is made by the hospital's fiscal intermediary. Regardless of the authority making the determination of hospital status, this determination applies to the intermediary's determination of the total amount of prospective payment due the hospital for the applicable cost reporting period.

Comment—One commenter believes that certain aspects of the

determinations made on individual medical bills by medical review entities (that is, a fiscal intermediary, a peer review organization (PRO), or a Professional Standards Review Organization (PSRO), depending on the circumstances) under the prospective payment system are more properly within the jurisdiction of the Board. The commenter suggested that § 405.1801 be revised to clarify that all determinations on bills would be considered intermediary determinations and appealable to the Board, regardless of the authority making the determination. The commenter further stated that if an issue falls within the jurisdiction of the PRO, that particular issue should be sent by the Board to the PRO for review and decision. Also, for cases involving medical issues not within the PRO's jurisdiction, the Board should secure an advisory PRO opinion.

Response—We believe that bill review activities, such as those discussed in paragraphs B.2. and B.3. below, are consistent with the jurisdiction and decision-making authority of the medical review entities (PROs, PSROs, and fiscal intermediaries). The determinations required of the medical review entities (for example, those concerning outlier cases) relate to medical necessity, appropriateness, or coverage determinations on individual bills submitted for payment. These determinations are not within the jurisdiction of the Board.

Comment—One commenter asked if the Board must always hear an appeal if a hospital meets the required conditions for appeal.

Response—In the preamble of the interim final rule (48 FR 39784), we stated that hospitals receiving payment under the prospective payment system may obtain a Board hearing if specified conditions are met. Our use of the word "may" in the preamble was consistent with the statutory language in section 1878 of the Act. However, the regulations in § 405.1835 clearly establish that a provider has a right to a hearing when the prescribed requirements, including the requirement that the provider must file a written request for a hearing, are met. We believe the regulations correctly interpret the law. Accordingly, the Board must hear the appeal if the provider meets all the conditions.

Comment—One commenter stated that § 405.1839 does not clearly explain how the amount of controversy is to be computed. This commenter also questioned the need to identify target rate reimbursement separately from other reasonable cost reimbursement and suggested a separate paragraph to explain prospective payment in greater detail.

Response—We agree and have revised the final regulations to remove all references that apply to and separately identify hospitals receiving payment for inpatient hospital services under the reasonable cost subject to the target rate system. Thus, all providers that do not receive payment under the prospective payment system are now included in the rules applicable to reasonable cost reimbursement. The changes are as follows:

§ 405.1801(a)—definition of "intermediary determination" revised
§ 405.1801(b)(1)—revised
§ 405.1801(c)(1)—revised
§ 405.1801(c)(3)—deleted
§ 405.1803(a)(2)—deleted
§ 405.1809(a)—revised
§ 405.1839(a)(2)—revised
§ 405.1839(b)(2)—revised

We revised § 405.1839 to explain in a separate paragraph, how the amount in controversy is to be computed for providers paid under the prospective payment system.

2. Errors in DRG Coding

As we stated in the preamble of the interim final rule, if errors in the fiscal intermediary's initial DRG coding occur, the hospital may resubmit the billing data for review with the revised coding for the discharge. This review would appropriately be conducted by the fiscal intermediary.

When a medical review entity (PRO, PSRO, or fiscal intermediary), upon DRG validation, determines that an error has occurred in the coding of a DRG, it may revise the DRG code accordingly. If the hospital disagrees with the revised DRG code determined by the medical review entity, the hospital may request the medical review entity to review its determination.

Comment—One commenter sees a potential conflict between the requirement that prohibits retroactive adjustments to a hospital's base year costs and the appeal allowed to the provider if an error occurs in the DRG classification assigned to an individual patient's case.

Response—We see no conflict between the cost requirement and the provider's right to question whether the proper DRG code was assigned to an individual patient's case.

3. Outlier Claims

A hospital's claim for outlier payments is subject to review by a PSRO or PRO (or in the absence of a peer review organization, by the hospital's fiscal intermediary). The reviewing entity makes appropriate coverage determinations. The PSRO, PRO or intermediary examines outlier cases and denies claims for additional payment for those days of care or services provided in the outlier case that are not covered. The provider may challenge an adverse coverage determination under the provisions listed in § 405.472(e)(2). If the medical review entity is a PRO, § 405.472(e)(2)(i) is applicable and if the entity is a PSRO, § 405.472(e)(2)(ii) applies. If the medical review entity is a fiscal intermediary, § 405.472(e)(2)(iii) is applicable.

A provider may not appeal the coverage determination beyond the reconsideration stage. However, if items or services are excluded from coverage based on a determination that the services are not medically necessary, constitute custodial care, or are excluded under section 1154(a) (1) and (2) of the Act, and a determination is made under section 1879 of the Act concerning waiver of liability, the section 1879 determination is appealable. Under these circumstances, if we have determined that the beneficiary will not pursue his or her appeal rights, the provider may request a reconsideration, a hearing before the Office of Hearings and Appeals of the Social Security Administration, and a judicial review as part of the appeals process authorized under §405.704(b)(12) of the regulations. The waiver of liability regulations are found in §§ 405.330–405.332.

C. Other Comments on Appeals

We also received various comments on other aspects of the prospective payment system that relate to appeals procedures. One commenter stated that a hospital experiencing atypical circumstances can undergo temporary financial difficulty if the circumstances cause the hospital's current costs to compare unfavorably with the regional or national DRG rates, or the hospital's own base year costs. The commenter recommended that hospitals be allowed to receive temporary relief for the atypical circumstances through the Board or judicial review. The commenter recommended that the appeal rights should not be restricted beyond the conditions contained in the Social Security Act, and the appropriate adjustment provided to a hospital based on its individual circumstances be evaluated by the Board or the courts. Another commenter stated that § 405.1839 does not clearly explain the issues that can be appealed.

One commenter believes that the final rules should include an appeal

mechanism for denials of exclusion from the prospective payment system (section 1886(d)(1)(B) of the Act).

Another commenter believes that providers should be allowed to appeal denials of exclusion to the Board immediately after they are notified of the denials. The commenter recommended that an adverse determination regarding excluded status be considered an intermediary determination and any adverse determination concerning exclusion either be deemed to involve $10,000 or more, or not be subject to that requirement. The commenter suggested that, as an alternative, all adverse determinations could be reviewed under certification determinations and appeals procedures in 42 CFR Part 405, Subpart O, to provide an expeditious forum for resolving disputes.

A commenter stated that the prohibition against administrative or judicial review of an established DRG might be challenged successfully in a court of law if the prohibition is found to be arbitrary and unreasonable.

Another commenter stated that the definition of intermediary determination in § 405.1801 does not seem to cover determinations of the hospital-specific rate. The commenter believes this should be an appealable issue and that the right of appeal should begin immediately upon receipt of the determination. The commenter believes that this is especially important because the decision impacts only on a prospective basis. The commenter stated further that although there would be a problem in determining the amount in controversy and the process might be exposed to a two-stage appealable review, administrative problems should not be used as a basis for denying hospitals an effective right to contest the determination.

One commenter stated that the application of a combination of various regulations sections in 42 CFR Part 405, Subpart R permit a hospital subject to the prospective payment system to appeal the total amount due for a cost reporting period. The commenter believes that without further clarification the regulations could be interpreted to mean that a hospital could appeal the determination of the hospital-specific portion of payment due for all cases discharged during the year. The commenter noted § 405.474(b)(1)(iv) states that the intermediary's estimate of base year costs is final and may not be changed except for limited adjustments and suggested that this issue be addressed in the final rule.

A commenter asked if the notice reflecting the intermediary's determination of the base year costs constitutes an appealable intermediary determination. The commenter believes that base year cost determinations meet the definition for an intermediary determination as defined in §§ 405.1801(a)(iii) and (iv). The commenter recommended that § 405.1801 be revised to clarify that a hospital may appeal the base year cost determination directly to the Board.

Finally, several commenters believe that hospitals should be allowed to appeal perceived adverse effects of the wage index and the case-mix index to the Board and the Courts.

Response—Disputes that arise concerning prospective payments will be resolved under the administrative and judicial review procedures established in section 1878 of the Act and the Medicare regulations at 42 CFR Part 405, Subpart R. Under these procedures, a provider that is dissatisfied with the intermediary determination of the total amount of the program reimbursement due for a cost reporting period (as contained in a "Notice of Amount of Program Reimbursement" issued after the close of the period) may request a hearing before an intermediary hearing officer or panel of hearing officers. The amount in controversy must be at least $1,000. A provider may request a hearing before the Board if the amount in controversy is $10,000 or more. The request for hearing must be filed within 180 days from the date of mailing of the notice reflecting the intermediary's determination.

Under the law and regulations, a provider who requests and has the right to a hearing by the Board may obtain both Board and judicial review of disputes involving the applicable provisions of title XVIII of the Act, implementing regulations, HCFA Rulings, or program instructions that govern the intermediary's actions in determining the total amount of program reimbursement due the provider. In general, the provider may dispute both factual and legal issues arising from the intermediary's application of the governing law, regulations, HCFA Rulings, or program instructions. The provider may also raise questions concerning the validity of the governing law, regulations, or HCFA Rulings if the provider wishes to challenge our legal position in court. On questions relating to validity, the law and regulations (see § 405.1842) allow a provider to request and obtain expedited Board proceedings.

Additionally, under current regulations at § 405.1873, the Board decides all questions relating to its jurisdiction to grant a hearing. A Board decision denying jurisdiction is a "final decision" that may be reviewed by the Administrator of HCFA (§ 405.1875). If a provider is dissatisfied with the decision of the Board or the administrator (where there is a decision affirming the action of the Board), the provider may request judicial review of the final agency decision (§ 405.1877).

We believe these procedures are consistent with the requirements of the law. The procedures permit providers to dispute those matters with which they are dissatisfied including matters described in the above comments. Accordingly, we believe the rights of providers, in this respect, are fully protected.

D. Entire Patient Stay

As we stated in the interim final rule (48 FR 39784–39786), the waiver of liability regulations found at §§ 405.330–405.332 will apply to a denial of an entire patient stay as well as to a denial of a day outlier or cost outlier that is based on a determination that the services are not medically necessary or constitute custodial care. Waiver of liability considerations will also apply if a PSRO, PRO, or fiscal intermediary finds that services are excluded under section 1154(a)(1) and (2) of the Act. We received no comments regarding this aspect of the appeals process.

X. CHARGES TO BENEFICIARIES

We stated in the interim final rule that, generally, a hospital paid under the prospective payment system must bill its intermediary under Medicare Part A for all inpatient hospital services furnished to a beneficiary. With certain exceptions, a hospital cannot bill Medicare Part B for inpatient hospital services if it receives payment under the prospective payment system. Further, a hospital cannot charge a beneficiary for services covered under the prospective payment system. However, Medicare Part A beneficiaries are still responsible for payment of deductible and coinsurance amounts.

We did not intend to have the interim final rule result in any new liability to beneficiaries or to impose new costs on hospitals because of the provision of medically unnecessary or other noncovered services. The revisions that we have made in these final regulations are designed to clarify when charges may be made and also to retain our original intent that beneficiary liability not change under the prospective payment system. We received several comments from hospitals, professional associations, individual physicians and law firms about these provisions. The

major comment and issue raised is as follows.

Comment—Several commenters requested that the regulations be revised to permit a hospital or utilization review committee to notify a Medicare beneficiary that continued hospital stay is not medically necessary, and to permit billing the beneficiary for custodial care and medically unnecessary services, prior to the outlier threshold. The commenters believe that hospitals must be able to exercise this authority as early as possible to control patient length-of-stay and hospital costs under the prospective payment system. Some of these commenters also believe, however, that the regulations should not preclude a patient from paying the hospital for a lower level of care that is needed, when the patient is willing to pay.

Response—We agree and have revised § 405.472(b)(1). We have also included a number of safeguards to protect the beneficiary against the possibility that hospitals might abuse the procedure by characterizing medically necessary services as noncovered or by using the procedure in a harsh and abrupt manner. The danger of such abuse arises from the fact that noncovered care rendered prior to the outlier threshold, during a covered stay, does not result in a corresponding reduction of Medicare payment as it does under the cost reimbursement system. The details of this new procedure and the safeguards associated with it are described below in the Statement of Permissible Charges to Beneficiaries.

For ease of understanding, further comments on this issue and our responses (written in the light of our revised policy) follow this summary statement.

Statement of Permissible Charges to Beneficiaries

We have revised the regulations pertaining to the permissible charges to beneficiaries. The following discussion summarizes the effect of these changes.

A hospital furnishing inpatient hospital care for which payment may be made under the prospective payment system may charge beneficiaries only for the following:

1. The applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87.

2. Items and services, furnished at any time during a covered stay, that are excluded from coverage on some basis other than the requirements at § 405.310(g) (custodial care), § 405.310(k) (medically unnecessary items and services), § 405.310(m) (nonphysician services furnished to hospital inpatients by other than the hospital or a provider or supplier under arrangements made by the hospital), § 409.61 (exhaustion of benefits), or Subpart A of Part 408 (nonentitlement to Part A).

3. Items and services excluded from coverage on the basis of § 405.310(g) (custodial care) or § 405.310(k) (medically unnecessary items and services) and furnished by the hospital after all of the following conditions have been met:

a. The hospital (acting directly or through its utilization review committee) determines that the beneficiary no longer requires inpatient hospital care (including an SNF level of care considered unavailable under Medicare criteria outside of the hospital).

b. The attending physician agrees with the hospital determination in writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the medical review entity. Concurrence by the medical review entity in the hospital's determination will serve in lieu of the physician's agreement.

c. The hospital (acting directly or through its utilization review committee) notifies the beneficiary (or person acting on his or her behalf) in writing that—

(1) In the hospital's opinion, and with the attending physician's or the medical review entity's concurrence, the beneficiary no longer requires inpatient hospital care;

(2) Customary charges will be made for continued hospital care beyond the second day following the date of the notice;

(3) The medical review entity will make a formal determination on the validity of the hospital's finding if the beneficiary remains in the hospital after he or she is liable for charges;

(4) The determination of the medical review entity made after the beneficiary received the purportedly noncovered services will be appealable by the hospital or the beneficiary under the appeals procedures that apply to medical review entity determinations affecting Medicare Part A payment; and

(5) The charges for continued care will be invalid and refunded if collected by the hospital, to the extent that a finding is made that the beneficiary required continued care beyond the point indicated by the hospital.

d. If the beneficiary remains in the hospital after the appropriate notification, and either the hospital, the physician who concurred in the hospital determination on which the notice was based, or the medical review entity subsequently finds that the beneficiary requires an acute level of inpatient hospital care, the hospital may not charge the beneficiary for continued care until the conditions for the charges again meet the required criteria.

4. Diagnostic procedures and studies, and therapeutic procedures and courses of treatment (for example, experimental procedures) that are excluded from coverage under § 405.310(k) (medically unnecessary items and services), even though the beneficiary requires continued inpatient hospital care, and that are furnished after the beneficiary (or the person acting on his or her behalf) has acknowledged in writing that the hospital (acting directly or through its utilization review committee and with the concurrence of the intermediary) has informed him or her that—

a. In the hospital's opinion, which has been agreed to by the intermediary, the items or services to be furnished are not considered reasonable and necessary under Medicare;

b. Customary charges will be made if he or she receives the items or services;

c. The intermediary will make a formal determination on the validity of the hospital's finding if the beneficiary receives the items or services;

d. The determination of the intermediary is appealable by the hospital or the beneficiary under the appeals procedure that applies to determinations affecting Medicare Part A payment; and

e. The charges for the services will be invalid and, to the extent collected, will be refunded by the hospital if the services are found to be covered by Medicare.

5. Customary charges for noncovered items and services furnished on outliers days (as described in § 405.475) for which payment is denied because the beneficiary is not entitled to Medicare Part A or his or her Medicare Part A benefits are exhausted (if payment is considered for outlier days, the entire stay is reviewed and days up to the number of days in excess of the outlier threshold may be denied on the basis of nonentitlement to Part A or exhaustion of benefits, and in applying this rule, the latest days will be denied first); and

6. The customary charge differential for a private room or other luxury service that is more expensive than is medically required and is furnished for the personal comfort of the beneficiary at his or her request (or the request of the person acting on his or her behalf).

Under the above rules, a hospital receiving payment under the prospective payment system may notify the beneficiary that he or she no longer requires inpatient hospital care, and will have to pay for continued care, only if the attending physician or medical review entity concurs. The hospital may notify a beneficiary who requires continued inpatient hospital care that a diagnostic procedure or study or therapeutic procedure or course of treatment is not considered reasonable and necessary under Medicare guidelines, and that the beneficiary will be liable for the charges, only if the intermediary concurs. (Procedures will be established to enable the hospital to obtain expeditious medical review entity or intermediary concurrence, as necessary.) If the beneficiary receives services that the hospital has notified the beneficiary were not medically necessary or constitute custodial care, the Medicare program will make a determination regarding the coverage of the services, and such determination will be appealable by either the hospital or the beneficiary under the usual appeals procedures regarding medical necessity issues affecting Medicare payment.

We believe that the safeguards described above will in most cases provide adequate protection to beneficiaries against a hospital characterizing covered care as noncovered (and thereby causing the premature discharge of the patient or other withholding of covered care or subjecting the beneficiary to charges for covered care). As additional protection against these abuses, we have redesignated § 405.472(b)(2) as § 405.472(b)(3) and added a new paragraph (b)(2) to provide that the medical review entity or intermediary may review any cases in which the hospital notifies the beneficiary (or the person acting on his or her behalf) of the noncoverage of the services in accordance with § 405.472(b). The hospital must identify such cases to the medical review entity or intermediary in accordance with HCFA instructions. In practice, it is likely that this review will be done on a sample basis. Particular emphasis will be placed on cases where the beneficiary is discharged before the stay reaches the average length of stay for the particular DRG. If this review together with an analysis of the routine review by the medical review entity or intermediary of cases in which the beneficiary elects to receive noncovered care reveals that the hospital frequently characterizes covered care as noncovered or improperly induces beneficiaries to request noncovered care, the Office of the Inspector General, Department of Health and Human Services is authorized to impose sanctions against the hospital under sections 1156(b)(1) and 1862(d)(1)(C) for providing poor quality care or under section 1886(f)(2) for engaging in inappropriate medical and other practices with respect to beneficiaries. Such sanctions might include requiring the hospital to submit to prereview by the medical review entity, all notices of noncoverage the hospital planned to issue to beneficiaries, or exclusion from the Medicare program.

Further discussion of comments and responses follows:

Comment—One commenter stated that under the reasonable cost method of reimbursement, a patient could be billed for further hospitalization if the utilization review committee found that the patient's admission was not warranted. The commenter asked if a patient can be billed in the same manner under the prospective payment system.

Response—If the utilization review committee finds that the beneficiary's admission was unwarranted, the hospital generally can bill the beneficiary for his or her continued stay after due notice (as was permitted under regulations prior to the prospective payment regulations).

Comment—One commenter asked that the regulations be revised to allow hospitals to bill the State Medicaid program for intermediate care facility (ICF) administratively necessary days, when the patient is a dual Medicare/Medicaid enrollee. The commenter stated that the current prohibition against doing so imposes financial penalties on hospitals that are not able to place patients in nursing homes or other facilities due to a shortage of beds in the particular community. The commenter also believes that this restriction violates budget neutrality under Pub. L. 97-248 because hospitals are precluded payment for services previously allowed.

Response—A provider cannot, consistent with its Medicare participation agreement, charge third parties such as Medicaid for services for which it cannot charge the beneficiary. The hospital can, however, charge a beneficiary for providing an ICF level of care after giving notice to the beneficiary or his or her representative as described in the Statement of Permissible Charges to Beneficiaries. Hence, under these circumstances, the hospital is able to look to the Medicaid program for payment of authorized benefits on the Medicare beneficiary's behalf.

Comment—One commenter believes that the limitation on charges to beneficiaries in § 405.472(b)(1)(iv) should be deleted. This provision requires that charges for items and services representing cost outliers denied because of the absence of medical necessity be limited to what Medicare would pay if the services were viewed as covered. The commenter stated that the beneficiary is responsible for the customary charges for noncovered services, not for the incremental costs. Further, the commenter believes that the charge under § 405.472(b)(1)(iv) would not be known until long after the beneficiary left the hospital, since it would take time for the intermediary to ascertain what Medicare would pay for covered services. The commenter stated that most hospitals would have to rely on the intermediary to tell them what Medicare would have paid had the services representing the potential cost outlier been covered. The commenter believes that the cost of calculating these amounts and communicating them to the patient via hospital billing would be excessive and the hospital would have difficulty attempting collection so long after discharge.

Response—We have revised § 405.472(b)(1)(iv) to permit the hospital to charge its customary charges for medically unnecessary and custodial care subject to appropriate notice to the beneficiary and other safeguards. If medical review by the Medicare program indicates that the hospital has charged for care that is in fact covered, the hospital will be required to make a refund.

Comment—Several commenters believe that hospitals should be able to charge the beneficiary, subject to the waiver of liability provisions, for any noncovered care furnished during the hospital stay and not just for care furnished when the patient no longer requires hospitalization. They believe the regulations should not preclude the beneficiary from obtaining services that are not medically necessary (for example, experimental procedures) by Medicare standards if he or she wishes to purchase them. Otherwise, a severe intrusion into the beneficiary's freedom of choice would occur. This is particularly true when conventional methods of diagnosis or treatment have failed and experimental methods offer the only hope.

Response—We agree that the hospital should be able to charge for medically unnecessary or custodial care furnished after due notice. Such charges should,

however, because of the possibility of abuse, be subject to safeguards more stringent than those of the waiver of liability provisions. These are described in the Statement of Permissible Charges to Beneficiaries.

XI. REVIEW ACTIVITIES

A. Review System Background

The law requires all hospitals to enter into agreements with Utilization and Quality Control Peer Review Organizations (PROs) by October 1, 1984. PROs will be expected to undertake all inpatient hospital medical review. In the interim, PSROs and fiscal intermediaries will perform review in areas until a PRO contract is awarded. In the interim final rule, for convenience, we used the term "medical review agents" to refer to PROs, PSROs, and fiscal intermediaries. In doing so, we inadvertently implied that PROs are agents of the Federal government. Therefore, to correct this impression, we are referring in this preamble to the variety of organizations that will be performing these review functions in the short term as "medical review entities" (MREs).

MREs will be responsible for determining the medical necessity, appropriateness, and quality of care as well as performing DRG validation. As in the past, MREs will be responsible for providing appropriate medical determinations in connection with coverage rules.

The prospective payment legislation did not change Medicare coverage or eligibility rules currently in effect (although it did expand our authority to cover certain services). As a result, requirements relating to exclusions, physician certification and recertification, and national coverage rules continue to be applicable. These rules will continue to be applied by intermediaries with assistance from PROs and PSROs where appropriate.

The review system established in the interim final rule was designed to conform review activities to the nature of the payment process and to the new fiscal incentives created by the payment system as a whole. Our objective was to create a system in which all the medical review and coverage requirements were brought to bear on a claim, balanced appropriately against the claim as a whole, and in which the result is generally either payment or denial of the whole prospective payment.

Accordingly, we revised the physician certification and utilization review requirements to permit these functions, to the extent possible under the law, to occur at points in a stay where payment incentives could lead to inappropriate utilization. Necessarily, these points are at admission and in cases where outlier status has been achieved.

We received comments from hospitals, medical records personnel, consultant groups and MREs. Many of the comments concerned the medical review process and DRG validation.

Comment—A commenter requested that we specify in the regulations that all review by MREs regarding medical appropriateness and necessity must be made only by a physician and on a timely basis (that is, 30 days from billing).

Response—All MREs employ personnel with varying levels of medical education and deploy them in review in a manner that enables issues to be screened by personnel appropriate to the type of decision that needs to be made. We are confident that the system that is in place enables physicians to review cases that require the judgement of physicians and leaves in the hands of nurses and other reviewers such decisions as they may appropriately make. We note, too, that the average billing cycle results in submission of claims 25 days after discharge. PROs and PSROs generally will have reviewed cases before that point and intermediaries will have done so after that point, but, in our view, all reviews will be done timely in relation to the claims process.

Comment—A commenter requested clarification as to whether MREs will use national or local standards of care and how criteria will be established. The commenter is concerned because intermediaries will perform this function prior to PRO implementation when there is no PSRO in the area.

Response—Intermediaries use guidelines for medical review that are based on local practice patterns. The PSRO/PRO review system uses professionally developed and approved criteria. These requirements do not change as a result of this new method of payment for hospital care.

Comment—A commenter stated that intermediaries lack the capability to conduct appropriate medical review and will tend to emphasize cost reductions over quality considerations. The commenter recommended that the regulations be modified to allow review by utilization review (UR) committees until a PRO or PSRO is available to perform medical review.

Response—Until a PRO contract is awarded in an area where there currently is no PSRO, the hospital is required to have a UR committee. This committee is required to perform both utilization review and medical care evaluation studies and quality review. However, the UR committee's affirmative findings remain advisory to the intermediary.

B. Review System Components

1. Admission Review

MREs will review admissions to determine whether inpatient hospital care is medically necessary for treatment of the inpatient's condition. Based on a finding of medical necessity and appropriateness, a prospective payment will be made. If the admission is not medically necessary, no payment will be made (except to the extent permitted under the waiver of liability provisions). MREs will not attempt to deny Medicare payment for individual days or services in a medically necessary stay (except in outlier cases and cases where a noncovered procedure can result in payment of different DRGs, as discussed below).

2. Procedure Review

The MRE will also review operating room procedures and, where the MRE determines that such procedures are not appropriate, will assure that the DRG to which the case is assigned is one that is not weighted for the operating room procedure that was found unnecessary.

3. Admission Pattern Monitoring

We will analyze admission patterns of providers to determine if admission rates have increased or the number of short-stay cases have increased. If either have increased beyond a certain threshold, the MRE will be asked to review the hospital's admissions (on a sample or other basis) to determine if the increased admissions or decreased lengths of stay are medically necessary and appropriate.

Comment—A commenter requested that hospitals be given an opportunity to explain increases in admission rates before MREs perform onsite reviews. Also, the commenter requested that the "predetermined thresholds" and review activities to be performed be specified and published.

Response—These review activities are outlined in instructions to our MREs (see Transmittal Number 308 to Part 2 of the *Intermediary Manual*, HCFA Pub. 13–2). These instructions are in the public domain and are available for scrutiny at Federal Depository Libraries.

4. Outlier Review

Outlier cases will be reviewed in their entirety and the MRE will determine whether the stay as a whole contains noncovered or medically unnecessary or inappropriate days or services (as

discussed below) and may deny outlier payments as a result of their review. Although services and days throughout the stays are reviewed, denials may not exceed the amounts claimed for outlier payments. The basic prospective payment amount will not be subject to reduction as a result of outlier review. In the case of day outliers, denials will be made on a day-by-day basis. In the case of cost outliers, denials will be made on a service-by-service basis as well.

Comment—A commenter noted that § 405.475(c) merely provides that, in day-outlier cases, MREs must review and approve the admission and the number of outlier days. On the other hand, for cost outlier cases, § 405.475(d) specifically provides that MREs must determine that the admission was medically necessary and that all services were medically necessary and delivered in the most appropriate setting. The commenter recommended that § 405.475(c) be revised to clarify that medical necessity is also the reason for the review of admissions and outlier days in day-outlier cases.

Response—We agree with the commenter and have revised § 405.475(c)(2) accordingly.

5. DRG Validation

DRG validation is conducted for the purposes of assuring that cases have been appropriately reported to the intermediary so that a proper DRG can be assigned. The MRE will be required to conduct a review of, at a minimum, a sample of a hospital's discharges and, at the Secretary's discretion, may do so onsite. The purpose of the review is to evaluate the hospital's coding of the case on the claim against the principal diagnosis, secondary diagnosis, and procedures specified by the attending physician and the medical record.

We received several comments on the process and format for physician attestation to the procedural and diagnostic information.

Comment—Several commenters pointed out that the preamble language stated that DRG validation is to be performed every three months while the regulation itself (§ 405.472(d)(2)(ii)) stated that the validation is to be performed every six months.

Response—This was a drafting error and has been corrected in the regulatory text (§ 405.472(d)(2)(ii)) to make clear that DRG validation is to be performed at least every three months using Medicare discharges from the previous three-month period or the period since the last review.

Comment—One commenter stated that there was no reason given for performing DRG validation onsite and requested that the requirement be dropped.

Response—We agree with the commenter that it may not be necessary routinely to visit the provider in order to perform DRG validation; however, we believe that there are many cases where this course of action is advisable. For example, it may well be more efficient than requesting large volumes of medical records and could well facilitate the educational effect of the function by permitting face-to-face interaction with the hospital personnel responsible for coding the bills before submission to the intermediary. Therefore, we have clarified this provision by changing the language in § 405.472(d)(2)(ii) to make it clear that this function need not always be done onsite but that we have the discretion to determine when onsite review will be conducted.

Comment—Numerous comments were received that requested a rationale for requiring physicians to attest to the diagnostic and procedural information. Commenters were particularly interested in the necessity of the attending physician's attestation where numerous physicians were involved in the inpatient's care or in a teaching hospital situation.

Response—We have required that attending physicians attest to the diagnostic and procedural information because the nature of the prospective payment system requires, in order for proper payment to be made, an accurate statement of this information and an accurate transcription of this information on the claim. We believe that it is most appropriate to base our DRG validation on the views of the attending physician and therefore have required that the attending physician create a record of his or her views against which the coding decisions of the hospital may be measured.

Where numerous physicians are involved in an inpatient's care, the attending physician is the coordinator of this activity and is the best person to coordinate the data applicable to the particular inpatient. In the teaching hospital, the intern or resident may prescribe for the inpatient, but the attending physician or chief of the service is ultimately responsible for the inpatient. In those situations, the intern or resident dictates the discharge summary, but the attending physician of record must make appropriate entries in the clinical chart for it to be considered complete. We would require the same; that is, the intern or resident could list or dictate the diagnostic and procedural information, but the attending physician, for example, would have to attest to the validity of the information by signing. Our policy in this respect mirrors the policies of the hospitals themselves which permit many "physicians" to receive training by dealing with the inpatient and ordering care and other items and services, but recognize that the superior knowledge (and thus the ultimate control) of the case is in the hands of the attending physician. We believe that the Medicare program should benefit from the judgement of the physician to the same extent that interns and residents would do so.

Comment—One commenter asked why the New Jersey alternate reimbursement system does not require physician attestation.

Response—DRG validation is a requirement we have established under the Medicare prospective payment system and which we believe that we have the authority to require under prospective payment systems which operate under waivers. We would note, however, that this requirement did not exist at the time the New Jersey demonstration was approved and we believe it would not be appropriate to impose it on that system without a modification in the contract. We will, of course, consider these issues at the time that these projects are reviewed for renewal.

Comment—Several commenters requested permitting physicians to enter narrative descriptions of diagnoses rather than requiring physicians to learn the ICD–9–CM coding process.

Response—We do not intend for physicians to learn coding procedures. Physicians may use familiar diagnostic and procedural information and appropriate medical records personnel may then convert the information to the correct codes.

Comment—One commenter asked if we meant that the attending physician had to actually write out the diagnostic and procedural information. Another commenter urged that we permit nonphysicians to code and sequence diagnoses.

Response—We do not envision the attending physician, in all cases, actually writing the diagnostic and procedural information. The attending physician may dictate the information as part of the discharge summary and medical records personnel may sequence the diagnoses. In all cases, regardless of the form or format, the attending physician must either write the information or read it and attest to the validity of the information by signing the document utilized by the hospital. The attending physician may write and sign, or read and sign, diagnostic and procedural information which is in

either narrative or ICD–9–CM code form. If the attending physician signs a document that expresses the information as ICD–9–CM codes, we expect the attending physician to understand the meaning of the codes. Because of the importance of this information in determining payment, we have added a provision in these regulations (§ 405.472(d)(2)(i)) that there be a statement on the document used by the hospital for this purpose that will alert the attending physician of his or her responsibility to provide accurate information.

Comment—Many commenters asked if we had a prescribed form or format for use by the attending physician when a physician attests to the diagnostic and procedural information.

Response—We have not prescribed a form for this purpose. This information could be found, for example, on the face sheet or in the discharge summary used by the hospital. We would expect, however, that a hospital use the same method for all cases so that DRG validation can be efficiently performed. We would not allow a hospital's medical staff to totally delegate this function, including the signature requirement, to the medical records staff and, thus, bypass physician involvement because we believe that the purpose here is to have a statement by (or supported by the signature of) the attending physician against which the MRE can measure the accuracy of the medical records department's coding.

Comment—One commenter noted the potential for manipulation of diagnostic and procedural information for puposes of claiming additional payment (that is, by providing information that would cause a claim to be assigned to a DRG with a higher weight). The commenter suggested that a statement be placed on the document used for physician attestation that warns the attending physician of the consequences of false statements.

Response—We have accepted this comment and have added a provision to § 405.472(d)(2)(i) that requires that cautionary language be included in the document used by the provider for physician attestation.

Comment—A commenter stated that hospitals should not be penalized by delayed payments for lack of timely attestation to diagnostic information by physicians.

Response—While we realize that some hospitals that are not capable of meeting the requirements may experience delayed payments until they are able to comply, we think it necessary that the hospital have the attending physician's attestation before that claim is submitted. If hospitals were to bill before the attending physician attested to the diagnostic and procedural information, it could result in a large number of adjustment bills being submitted. This would be an increased administrative cost and would result in problems relative to the accuracy of data. The arithmetic average for submittal of Medicare claims by hospitals is currently 25 days after discharge. We believe it is reasonable to expeot that, generally, in this 25-day period, the hospital can ascertain from the attending physician what diagnostic and procedural information should be used for Medicare billing. In addition, the hospital may elect to receive periodic interim payments if it qualifies. Under this method, payments are made on a biweekly basis without regard to the timing of physician attestation to diagnostic information.

Comment—Commenters requested that we explain how changes to the diagnostic and procedural information can be executed once the physician has attested to the information.

Response—We do not anticipate that this situation will occur often. If the need arises to change the diagnostic and procedural information (for example, the late arrival of a culture report more accurately describes the infectious process), we will allow the change(s) to be made. However, we will require that the attending physician countersign each change.

Comment—One commenter questioned the language in § 405.472(d)(2)(iii) that indicates that the MRE will change the diagnostic and procedural coding on the beneficiary's clinical record if review indicates that it does not accurately reflect the course of hospitalization.

Response—We do not intend for the MRE to alter the beneficiary's clincial record. Instead, we meant that the MRE would change the coding on the Medicare claim, thus enabling the intermediary to classify the case in a DRG appropriate to the beneficiary's hospital stay.

6. Coverage Review

Intermediaries will continue to apply all technical and medical coverage rules to the cases that they review. They will consult with other MREs in cases where a medical judgment is required to apply a coverage rule. Review may result in the reclassification of a case from one DRG to another, or in total payment denial. In outlier cases, review may result in reduction or denial of outlier claims. Review will not, however, result in the reduction of a nonoutlier propsective payment for a particular DRG.

Comment—A commenter stated that we appear to be using these regulations to create a regulatory status for coverage decisions, which are presently made informally and announced only through manual changes. The commenter recommended that regulations be promulgated to formally describe this process of making "national" coverage decisions and the criteria used.

Response—The preamble discussion is intended merely to provide general background on how the "national" coverage decisions (however made) affect payment under the prospective payment system. There is no intended attempt to convey a regulatory status on the decisionmaking process by simply referring to what the resulting decisions will mean in processing claims under the prospective payment system.

Comment—A commenter requested that care never be considered to violate the "reasonable and necessary" requirement based on a nationally applicable policy. The commenter recommended that review of care be based solely upon "community" practice.

Response—There are some services that are never coverd under Medicare, and those coverage prohibitions are applicable throughout the country (that is, they are "national" coverage rules). For example, Medicare does not pay for experimental care (that is, care that has not been proven to be safe and effective). These limitations apply irrespective of "community" practice. In contracting with MREs, we plan to exclude from their review any issues that have been resolved by national coverage rules. For care not in these categories, community standards, as applied by PROs, PSROs, or intermediaries, are the governing consideration. The new provisions in the law permitting us to make limited payment for experimental items and services clearly affirms our existing policy that such services should generally be denied until found medically efficacious.

Comment—A commenter stated that intermediaries should not review for "reasonable and necessary" compliance. The commenter further stated that it is a waste of resources, particularly since once an admission is considered appropriate, any covered care furnished in the stay is paid for by the DRG amount.

Response—Under the prospective payment system, intermediaries and *not* other MREs will continue to enforce the

Medicare prohibition against paying for experimental care (this comes under the "reasonable and necessary" exclusion). If a stay was primarily for the purpose of furnishing experimental treatment, then the *admission* is denied and no DRG payment is made. Therefore, "reasonable and necessary" review by an intermediary can be an appropriate use of resources.

Comment—The commenters requested that we amend the way in which we describe cases where delivery of a noncovered service in a prospective payment stay should lead to admission denial. The preamble language to the interim final rule (48 FR 39787) states that an admission will be denied if the sole or primary services provided to an inpatient were experimental or otherwise noncovered. The commenter requested that we state that there should be a denial if the *only* service provided is noncovered.

Response—We do not believe that that type of definitive provision would be workable or appropriate for the review of every case. Specifically, Medicare's objective is to see whether, in cases where clearly noncovered services have been furnished to a beneficiary, there are nevertheless sufficient covered services remaining so that payment of the DRG is appropriate. This is an essential judgment to make since Medicare does not pay for noncovered care, and we must, therefore, assure that there are reasonable covered services for which we are paying. In our judgment, it would not be appropriate to require that we make a DRG payment in every case where a major noncovered procedure was performed merely because a minor covered ancillary service was also provided to the inpatient. The revision recommended would force us into that result in every case. We believe that the most workable approach requires the more flexible approach we have taken.

Comment—One commenter stated that the medical review activities were far too prescriptive for PROs, which were to be allowed flexibility in performing medical review.

Response—The PRO enabling legislation (the Peer Review Improvement Act of 1982 (Title I, Subtitle C of Pub. L. 97–248)) was designed with the existing cost reimbursement system as a given and did not contain review provisions designed to deal with a prospective payment system. However, Pub. L. 98–21, which established the prospective payment system, recognizes this fact and embodies specific PRO review requirements tailored to the payment system it created. Specifically, it directs that PROs review admissions, outliers and the accuracy of diagnostic information. Neither the timing of the review (for example, concurrent versus retrospective) nor the selection of admission or DRG validation samples is dictated in either Pub. L. 97–248 or Pub. L. 98–21. Since outlier payments must remain within the precentages dictated by Congress and the number of outlier cases is to be small, we believe that the review of every outlier case is warranted and should be mandatory. DRG validation and admission pattern monitoring are essential parts of the Congressional mandate, and these review efforts are, therefore, directed.

Comment—One commenter requested that we add a statement to § 405.472 that medical review could be lessened in a hospital that has exhibited no problems.

Response—As indicated above, we are not, in these regulations, dictating review processes for medical review, other than the review of outliers, DRG validation, and admission pattern monitoring. Further administrative instructions were issued, which address review processes for intermediaries and PSROs. The PRO contract will govern review procedures for PROs. We see no need to make any change to the regulation based on this comment.

7. Unnecessary Admissions and Readmissions.

Congress provided in Pub. L. 98–21 a new section 1886(f)(2) of the Act. Under this new section, if we determine that a hospital tries to circumvent the rate of increase controls under section 1886(b) of the Act or the prospective payment system under section 1886(d) of the Act, by encouraging unnecessary admissions or readmissions of Part A beneficiaries or other inappropriate medical practice with respect to such beneficiaries, we may (1) deny payment (in whole or in part) under Part A for impatient hospital services provided for an unnecessary admission (or subsequent admission of the same individual), or (2) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

Section 1886(f)(3) of the Act provides that sections 1862(d) (2), (3), and (4) also apply to these determinations. Section 1862(d) of the Act contains general requirements prohibiting fraudulent billing practices and provision of unnecessary services, or services that fail to meet professionally recognized standards and permits notice to providers and suppliers, the public, and State Medicaid agencies when it is determined that these practices have occurred. Section 1866 of the Act generally sets forth the requirements of provider agreements with which a provider must comply in order to participate in Medicare. Section 1866(a)(1)(G) of the Act prohibits providers from billing beneficiaries for services that are the subject of such determinations. Section 1866(a)(1)(F) specifically provides that hospitals furnishing inpatient services must maintain an agreement with a PRO for the purpose of reviewing the appropriateness and quality of care.

Determinations under section 1886(f)(2) must, according to the statutory language, be based upon the findings of a PRO. Because we implemented the prospective payment system under section 1886(d) of the Act before any PRO regulations became effective or any PRO contracts established, we provided, at § 405.472(e), general authority for us to impose sanctions based on a review by an MRE, and cross-referred to appropriate regulations providing for notice and appeal.

C. Utilization review

For hospitals under prospective payment, Congress retained the requirement of a UR committee, that operates in conformance with certain statutory provisions (section 1861(k) of the Act). This statutory requirement does not apply to hospitals under PSRO or PRO review. Currently, another statutory provision, section 1866(d) of the Act, further provides that no Medicare payment will be made beyond a certain point in "long-stay" cases (that is, no payment beyond 20 days) if we find inadequate UR compliance. (Also see section 1814(a)(6) of the Act.) Finally, section 1814(a)(7) of the Act provides that program payment cannot be made if a hospital UR committee has found that further care is not necessary, except that up to three grace days may be provided.

Hospitals covered by section 1861(k) of the Act had to comply with the basic terms of the statute and a partial set of implementing regulations, parts of which had been permanently enjoined. (See *AMA et al. v. Weinberger*, 395 F. Supp. 515 (N.D. Ill., 1975), affd. 522 F. 2d 921 (7th Cir., 1975).) Essentially, the requirements that hospitals had to meet included—

- Having a UR committee;
- Reviewing admissions and durations of stay;
- Reviewing extended stay cases no later than seven days after specified time intervals; and
- Notifying parties of denials.

For purposes of prospective payment, we revised 42 CFR Part 405, Subpart J, Conditions of participation: Hospitals, by adding a new condition § 405.1042—Condition of participation: special utilization review requirements for services subject to the prospective payment system. The changes contained in this new condition represent, for hospitals under the prospective payment system, a revision and adoption of the proposed § 482.30 on utilization review that appeared in our proposed regulations for hospital conditions published on January 4, 1983 (48 FR 299).

A discussion of the comments we received on the proposed § 482.30, and the changes in this provision that we made based on those comments appeared in the interim final rule (48 FR 39790). The new UR requirements became effective for hospitals that began participation in the prospective payment system as their cost reporting periods ended on or after October 1, 1983. Regulations at § 405.1035 on utilization review continue to apply to all other hospitals participating in Medicare.

In the interim final rule, we added § 405.1042 to replace the current UR provisions for hospitals under prospective payment and to avoid certain overly prescriptive and detailed specifics for those hospitals. However, in the final regulations, we have clarified that § 405.1042 is not applicable to hospital units excluded from prospective payment. We point out that the findings of UR committees, particularly regarding approval of admissions and outlier care, do not substitute for intermediary review. The UR requirements are necessary to comply with current statutory requirements (for example, 1861(k), 1814(a)(6) and (7) of the Act).

Section 405.1042(c) requires that the UR plan provide for some type of admission review, either pre-admission, upon admission, or after admission. Hospital UR plans must include procedures under which the UR committee will automatically review day outliers (based on the hospital's reasonable estimate of the outlier threshold of the proper DRG) and the necessity for continued services in cases that the hospital believes will qualify for an "extra" or outlier payment. We stated that the Medicare outlier payment should be denied or reduced if the quality of UR committee activities is inadequate.

Section 1814(a)(7) of the Act, which prohibits payment after a UR committee finding that further care is not necessary, is now interpreted to include only those committee findings that relate to situations where additional payment would be made on the basis of medical need and utilization, that is, outliers. In the interim final rule, we revise § 405.162 accordingly.

Comment—The commenters recommended that hospitals should not become ineligible for outlier payments simply because physicians have not certified on time.

Response—Section 1814(a)(2) of the Act explicitly mandates physician involvement in certifying the need for inpatient care if the hospital is to receive Medicare payment for inpatient services. As was the case prior to the prospective payment system, hospitals will still be expected to work closely with and cooperatively with physicians for assuring appropriate utilization. However, § 405.1625(e) of the regulations permits the acceptance of delayed certifications and recertifications.

Comment—The commenters stated that the UR regulations should not prohibit hospitals from "acting upon" cases where medical necessity for continued stay no longer exists. The commenter understands that this is to be permitted only in appropriately admitted outlier cases.

Response—The UR regulations do not prohibit hospitals from taking action when appropriately admitted nonoutlier inpatients should no longer be hospitalized. For example, the UR regulations do not prohibit the hospital from sending a notice to an inpatient and/or to the inpatient's physician advising that the inpatient is no longer at the acute level of care. Also, pursuant to changes being made in other provisions of the prospective payment regulations (§ 405.472(b)), hospitals (including their UR committees) may give appropriate notices to beneficiaries and then charge them for services not covered by Medicare.

Comment—A commenter interpreted the regulations to mean that hospitals can no longer use their UR committees to notify inpatients when care is no longer covered under Medicare. The regulations indicate that this can now be done only by PROs and that hospitals may be penalized if inpatients are not given timely notification of "noncoverage".

Response—Utilization review is a term of art that has long been used to characterize a hospital's internal review mechanism. It is also a term that is used by the law to set minimum review standards for Medicare inpatients. There is neither a UR regulation nor a PSRO/PRO provision that prohibits the hospital from using its internal review structure to notify nonoutlier inpatients and their physicians when it believes that those inpatients no longer require a hospital level of care. Such determinations may affect Medicare payment only to the extent provided in § 405.162. Care must be exercised to assure that internal notices do not inappropriately state or imply that there is a direct reimbursement consequence when this is not true. Also, changes have been made in § 405.472(b) to permit hospital charges to beneficiaries in certain circumstances when the hospital (e.g., its UR committee) has given notice to the beneficiary that services not covered by Medicare are being furnished.

Comment—A Commenter questioned whether or not a hospital UR system (provided for in section 1861(k) of the Act) will operate in place of a PRO that does not assume binding review under prospective payment.

Response—A hospital UR system or a PSRO will operate in an area until a PRO assumes binding review under prospective payment. We believe that utilization review will be an interim activity and will be completely displaced by PRO review, which is scheduled to be in place in all review areas by October 1, 1984.

Comment—A commenter urged rapid development of professional review mechanisms to review for quality of care and that it be *required* that registered nurses serve as part of the review mechanism under PSRO/PRO and utilization review, whichever system is applicable.

Response—With respect to utilization review, as was pointed out in the interim final rule (48 FR 39790), section 1861(k)(1) of the Act permits but does not require, participation on UR committees by nonphysician personnel. While we encourage participation by nonphysician personnel, we believe that it would be inappropriate to limit hospital discretion and flexibility by imposing committee composition requirements exceeding those established in the statute.

With respect to PRO/PSRO review, nurses are an integral part of both the quality and UR process. The PSRO regulations do and the PRO regulations will encourage the use of health care professionals other than physicians in the review processes.

Comment—A commenter requested that UR committee findings be binding.

Response—Pub. L. 98–21, in enacting the prospective payment provisions, did not change the status of UR provisions of the statute, and thus the status of UR committee findings in the Medicare program remains advisory.

Comment—A commenter stated that the UR committee authority is inappropriately reduced since it appears that under the prospective payment system they can no longer determine that a Medicare inpatient's continued stay is noncovered.

Response—The commenter has misinterpreted the law and current regulations governing utilization review. In the absence of PSRO review, the UR committee has always been responsible under the law for reviews of medical necessity and appropriateness of a stay but never coverage. The regulations do not prohibit UR committee's notifying nonoutlier inpatients when continued hospital care for them is no longer medically necessary. Such action, however, is not required by Medicare and, as is the case with UR findings required by Medicare, these UR committee determinations do not constitute official Medicare program findings. Moreover, these regulations do require UR committee review of outlier cases and such determinations do have an effect upon payment under section 1814(a)(7) of the Act.

Comment—The Commenter requested that UR rules stipulate that the UR committee establish, where feasible, consulting committees for input from the respective specialties. The commenter believes this is needed because the number of physicians on the committee may not be sufficient to allow input by specialists regarding cases in their specialty area.

Response—Hospitals now have the option of having such committees if they so choose. We would not propose to mandate this as a requirement since it would limit hospital flexibility and discretion beyond that which is required by the statute.

D. Physician Certification and Recertification

Section 1814(a)(3) of the Act requires that no Medicare payment be made where a physician has failed to certify and, as appropriate, recertify that care is needed. Under the statute, in hospitals that are not tuberculosis or psychiatric hospitals, the certification must be no later than the 20th day of an inpatient hospital stay.

In the interim final rule, for hospitals under prospective payment, we revised § 405.1627(b) to require certification at the beginning of what the hospital reasonably assumes to be an outlier (cost or day), or no later than 20 days into the stay, whichever is earlier. As is currently the case, we will accept delayed certifications and recertifications.

The content of the physician certification statement remains substantially the same. However, in the interim final rule, we amended § 405.1627(a) to require a showing as to the need for special or unusual services in cost-outlier cases. The physician is still authorized to recertify the need for hospital care if other needed, covered care in an SNF is unavailable.

Comment—A commenter requested that we eliminate the requirement for physician certification at the beginning of and during outlier status, because Medicare outlier payments cannot be made unless an MRE has approved the medical necessity and appropriateness of the services. The commenter believes that physician certification is unnecessary as a means of insuring that Medicare pay for only reasonable and necessary services and should be eliminated, particularly since the precise outlier point for a particular case will not be determined definitively until after discharge, when the intermediary assigns a DRG to the case.

Response—Physician certification in "long-stay" cases continues to be a *statutory* requirement (section 1814(a)(3) of the Act). Until there is a statutory amendment eliminating the requirement, a physician certification of the continued need for care at the 20th day of the stay or earlier is an absolute requirement for payment. We are requiring certification no later than the 20th day of a stay, or at the time the hospital reasonably assumes to be the outlier point in the case, whichever is earlier, because we believe this statutory requirement should be as relevant as possible to the prospective payment system. We believe that this change in the previous physician certification requirements most appropriately focuses physician attention on the case at points in time that are relevant to the payment system.

E. Quality Review

Section 1866(a)(1)(F) of the Act, effective October 1, 1984, authorizes PROs to review the quality of care provided by a hospital. Specific guidelines and procedures for PRO quality review will be included in PRO regulations currently under development and PRO contracts.

Comment—One commenter noted that under the prospective payment system, because of the strong economic incentive not to provide service, physicians could be subject to pressure to discharge inpatients prematurely or to withhold some medically indicated services. Therefore, the commenter recommended that PROs be available as a means of insuring quality medical care by supporting physicans in their decisions to continue medically necessary care. Also, the commenter recommended that the regulations allow PROs the specific authority to review cases based on an individual physician's request.

Response—The prospective payment regulations do not contain the specific provisions relating to PRO review. However, PRO regulations currently under development will establish the general requirements that a PRO determine whether the quality of care furnished to Medicare beneficiaries meets professionally recognized standards of health care and whether that care is complete and adequate. Specific PRO review obligations will be included in contracts between HCFA and each PRO. These contracts will describe the quality review activities to be undertaken and the quality of care objectives to be achieved by the PRO. Also, each contract will include the requirement that a PRO participate in studies or investigations by HCFA or HHS of abusive practices of participants in the Medicare program.

Comment—A commenter stated that the new PROs must be able to perform effective quality assurance activities and not become too overburdened with DRG validation responsibilities.

Response—We believe that the funding accorded these new organizations is adequate to permit their full development as anticipated by the statute, and that funding will enable PROs to meet all the activities required under the statute. The statute itself requires that quality assurance activities be an integral aspect of PRO activities.

Moreover, the PRO Scope of Work (that is, the document describing the duties and functions of PROs) does emphasize quality assurance activities by requiring PROs to establish quality objectives. However, it should be noted that DRG validation is an intergral part of maintaining budget neutrality and, therefore, must continue to be an important part of the medical review process.

Comment—A commenter stated that the regulations do not emphasize the importance of quality assurance review activities.

Response—Again, we believe that the funding accorded the new PRO organizations is adequate to permit their full development as anticipated by the statute. The statute itself requires that quality assurance activities be an integral aspect of PRO activities. Also, in other documents (that is, the PRO review regulations and the PRO Scope

of Work), quality assurance will be addressed more thoroughly.

Specifically, the requirements for quality assurance review activities and quality of care objectives to be achieved by PROs will be contained in the contracts between HCFA and PROs. Each PRO will be obligated to conduct meaningful quality review and achieve significant impact on the quality of care furnished to Medicare beneficiaries.

XII. PAYMENT FOR NONPHYSICIAN SERVICES FURNISHED TO HOSPTIAL INPATIENTS

Section 1862(a)(14) of the Act requires that all nonphysician services furnished to a hospital inpatient be paid only as hospital services. This provision was added to the Act to prohibit the practice followed by some suppliers and other providers of billing under Part B of Medicare for nonphysician services that are furnished to a hospital inpatient. This practice has been referred to as "unbundling" and was prohibited effective October 1, 1983, for all participating hospitals, regardless of a hospital's fiscal period or inclusion or exclusion from the prospective payment system.

Although these requirements apply to all hospitals on October 1, 1983, there is a statutory provision for a waiver of this requirement. Section 602(k) of Pub. L. 98–21 provides that we may waive the prohibition on unbundling for any cost reporting period beginning before October 1, 1986 if—

- A hospital has been extensively allowing Part B billing of inpatient services since before October 1, 1982; and
- Immediate compliance with this prohibition would threaten the stability of patient care in that hospital.

We received approximately 1,000 comments on our changes in the regulations concerning payment for nonphysician services furnished to hospital inpatients. The comments we received on issues related to this provision and our responses to those comments are discussed below.

A. Part A Billing

The rebundling provision specifies that Medicare payment will not be made if nonphysician services are furnished to a hospital inpatient by anyone other than the hospital. Therefore, in order to receive Medicare payment, the hospital must either furnish the services directly or "under arrangements."

The regulations (§ 405.310(m)) also require that all services within the definition of inpatient hospital services must be billed under Part A, except when the patient is not eligible for Part A benefits or when Part A benefits are exhausted before the patient is admitted or, in the case of a hospital being paid on a prospective rate basis, enters outlier payment status.

We received several comments on the rebundling provision from professional health care associations and providers and suppliers of health care services.

Comment—Some of the commenters are concerned about the possibility that the unbundling prohibition will lead to a decrease in the level of services available to Medicare beneficiaries. Because health professionals other than physicians will no longer be reimbursed directly under Part B for their services, the commenters believe there will be a reduction in the use of these nonphysician personnel. Therefore, these commenters believe that this situation could have an adverse impact on the quality of care furnished to these beneficiaries.

Response—We believe that the prospective payment system, including the necessary rebundling provision, will not adversely effect the quality of patient care. Even though we expect the quality of care not to diminish under the prospective payment system, we have instituted a comprehensive system of medical review. These medical reviews will alert us to hospitals that may abuse the system and, thus, allow corrective action to be taken.

We believe that fears of the adverse impact on the quality of care are unfounded and do not give credit to the professional standards of those individuals involved in the health care industry. Therefore, we are not making any changes to the regulations based on this comment.

Comment—A physician association opposes the manner in which we have approached the issue of unbundling and payment for nonphysician services furnished to Medicare beneficiaries. The association's opinion is that we are attempting to define the practice of medicine on the basis of the location of the patient. For example, a physician can furnish the same service in his or her office to a patient who is not a hospital inpatient and one who is a hospital inpatient. In the first case, the service can be billed under Medicare Part B and, in the second case, the physician has to bill the hospital for the service.

Response—These regulations, including the unbundling provision, are not intended to be an attempt to influence the practice of medicine, We are explicitly prohibited from any action such as that by section 1801 of the Act. Rather, these regulations address a payment mechanism for inpatient hospital services.

In order for a payment system that is based on a national average rate for a particular diagnosis to succeed, it is vital that the services and supplies included in the payment be essentially the same in every hospital. If the statute had not included the rebundling provision, it would have been possible for hospitals to collect the full prospective payment rate for inpatient services and, at the same time, reduce their costs by having outside providers and suppliers furnish many of the necessary services and bill Part B. Thus, Medicare would be paying for those services twice.

Physicians continue to have the freedom to prescribe for their patients the services that the physicians believe are necessary. We have altered only the method of payment for these services. They continue to be covered by the program. Therefore, we do not believe that rebundling can be construed as an attempt to define the practice of medicine.

Comment—We received comments from two freestanding radiation centers on the Part A billing issue. These commenters believe that this provision places an inappropriate burden on nonhospital-based cancer treatment facilities for the following reasons. First, these facilities have a disproportionately high number of Medicare-covered hospital inpatients. Second, the DRG relative weighting factors for oncology patients do not reflect the costs of freestanding cancer facility services because these services were never included in Part A cost data used to compile the DRG weighting factors and the hospitals that do furnish these services are a minority; therefore, the national DRG payment will not reflect the costs of these services. Third, because cancer patients have inordinate lengths of stay and are heavy resource users within the hospital, there will not be monies left over from the DRG payment to pay freestanding facilities for their services. Therefore, hospitals will not negotiate with freestanding centers in good faith due to their inability to make sufficient payment.

In the end, the commenters believe that the cancer patient will suffer because the freestanding cancer therapy center will not be reimbursed fully by the hospitals for the services furnished to hospital inpatients and the centers will be prohibited from receiving any Part B payment.

Response—We do not believe that the rebundling provision will adversely effect freestanding radiation centers.

The Federal portion of the prospective payment rates have been adjusted to account for the rebundling of services that were previously billed under Part B of the program.

In addition, those hospitals that had used the services of freestanding radiation centers were entitled to request an adjustment to their base year costs to reflect the additional cost to the hospitals in arranging for these services to be furnished to their inpatients in the future. Thus, the prospective payment rates do reflect the cost of freestanding radiation therapy.

While it is true that the DRG weighting factors may not reflect the cost of these centers, we believe that the proportion of these services that were billed under Part B is relatively small when compared to those hospitals that furnish radiation therapy directly. Since the costs of directly supplied radiation therapy have been included in determining the oncology DRG weighting factors, we do not believe that the omission of the costs of radiation therapy furnished by freestanding centers significantly effects the weighting factors based on average national resource consumption.

Finally, the DRG weighting factors do reflect the length of inpatient stay. We do not believe that the location of the radiation therapy would alter the length-of-stay. Therefore, the weighting factors should equally represent the length-of-stay for oncology patients regardless of where they received their radiation therapy. Consequently, we are not revising the regulations based on this comment.

Comment—Several commenters noted the short time period between the issuance of the interim final rule (September 1, 1983) and the effective date of the rebundling provision (October 1, 1983). Many hospitals requested a time-limited waiver of the rebundling provision in order to more accurately determine the cost and volume of Part B services that has been furnished directly by suppliers. As an alternative, some commenters suggested that we permit subsequent adjustment of the hospital-specific rate if data indicates that the original adjustments were in error or incomplete.

Response—The October 1, 1983 effective date of the prohibition on unbundling is prescribed by the statute (section 604(a)(2) of Pub. L. 98–21). There is no provision in the law to authorize waiver of this effective date for hospitals other than the waiver authorized by section 602(k) of Pub. L. 98–21. Therefore, we cannot waive the effective date of the rebundling provision except for those hospitals that meet the criteria specified in § 489.23.

With respect to the suggestion that we permit subsequent adjustment to the hospital-specific rate for rebundling, the regulations specify that hospitals that become subject to the prospective payment system on or before November 15, 1983, may, up to November 15, 1983, request that their intermediaries recompute their base period costs to take into account inadvertent omissions in their previous submissions to the respective intermediary related to changes made by the prospective payment legislation for purposes of determining base period costs. In addition, hospitals may submit additional information and request that their rates be recalculated for up to three weeks after their intermediaries notify the hospitals of their initial rates.

We notified hospitals of the rebundling adjustment through a revision to the Provider Reimbursement Manual (HCFA Pub. 15–1) in June 1983. Thus, hospitals have had a minimum of five months in which to notify their intermediaries of the necessary adjustments. Since the hospital-specific rate is based on the best data available, we believe this is an adequate amount of time for hospitals to review their records and determine which services were billed under Part B during their base year. Furthermore, it would not be consistent with the concept of prospectively determined rates to permit hospitals to continually receive adjustments in their hospital-specific rates.

Comment—One commenter wanted to know if hospitals in waiver States (those excluded from the prospective payment system because they are paid under State cost control systems or paid in accordance with demonstration projects) would be permitted to continue to unbundle inpatient hospital services.

Response—The statutory authority for the rebundling provision is set forth at section 1862(a)(14) of the Act. This section of the Act applies to all hospitals participating in the Medicare program whether or not they are subject to the prospective payment system.

It appears that the rebundling provision may not be waived under the current reimbursement waivers authorized under section 222 of Pub. L. 92–603. Therefore, the rebundling provision also applies to hospitals in those States that are currently operating alternative payment systems under existing waivers of the reimbursement provisions of the Act.

Comment—One commenter wrote encouraging us to cease attempts to rebundle inpatient hospital services claiming that this provision discourages competition in the industry.

Response—Since the rebundling provision is required by law, we do not have the authority to cease our rebundling efforts as suggested. Morever, we do not agree that the rebundling provision is anticompetitive. On the contrary, we believe that by requiring that the hospital be the sole deliverer of inpatient hospital services under Medicare, we are promoting competition in the delivery of inpatient services and permitting the Medicare program to reap the benefits of the competitive market.

The rebundling provision does not preclude arrangements between a hospital and an outside supplier. It does establish the hospital as the responsible agent for the delivery of nonphysician services to inpatients. Unlike a beneficiary who is often restricted in the practical ability to shop for competing supplies and services (for example, durable medical equipment and prosthetic devices) because access to the marketplace is limited, hospitals are in a better position to use their power and access to the marketplace to obtain the best overall value.

Comment—Two commenters raised an issue concerning the inclusion of ambulance services furnished to hospital inpatients as inpatient hospital services under the rebundling provision. Previously, those services could be billed to Medicare under Part B of the program when the criteria for ambulance coverage were met. However, now these services must be considered to be inpatient hospital services and, for those hospitals under the prospective payment system, these services are included in the payment rate.

Response—Before we address the question of recovering the cost of ambulance services, it is important to clarify the circumstances under which ambulance services must be rebundled.

Transportation services furnished to hospital inpatients, such as transportation to and from another site for the purpose of administering tests that are not available at the patient's hospital, are considered to be inpatient hospital services. These services, to the extent that they were billed directly under Part B in the base period, must be rebundled and payment for these transportation services will be made to the hospital. For those hospitals under the prospective payment system, payment will be included in the prospective payment rate.

Generally, movement of a patient who is not an inpatient of a hospital at the

time of ambulance transportation (for example, transportation from a residence to a hospital for admission or transportation between hospitals while the patient is being transferred to another hospital) is covered only as a Part B ambulance service. Payment for these services will be on a reasonable charge basis if furnished by a nonprovider supplier. As a part of this final rule, we are amending § 405.232(i) to clarify when payment may be made under Medicare Part B for ambulance service.

With regard to those transportation services furnished by an ambulance that must be rebundled, adjustments were made in computing the prospective payment rate to accommodate the change in payment methods. Since prospective payment rates during the transition period are comprised of two portions (that is, the Federal and hospital-specific rates), two separate adjustments were necessary to accommodate rebundling of inpatient services.

As we stated in the preamble to the interim final rule (48 FR 39766), the Federal rates have been increased by the estimate of the national average cost per discharge for services to inpatients that were previously billed under Part B. In order to have its hospital-specific rate increased for ambulance or other services previously billed under Part B, a hospital must request the adjustment and submit the necessary information to its intermediary. This adjustment should be submitted by the hospital on the form HCFA–1008. Instructions for completing this form are contained in § 2800ff of the Provider Reimbursement Manual—Part I (HCFA—Pub. 15–1).

B. Definition of Nonphysician Services

The regulations (§ 405.310(m)) identify nonphysician services as those services furnished to hospital inpatients that do not meet the criteria of physician's services as set forth in § 405.550(b). Section 405.550(b) provides that physicians' services are medical services to individual patients if—

- The services are personally furnished to an individual patient by a physician;
- The services contribute directly to the diagnosis or treatment of an individual patient;
- The services ordinarily require performance by a physician; and
- If applicable, the services meet certain special rules that apply to the services of anesthesiologists, radiologists, and pathologists.

Therefore, any service to a hospital inpatient that cannot be defined as a physician's service is a nonphysician service.

Over 400 nonphysician personnel engaged in the delivery of clinical laboratory services and their professional associations wrote to express their support of the definition of nonphysician services presented in the regulations. They indicate that this provision will help reduce inappropriate Part B payments and thus allow Medicare funds to be spent more wisely.

We received other comments that disagree with our definition of nonphysician services.

Comment—A physician organization believes that referring to those services that do not meet the criteria of physician's services as "nonphysician" services is inappropriate and misleading because physicians may indeed furnish these services. In situations where a physician may be furnishing these services that are not directly applicable to individual patients, that physician is still furnishing a physician service. In these cases, the commenter believes that the services should be classified as "physician services" to the hospital inpatient.

Response—We recognize that services classified by Medicare policy as "nonphysician" services may be furnished by a physician. However, the critical issue is that the services do not constitute physician services reimbursable on a reasonable charge basis. Referring to these services as "nonphysician" services is not intended to denigrate their significance but is merely our use of a convenient term to describe them for reimbursement purposes.

Comment—A physician association contended that we have chosen not to define nonphysician services for the purposes of these regulations; rather, we have taken pre-existing regulations (§ 405.550(b)) and applied the criteria in these regulations as a definition of physicians' services. The commenter believes that this approach appears to be in direct conflict with the parenthetical phrase in section 1862(a)(14) of the Act (that is, "* * * (as defined in regulations promulgated specifically for purposes of this paragraph) * * *"). The association stated that the preamble language of the interim final rule is misleading in that it implies that section 1887(a) of the Act (enacted by Pub. L. 97–248) was enacted by Congress to cover *all* physician services. In fact, the commenter believes that section 1887(a) of the Act was enacted for the purposes of defining Part B payable services furnished by provider-based physicians to patients of the provider.

Response—Section 1887 of the Act deals explicitly with distinguishing between physicians' professional services to individual patients (reimbursable on a reasonable charge basis under Part B) and services to providers (which are reimbursable only on a reasonable cost basis). This section specifies that, in reimbursing the services of provider-based physicians, we must apply certain standards of reasonableness to the costs providers incur for physician services to the providers. In implementing this statutory provision, we added § 405.550 (Conditions for payment of charges for physician services to patients in providers; General provisions) to our regulations. Section 405.550(b) defines those physicians' services that are payable on a Part B charge basis.

Section 1862(a)(14) of the Act gives the Secretary the authority to define physicians' services for the purpose of distinguishing those services from all other items and services furnished to hospital inpatients by physicians. Since we already have a definition of physicians' services in § 405.550(b), we used that definition in our interim final rule. We believe this was clearly within the intent of the statute and is a more precise method than trying to define all services, items, and supplies that are or potentially could be included among inpatient hospital services.

C. Services "Incident to" Physicians' Services

With one exception, the regulations (§ 405.310(m)(2)(vi)) include as nonphysician services those inpatient hospital services furnished incident to a physician's services. The single exception to this policy is set forth in § 405.553(b)(4). That paragraph provides that, if a physician's practice was to employ anesthetists, and bill Medicare on a reasonable charge basis for their services, as of the last day of a hospital's most recent 12-month or longer cost reporting period ending before September 30, 1983, then the physician may continue this practice through subsequent cost reporting periods beginning before October 1, 1986. However, if the physician chooses to continue this practice, the hospital may not add the costs of the anesthetist's services to its base period cost for purposes of determining the hospital-specific portion of its transition payment rates.

The majority of the approximately 550 comments received on this provision were from certified registered nurse anesthetists (CRNAs), anesthesiologists, hospitals, and their professional

organizations. In addition to the various other comments, we also received numerous comments on the exclusion of intraocular lenses from Part B payment as a service "incident to" a physician's service.

The specific comments and our responses are as follows:

Comment—In general, many of the CRNAs who commented supported the exception that was granted under this provision. However, they would prefer that these regulations be amended to permanently exclude them from the unbundling prohibition. They believe that unless this exclusion is made effective indefinitely, there will be an adverse impact on CRNAs and a substantial increase in cost to the Medicare program for anesthesia for hospital inpatients.

Response—The intent of this special exception for physician-employed CRNAs is to prevent the sudden disruption of longstanding employer-employee relationships. However, our ultimate goal is to move all the hospital inpatient services we possibly can under the prospective payment system. For example, during the transition years, we will be studying the feasibility of a prospective method of payment for capital-related costs and physician services to inpatients. The results of this study will be the basis of recommendations we make to Congress on this issue. We are hopeful that we can develop an equitable means of including these services under the prospective payment system. Therefore, we do not think it is necessary at this time to extend the exception to the unbundling prohibition for the services of physician-employed CRNAs beyond the transition period.

Comment—Many of the commenters indicated that the effect of this provision is to encourage the use of higher-cost physicians and discourage the use of CRNAs. There will be a strong incentive in the system to substitute a physician for a CRNA in the administration of anesthesia. As long as physician services are paid for separately under Part B of Medicare, and a substantial number of CRNAs must be paid under Part A, services will be unbundled to physicians wherever possible.

Response—We have tried to discourage this practice by excluding interns and residents employed by a hospital for this purpose from inclusion in the computation of the special payments applicable to graduate medical education (§§ 405.421(d)(6) and 405.477(d)(2)(ii)(A)). We doubt that there will be any widespread effort to substitute anesthesiologists for CRNAs. We further note that a study done by the Graduate Medical Education National Advisory Committee (GMENAC) indicates an overall shortage of anesthesiologists. However, we will monitor this situation and address this issue at some later date if we believe it warrants further policy change.

Comment—We received several comments that disagreed with the criteria set forth in § 405.553(b)(4). In particular, the commenters disagree with the fact that § 405.553(b)(4)(ii) states that in order to be excepted from the rebundling provision, it must have been the physician's practice to employ anesthetists as of the last day of the hospital's most recent 12-month or longer cost reporting period ending before September 30, 1983. These commenters believe that this requirement unfairly penalizes anesthesiologists on the basis of the hospital's cost reporting period and discourages anesthesiologists who have not previously employed anesthetists from doing so in the future.

Response—The intent of this single, time-limited exception to the rebundling provision is to recognize the unique and longstanding physician-employer and anesthetist-employee relationships. One of the major reasons for this exception is the widespread use of anesthetists as physician employees. If we required renegotiation of the multitude of contracts involved, this requirement, coupled with the short period of time given for the implementation of rebundling, would have potentially created serious disruption in medical practice.

It is not our intention to have anesthesiologists become the sole employers of CRNAs. Therefore, these regulations do not provide for the transfer of hospital-employed CRNAs to the employ of physicians. In addition, we do not believe that linking the date of employment of CRNAs by physicians to hospital cost reporting periods unfairly penalizes physicians. We believe that this requirement is consistent with our intent to recognize only previously longstanding physician practices.

Our hospital cost reporting period deadline is necessary to prevent shifting of CRNA costs that were incurred by the hospital in earlier periods (and thus included in the prospective payment rate) to Part B of the program. If we did not maintain this requirement, the program could potentially make payment for CRNA services under both parts of the program.

Comment—A privately practicing CRNA not employed by either a physician or hospital wanted further clarification of this provision. This CRNA is paid by the hospital for services furnished to Medicare beneficiaries; the hospital then includes these costs on their cost report as a cost item. In particular, he would like to know if he will continue to receive payment in this manner for hospital inpatients.

Response—Payment may be made for these services only through the hospital. This policy has been in existence for some time and is unchanged by these regulations.

Comment—We received a large volume of comments that objected to the treatment of the services of hospital-employed CRNAs. These commenters believe that a system that requires that payment for the services of hospital-employed CRNAs be included in the prospective payment rate while permitting physicians to bill the Medicare program directly under Part B for the services of physician-employed CRNAs is disruptive to the practice of medicine and will result in hospital-employed CRNAs being replaced by physicians and the CRNAs employed by them. The commenters encouraged us to modify the prospective payment system to allow additional payments to the hospital for the costs of the services of hospital-employed CRNAs (similar to the payments for capital-related costs and the direct cost of medical education).

Response—We recognize that by establishing two methods of paying for the services of CRNAs depending upon their employer presents some difficulty for hospitals and the CRNAs they employ. However, we do not collect data on the cost of hospital-employed CRNAs. These costs are combined with other costs of the department and are shown as a single line item on the hospital's Medicare cost report.

Since the Federal rates already include the cost to the hospital for their CRNA employees, we would need to reduce the Federal rates in order to avoid duplicate payments for this service if we were to pay hospitals an additional amount for the costs of CRNAs. We do not have data that would enable us to estimate the amount of the necessary adjustment.

In addition, the removal of the cost of CRNA services from the prospective payment system technically would demand recalibration of all the DRG weighting factors. We would need to remove the cost of CRNA services for each claim represented in the MEDPAR file and create new relative weights. Since CRNA costs are not separately identified on cost reports or bills, this is technically not feasible.

Although we are not able to adopt this recommendation, we will evaluate the effects of these regulations on hospital-employed CRNAs and will consider alternative approaches as the transition to a full Federal prospective payment rate proceeds. It should be noted that, in the initial year, the prospective payment rate is heavily weighted by each hospital's individual historical cost experience including the costs of hospital-employed CRNAs.

It should also be noted that the provisions that allow continued payment of physician-employed anesthetist services under Part B will terminate for cost reporting periods beginning after October 1, 1986. Thus, the existence of dual payment methods is limited to the transition period.

Comment—We received several comments that deal more specifically with payment to CRNAs and anesthesiologists. The commenters wish to know how we will make payment when a case's complexity or the patient's condition require both an anesthesiologist and an anesthetist.

Response—If a patient's condition requires both an anesthesiologist and a CRNA, and the CRNA is not employed by the physician, the reasonable charge of the anesthesiologist would be based on 15-minute time units, because the service was personally furnished by a physician. Medicare payment for the CRNA's service would be made to the hospital on a reasonable cost basis (for nonprospective payment hospitals) or on a prospective payment basis (for all other hospitals). If the CRNA is employed by the physician, the physician should explain the special circumstances on the bill. The Medicare carrier (the entity that has a contract with us to determine and make Medicare payments for Part B benefits payable on a reasonable charge basis) is authorized to recognize special circumstances in determining the reasonable charge for these services.

Comment—A medical association requested that an exception under this provision, similar to the physician-employed CRNA exception, should also be made for services furnished to hospital inpatients by speech-language pathologists and audiologists employed by physicians. The commenter contends that unless this waiver is granted, hospital inpatients may be deprived of needed services because the hospital will not have individuals on staff to perform the necessary rehabilitative services and the physician will not continue to employ and make available speech-language pathologists and audiologists if they cannot receive reimbursement under Part B for their services.

Another medical association requested that the services of the employees of radiologists be granted an exemption similar to the CRNA exception. As the regulations are currently written, radiologists or other physicians who employ radiological physicists and treat patients in one or more hospitals will be forced to transfer the physicist to a hospital payroll or to arrange to bill the appropriate hospital for the physicist's direct patient services. This would be disruptive to patterns of cancer treatment, particularly in circumstances where cancer therapy facilities are independent of hospitals but treat hospitalized patients.

Response—As we stated in the preamble to the interim final rule, we believe it is vital to the success of the prospective payment system that the services and supplies furnished to hospital inpatients included in the payment be essentially the same in every hospital. In addition, there is a strong statutory mandate for discontinuing the use of "incident to" billing for services and supplies furnished to hospital inpatients, as was also discussed in the interim final rule.

The single time-limited exception for physician-employed CRNAs was permitted because the practice of physician-employer and anesthetist-employee is so widespread, and the relationship of anesthesiologist to anesthetist is so unique, that we believe that it would be disruptive of medical practice and adverse to the quality of patient care to require all these contracts to be renegotiated in the limited time available before implementation of the prospective payment system.

We do not believe that the relationships between physician-employed speech language pathologists, audiologists, radiological physicists, or any other physician employees are as unique or widespread. Therefore, we are not expanding the rebundling exception to include other "incident to" physician services.

Comment—We received comments from physicians, hospitals, and a medical association on our policy to discontinue Part B payment for intraocular lenses. The commenters contend that these lenses should not be included in the Part A payment, and should be reimbursed separately under Part B, because—

- The patient is entitled to the intraocular lens under Part B since it is a prosthetic device that replaces the natural lens, as are cataract spectacles and contact lenses which are covered under Part B; and
- The practice patterns relating to cataract surgery and intraocular lens implant have changed dramatically in the last three years, resulting in an increase in the rate of these implantations from 20 to 80 percent or more since 1981.

Therefore, the DRG rate HCFA has calculated for lens operations (DRG 39) substantially underestimates the 1984 cost of performing cataract surgery with intraocular lens implant and these lenses should continue to be covered under Part B.

Response—As mentioned above, we believe there is a strong statutory mandate for discontinuing the use of "incident to" billing for services and supplies furnished to hospital inpatients. We also believe that, in order for the prospective payment system to succeed, it is essential that we not exclude any services or supplies previously billed under Part B as part of the "incident to" provision from being rebundled. (The single exception to this policy being the time-limited CRNA exception.) In addition, there are provisions for adjusting both the Federal and hospital-specific rates to account for services that were billed under Part B in the base year. Thus, through these adjustments, hospitals will be paid for the services they must rebundle.

With regard to the weight of DRG 39, we are not adjusting any of the 468 DRG weights at this time. For a more thorough discussion of the DRG classification system and weighting factors, and DRG 39 in particular, see the comments and responses included in section IV.B. of this preamble.

Comment—One commenter requested that we clarify the effect that the rebundling provision has on Medicare payment for custom-made prosthetic devices such as artificial limbs. Specifically, the commenter wanted to know if the payment for these devices will be made under Part B if the beneficiary was fitted for the device while he or she was an inpatient, but did not receive delivery of the device until after being discharged.

Response—Generally, the Medicare program has not considered an item or service as an incurred expense until it has been delivered. In the case of custom-fitted prosthetic devices, we consider the expense incurred on the date of delivery, unless the device is never delivered because the beneficiary dies or the order is canceled. In the event of nondelivery, the expense is

considered to be incurred on the date of death or cancellation.

If the patient is an inpatient at the time the expense is considered incurred (delivery or cancellation), the service would be considered an inpatient hospital service and Medicare payment would be made to the hospital. If the patient is not a hospital inpatient when the expense is incurred, the service is billed under Part B of the program regardless of where the patient was located when the item was ordered or fitted.

D. Payments for Physical Radiology Services Furnished to Hospital Inpatients

In the interim final rule, we amended § 405.555(a)(2) to provide that the reasonable charge for any physician radiology service furnished to a hospital inpatient, regardless of the site at which the service is furnished, cannot exceed 40 percent of the prevailing charge in a nonprovider setting. The change in the regulations was necessary to implement the provisions of the section 1862(a)(14) of the Act.

We received one comment on this issue from a medical association.

Comment—The association stated its continuing objections to the 40 percent ceiling on reimbursement of the professional services of radiologists in hospital. The commenter believes that this provision has no statutory basis and, as drafted, it is capricious in application and likely to be more meddlesome than productive in effect.

Response—The 40 percent limitation reflects differences in costs that we estimate exist between the overhead cost in provider-based and office-based practices. This provision limits payment for the physician's services component of radiology services to 40 percent of the prevailing charge for similar services furnished in a nonprovider setting. The rationale for this special limitation on payment for these services is set forth in the final rules we published on March 2, 1983 (48 FR 8930–8931).

The interim final rule published September 1, 1983 modified the regulations published March 2, 1983, to apply the limitation to the services furnished to hospital inpatients outside the provider setting. This change was necessary to implement the requirements of section 1862(a)(14) of the Act.

The limitation is applied to all radiological services that are generally furnished in physician's offices and clinics in the area to assure that technical input, such as equipment, will be paid as nonphysician services. If the radiological service furnished is not generally furnished in nonprovider settings in the area, then the 40 percent limitation would not apply because there would be no prevailing charge for that service on which to base the 40 percent limitation.

On several occasions we have specifically requested the public to furnish studies that demonstrate the relationship of charges for radiology services in hospital and office settings. We have not received any information that indicated to us that this limit is not reasonable.

E. Payment for Physicians' Services Furnished Through Independent Laboratories

In implementing section 1862(a)(14) of the Act, it was necessary to differentiate between independent laboratory services that are nonphysician services for the purposes of the unbundling provision and must be furnished under arrangements and any independent laboratory services that qualify as physicians' services reimbursable on a reasonable charge basis under Part B. Section 405.556(c) was added to the interim final rule to clarify this issue.

The comment we received on this issue was from a medical association.

Comment—The medical association took issue with our extending the criteria for identifying physician laboratory services that are reimbursable on a reasonable charge basis under Part B to independent laboratory inpatient services. The commenter strongly disagrees with our contention that these criteria "afford the most appropriate and consistent basis for distinguishing physicians' services reimbursable on a reasonable charge basis furnished by independent laboratories." The association believes that these criteria—

- Go beyond the statutory provisions of the law and the intent of Congress;
- Establish harmful public policies; and
- Demonstrate a misunderstanding of the practice of medicine and particularly the practice of pathology.

In particular, the commenter objected to the definition of consultation used in the regulations. The association contended that the interpretation of test material or data that requires the medical expertise of a pathologist would be a more realistic and rational approach for determining whether Part B payment is appropriate.

Response—We are continuing to discuss this matter with pathologists to determine whether additional services furnished in laboratories should be billed on a reasonable charge basis under Medicare Part B. If any changes are made in the future, they will apply to services furnished to inpatients by independent laboratories and hospital laboratories alike. This policy would be in accord with section 1862(a)(14) of the Act, which requires the Secretary to define nonphysician services for the purpose of prospective payment. However, for purposes of these final regulations, we are making no changes in this policy.

XIII. PROVIDER AGREEMENTS

A. Changes Affecting Basic Provider Agreement Commitments

In implementing sections 1866(a)(1)(F), (G), and (H) of the Act, as well as the requirements of the prospective payment system in general, the regulations concerning provider agreements under Medicare (42 CFR Part 489) were amended by the interim final rule to include several new provisions. The regulations (§§ 489.20 (d) and (e)) specify that in order to participate in Medicare a hospital that furnishes inpatient services must agree—

- To either furnish directly or make arrangements for all items and services (other than physicians' services) to which the beneficiary is entitled under Medicare; and
- To maintain an agreement with a PRO for that organization to review the admissions, quality, appropriateness, and diagnostic information related to those inpatient hospital services.

In addition to these requirements, §§ 489.21 (e) and (f) require that a hospital must also agree that it will not charge a beneficiary for the following:

- Inpatient hospital services for which the beneficiary would be entitled to have prospective payment made but for a denial or reduction in payments as a result of admissions or quality review.
- Items and services furnished to a hospital inpatient (other than physicians' services and the services of an anesthetist as described in § 405.553(b)(4)) for which Medicare payment would have been made if furnished by the hospital or by other provider or suppliers under arrangements made by the hospital. The hospital must also agree that a charge will not be made by another provider or supplier for these items and services.

We received one comment, which is answered below, on the provider agreement commitments. However, several comments concerning charges to beneficiaries were received. Those comments and our responses are set forth in section X. of this preamble.

Comment—A health care facilities' system believes that it is unfair for us to hold hospitals at risk of violating their provider agreements if unrelated suppliers improperly bill Medicare beneficiaries for items and services furnished to a hospital inpatient (other than physicians' services). This commenter contended that it is unreasonable for us to hold a hospital accountable for the billings of unrelated suppliers who may not have consulted with the hospital concerning their billing practices. It would be more appropriate to merely prohibit a hospital from participating in any improper billing of beneficiaries and to require that a hospital contractually prohibit the known suppliers of its patients from engaging in these billing practices.

Response—Section 1866(a)(1)(H) of the Act provides that a hospital's agreement with the Secretary to participate in Medicare and receive Medicare payment must include an agreement to furnish directly or under arrangements all items and services (other than physicians' services) furnished to inpatients of the hospital. If a hospital fulfills this requirement, no charges will be made by any unrelated suppliers. We have no statutory authority to amend the regulations that implement this provision.

B. Waiver of Requirements Concerning Part A Billing

Section 602(k) of Pub. L. 98–21 authorizes temporary waiver, in certain circumstances, of the requirement that nonphysician inpatient hospital services be furnished either directly or under arrangements. This waiver authority is implemented through our regulations governing provider agreements (42 CFR Part 489). However, the statute requires that we reduce the Medicare Part A payments to the hospital for the amount of Part B billings for nonphysician services furnished to the hospital's inpatients. Therefore, our regulations (§ 405.477(e)(3)) state that payments for inpatient services will be reduced to take into account 100 percent of the reasonable charges (before application of the Medicare Part B deductible and coinsurance amounts) for nonphysician services furnished by an outside supplier.

Section 489.23 sets forth the criteria for a waiver, specifies how a hospital must apply, and gives the terms that a hospital and its suppliers must meet under a waiver agreement.

Essentially, to qualify for a waiver, a hospital must—

- Have allowed extensive billing under Part B for services furnished to inpatients before October 1, 1982; and
- Demonstrate, by meeting certain criteria, that this practice was so extensive that the hospital's immediate compliance with the new requirement would threaten the stability of patient care.

The following criteria must be met by a hospital to satisfy the second requirement of the waiver provision:

- The hospital must show that the outside suppliers' reasonable charges for nonphysician services in the hospital's base period must have been at least 125 percent of the reasonable cost of the nonphysician ancillary services furnished to Medicare inpatients by the hospital, exclusive of the costs for operating room, recovery room, labor and delivery room, and drugs and medical supplies charged to hospitals.
- The hospital must show that at least three ancillary services furnished for its inpatients have been furnished by outside suppliers and billed directly under Medicare Part B.

In addition to these provisions, the regulations (§489.23(c)(3)) require that a hospital must show that its suppliers have agreed to the following during the period the waiver is in effect:

- The supplier will bill only for services for which payment may be made under Part B.
- The supplier will bill Medicare directly for services furnished to a hospital inpatient (even if assignment is not accepted).
- The bill will be submitted within 30 days of the patient's discharge.
- The bill will specify that the services were furnished to an inpatient of a particular hospital.
- The bill will identify the nonphysician services furnished and the charge for each service.

The last four requirements are necessary to enable us to make the required reduction in the hospital's Part A payment to reflect Part B billings.

The waiver authority extends through cost reporting periods beginning before October 1, 1986.

Comments on the waiver issue were submitted by a hospital association and four medical associations. All five commenters believed that the waiver criteria set forth in the regulations are unreasonable and inappropriate.

Comment—Two commenters believe that it is excessively restrictive to require that the hospital must show that at least three ancillary services furnished for its inpatients have been furnished by outside suppliers. Since the number of services seems to be an arbitrary decision and no rationale has been presented to support the decision that it must be three services, the commenters believe that the waiver should be granted to any hospital that has at least one ancillary service furnished by outside suppliers.

Response—The statutory language authorizing waiver of rebundling (section 602(k) of Pub. L. 98–21) is quite specific in stating that the waiver may only be granted in the case of a hospital that has followed a practice, since prior to October 1, 1982, of allowing direct billing under Part B for services (other than physician services) so *extensively* that immediate compliance with those requirements would threaten the stability of patient care. We believe the use of the terms "extensively" and "threaten the stability of patient care" call for restrictive criteria for evaluating waiver requests. We do not believe that hospitals that have a practice of direct billing for only one or two services can be considered to have engaged in this practice extensively.

Also, Congress intended that as many hospitals as possible should come under the general payment system. This is evidenced by the application of the rebundling provision to hospitals excluded from or not yet subject to the prospective payment system. Therefore, although the statute does provide for waiver of the unbundling prohibition, we believe those waivers are to be granted sparingly.

Comment—One commenter objected to the burden placed upon the hospital to acquire assurances from their outside suppliers as a condition of receiving a waiver. In the commenter's opinion, it would have been more appropriate for HCFA to directly seek from the outside suppliers the assurances dealing with the billing for services furnished by those outside suppliers. Also, mandatory assignments, as required by the waiver, is prejudicial and not consistent with present law or prior experience.

Response—We do not believe that it is appropriate for us to interfere in the contract negotiations between hospitals and their suppliers. Therefore, we are not going to seek the assurances directly from suppliers. Moreover, we believe that hospitals that have consistently arranged for services or supplies from an organization would be more familiar with the suppliers in question, and therefore, more likely to succeed in obtaining the required assurances.

With regard to the issue of mandatory assignment, we do not require mandatory acceptance of assignment as part of the assurance of suppliers for hospitals that have been granted a section 602(k) waiver. We do, however, require that the supplier submit a bill directly to the program for the services. If assignment is not accepted, the

supplier may not receive the Medicare payment on the bill in accordance with section 1842(b)(5) of the Act and, therefore, may bill the beneficiary for the full charge of the services.

Comment—One commenter suggested that the requirements be modified so that any hospital able to demonstrate that a current supplier will not agree to a revised contract and that other suppliers are not generally available will be eligible for a waiver to permit the necessary time for the hospital to investigate alternative suppliers or to develop the capacity to provide the service on-site.

Response—While we recognize that the situation where a hospital and a supplier are having difficulty negotiating agreements may be problematic in some circumstances, particularly where alternative sources are limited, we do not believe this situation can be considered to meet the hospitals and suppliers will be able to come to agreements swiftly, once they accept the virtually universal application of the rebundling provision.

Comment—One commenter stated that it is unreasonable to require that all waiver requests and supporting documentation had to be submitted by September 10, 1983 (§ 489.23(b)(1)). First, the commenter believes the date itself, only 10 days after the publication of the interim final rule, is unreasonable. Second, the unfavorable impact of these regulations may not be fully evident until after the new system has been in operation for some time. Hospitals should have the option of applying for this waiver at any time if the waiver will remove threats to the stability or availability patient care.

Response—The interim final regulations stated that requests for a waiver of the rebundling provision under section 602(k) of Pub. L. 98–21 must be submitted by September 10, 1983. The intent of this filing date was to assure waiver for qualified hospitals before October 1, 1983, the effective date of the rebundling provision. We do not believe that it is possible to extend the deadline for requesting waivers. This is because those hospitals that have not received waiver by October 1, 1983, have already rebundled previously directly billed services and have demonstrated that rebundling would not threaten the stability of patient care.

XIV. CONFORMING CHANGES

In the interim final rule, we made a number of conforming changes to the regulations. Some of these changes were directly necessary as a result of the prospective payment system, and some were necessary to implement other statutory changes made by Pub. L. 98–21. In addition, several sections of the regulations were deleted from the Code of Federal Regulations to remove obsolete or repetitious material. We also made some clarifying technical changes to correct errors in wording and cross-references. The conforming changes and corresponding comments and responses are summarized below.

- *Introduction to Subpart D*—Section 405.401 was revised to incorporate a reference to the prospective payment system. We received no comments on this change.
- *Methods of apportionment under title XVIII*—Section 405.404 was deleted since this was repetitious of regulations contained in § 405.452 (Determination of cost of services to beneficiaries) and § 405.453 (Adequate cost data and cost finding).

We received no comments on this deletion.

- *Cost of educational activities* ("orientation" and "on-the-job training")—Section 405.421(d) was changed to clarify which training and personnel development costs must be treated as operating costs, rather than direct medical education costs. This provision applies to all providers paid under Subpart D.

Comment—A number of commenters noted that § 405.421(d)(3) specifically excludes payment for costs for sending employees to educational seminars and workshops that increase the quality of medical care or operating efficiency. The commenter's were concerned that this provision could be construed as denying a cost-based payment for continuing medical education and other continuing education for health care professsionals. It was the commenter's opinion that such a decision will materially and harmfully affect the quality of services available to Medicare inpatients and others.

The commenters recommended that continuing education programs for physicians and other health professionals should be paid as a pass through cost and treated as direct medical education expenses.

Several other commenters noted that § 405.421(d)(4) provides that the cost of maintaining a medical library is a normal hospital operating cost included in the prospective payment amount rather than a pass through cost such as education program costs, which are reimbursed based on reasonable costs. Several commenters suggested that § 405.421(d)(4) be deleted and that medical library costs should be treated as an indirect medical education cost and treated as an additional payment.

Some commenters suggested that medical library costs incurred by a teaching hospital in excess of those of non-teaching hospitals should be allowed as educational program costs paid on a cost reimbursement basis. These commenters suggested that this could be accomplished by re-allocating library expenses in proportion to utilization by (1) attending physician and hospital staff, a general expense paid through prospective payment revenues, and (2) residents and other trainees, in education program costs paid on a cost reimbursement basis. These commenters further suggested that we revise § 405.421(d)(4) to permit an allocation of medical library expenses to both operating costs and education program costs using this or some similar methodology to distinguish the two.

Response—We believe that the prospective payment rates represent a fair payment to a hospital for normal inpatient operating costs, which are incurred by all hospitals. Included in normal operating costs are costs for such programs as on-the-job-training, employee orientation, continuing education and the maintenance of a medical library. These types of programs are areas engaged in by virtually all hospitals and constitute part of the normal day-to-day activities of the facility as it fulfills its primary function of providing needed health care services to its patients. In view of the fact that these programs are an integral part of the entire operation of the hospital, it is appropriate that they be included under the prospective payment system. A hospital whose operations (including these programs) are efficiently run will gain under the prospective payment system. Inefficient hospitals, on the other hand, will tend to be at a disadvantage, and thus will have an incentive to improve their efficiency. This was precisely the intent of Congress when it legislated the prospective payment system. Thus, it would be inappropriate to exclude continuing education, on the job training, employee orientation and the costs associated with maintaining a medical library from the prospective payment system, just as it would be inappropriate to exclude other facets of hospital operations from the prospective payment system.

It should be noted that the indirect medical education adjustment as discussed in section V.E. of this preamble recognizes higher costs for teaching hospitals. This adjustment factors into the prospective payment the higher costs incurred by a teaching

hospital for maintaining a medical library.

We also note in this regard that both the hospital specific portion and the Federal standardized amount include costs such as those which the commenters suggested should be passed through.

Comment—Some commenters noted that § 405.421(d)(6), which provides that the costs of interns and residents in anesthesiology who are employed to replace anesthetists are included in the prospective payment amount, should be deleted or modified. Some believe that this cost should be included and reimbursed as a medical education activity cost. One commenter suggested that we require the fiscal intermediary to determine that a hospital that employs more anesthesiology interns and residents and fewer anesthetists in any particular year has done so solely for the purpose of maximizing reimbursement and to disallow the cost on that basis.

Response—We do not believe it is appropriate for costs associated with interns and residents who replace anesthetists to be passed through as direct medical education costs. In providing for the pass through of direct medical education costs, Congress was very concerned about the possible effect of the prospective payment system on education programs operated by hospitals, and of the consequences the system would have on the future supply of medical personnel. Therefore, Congress provided that the direct costs of medical education programs would not be subject to the prospective payment system, but would continue to be reimbursed on a reasonable cost basis. However, we believe that when an intern or resident substitutes for an anesthetist, the intern or resident is no longer acting primarily in the role of a trainee in a formal approved education program, but rather is engaged primarily in providing hospital services to inpatients. Since the services of anesthetists are subject to the prospective payment system, it appears logical to us that the services of an individual qualified to substitute for the anesthetist should also be subject to the prospective payment system when in fact that individual serves as an anesthetist.

Since an intern or resident who performs the duties of an anesthetist is primarily performing what would be considered hospital services, rather than functioning as a trainee, we believe it is appropriate that all the costs of these services be subject to the prospective payment system, just as if they had been performed by an anesthetist. Therefore, there is no reason as one commenter suggested, to determine on a yearly basis whether the hospital is attempting to maximize its reimbursement by employing more interns and residents and fewer anesthetists.

Comment—One commenter questioned whether paragraphs (g) and (h) of § 405.421, which deal with the treatment of grants and donations, should be removed as the result of the deletion of § 405.423 (Grants, gifts, and income from endowments) in the interim final rule.

Response—We agree that a revision is necessary. We have therefore revised § 405.421 by revising paragraph (g)(1) and removing paragraphs (g)(2) and (h). This change merely makes the regulations consistent with the change that was made in the interim final.

• *Grants, gifts and income from endowments*—Section 405.423 was eliminated effective for cost reporting periods beginning on or after October 1, 1983. As a result, restricted grants and gifts will no longer be used to offset costs. We received several comments commending us for making this change in policy.

• *Compensation of owners*—Paragraph (d) of Section 405.426 was removed in the interim final rule since it included unnecessary payment requirements. Paragraph (d)(1) included requirements concerning sole proprietorships that are implicit in § 405.426(c)(2). Paragraph (d)(2) set forth special rules on the compensation paid corporate owners that we believe are adequately provided for in section 2305 of the Provider Reimbursement Manual (HCFA Pub. 15–1).

We received no comments on this change.

• *Allowance in lieu of specific recognition of other costs*—Section 405.428 was deleted since the provisions of this section were obsolete. We received no comments on this deletion.

• *Return on equity capital of proprietary provider*—Section 405.429(a)(1) was amended to implement section 1886(g)(2) of the Act, which was enacted by Pub. L. 98–21. Section 1886(g)(2) provided that the amount of allowable return on equity capital related to inpatient hospital services "shall be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund." This provision is effective for cost reporting periods beginning on or after April 20, 1983. We received no comments on this change.

• *Inpatient routine nursing salary cost differential for services furnished before October 1, 1982*—Section 405.430 was eliminated as the result of section 103 of Pub. L. 97–248, which added section 1861(v)(1)(J) to the Act. This amendment was effective for services furnished on or after October 1, 1982. We received no comments on this deletion.

• *Reasonable cost of physical and other therapy services furnished under arrangements* (exceptions, exemptions for inpatient hospital services)—Section 405.432(f)(4) was added to provide that effective with cost reporting periods beginning on or after October 1, 1983, the costs of therapy services furnished under arrangements to a hospital inpatient will be excepted from the guidelines issued under this section if such costs are subject to the provisions of § 405.463 (Ceiling on rate of hospital cost increases) or § 405.470 (Prospective payment: general provisions).

We received one comment on this change. The comment was from a national trade association which maintained that it agreed with our rationale that the coverage of these services under the salary equivalency guidelines no longer applies under the prospective payment and target rate reimbursement systems.

• *Reasonable cost of extended care services furnished by a swing-bed hospital*—Section 405.434(c)(3) was revised to provide that the cost of swing-bed ancillary services will be determined in the same manner as the reasonable cost of other ancillary services furnished by a hospital in accordance with § 405.452(a)(1).

We received one comment endorsing our policy on this change.

• *Determination of cost of services to beneficiaries*—Section 405.452 was reorganized. Several provisions were obsolete and were thus deleted. In addition, we revised the methodology for computing reimbursement for inpatient general routine service costs. Section 405.452(b)(3) (Carve-out method for swing-bed hospitals) was moved to § 405.452(a)(2). We further provided in § 405.452(a)(1)(iii) that for hospitals subject to the prospective payment system, it is no longer necessary to determine the higher costs of private rooms since the same amount per discharge will be paid regardless of whether private or semiprivate accommodations are provided. (Hospitals will, however, continue collecting the private room charge differential when private rooms are

requested and are not medically necessary.) We received the following comments on § 405.452(a)(2) (Carve-out method):

Comment—One commenter pointed out that the preamble of the interim final rule states that the carve-out method for computing general routine inpatient hospital service costs will not apply to swing-bed hospitals that are subject to prospective payment; however, the regulation did not contain the necessary corresponding changes. This commenter expressed the value of retaining the present system of reporting hospital costs, citing the many uses of Medicare cost data.

Response—The preamble discussion of the elimination of the carve-out methodology for swing-bed hospitals under the prospective payment system was in error. Pass through costs, for example direct medical education costs and capital related costs, will be based on the reasonable costs after carve-out. This will not affect the amount of Medicare payment for hospital inpatient operating costs for hospitals under the prospective payment system.

Comment—One commenter requested clarification of the effect of SNF services furnished in a swing-bed hospital on the prospective payment rate. Specifically, this commenter was concerned that payment for SNF-type services would be offset against the prospective payment rate.

Response—Payment for SNF-type services in swing-bed hospitals will not affect the hospital prospective payment rate for inpatient hospital services. Swing-bed hospitals will be paid the appropriate prospective payment rate for the discharge just as if the patient had been discharged to a separate SNF. The hospital would receive separate payment for the SNF-type services at the appropriate swing-bed rate. Even though the hospital must continue to carve-out SNF-type costs on the Medicare cost report, the carve-out will only impact Medicare payment for that portion of costs payable on a reasonable cost basis.

• *Adequate cost data and cost finding (cost reports-changes in cost reporting periods)*—Section 405.453 paragraph (f)(3) was added to describe the conditions under which a provider may change its cost reporting period. In the interim final, paragraph (g) of this section was erroneously removed and we are thus at this time reinstating this paragraph unchanged. (See section III. E. of this preamble for a comment and our response concerning this section.)

• *Payments to providers (outstanding current financing payments)*—Section 405.454(g) was erroneously retained in the interim final. This paragraph is being removed since all cases involving current financing are now referred to either the General Accounting Office or to the Department of Justice for collection. Removal of this provision for future cost reporting periods will not affect the status of existing overpayment cases.

• *Amount of payments where customary charges for services furnished are less than reasonable cost*—Section 405.455 was revised to provide that the lower of cost or charges (LCC) provision will not apply to the determination of payment for Part A Medicare inpatient hospital services under either the rate of increase or the prospective payment system. Section 101 of Pub. L. 97–248, which was effective for cost reporting periods beginning on or after October 1, 1982, provided that the rate of increase ceiling provisions were to be applied in determining payment for inpatient operating costs notwithstanding the LCC provision. With respect to the prospective payment system, payment for inpatient operating costs is made on the basis of a fixed amount per discharge rather than on the basis of LCC. In order to prevent imposing significant new recordkeeping burdens on hospitals if we were to apply the LCC provisions to costs other than inpatient *operating* costs (by which we mean capital-related costs, and costs allocated by a hospital to approved medical education programs), we decided to discontinue application of the LCC provision with respect to all Part A Medicare inpatient hospital services furnished in cost reporting periods beginning on or after October 1, 1982. The LCC provisions will still be applicable to all Medicare Part B services. Section 405.455(d)(1) was revised to state that we will not permit unreimbursed costs from a prior cost reporting period to be recovered in a current cost reporting period if the allowable costs of the current cost reporting period exceed the rate of increase ceiling under § 405.463.

We received one comment on the change, as discussed below.

Comment—The regulations do not address the determination of payments for carry-forward amounts from prior cost reporting periods under prospective payment. Although the carry-forward provision under section 223 of Pub. L. 92–603 for new providers has been eliminated, cost reporting periods for which this provision is applicable have not expired. Also, carry-forward amounts based on the lower of cost or charges provision will be applicable under prospective payment. The commenter recommended that the regulations should permit the recapture of carry-forward amounts from prior cost reporting periods under the prospective payment system. The commenter further recommended that specific instructions are needed concerning the determination of the carry-forward amounts and the method of payment.

Response—Current regulations in § 405.455 permit the recapture of carry-forward amounts from prior cost reporting periods whether or not a hospital is paid under the prospective payment system. The methodology for the computation has not changed.

• *Limitations on reimbursable costs*—Section 405.460 was amended to provide that it does not apply to the operating costs of inpatient hospital services furnished in cost reporting periods beginning on or after October 1, 1983. This statutory change was mandated by Pub. L. 98–21 and conforms to the prospective payment system. We received no comments on this change.

• *Ceiling on rate of hospital cost increases*—Section 405.463 was also amended in accordance with Pub. L. 98–21. We deleted all references to the inapplicability of the rate of increase limits to cost reporting periods beginning on or after October 1, 1985. This section will now apply indefinitely. We further clarified the costs subject to the ceiling by stating that for cost reporting periods beginning on or after October 1, 1983, only capital-related costs and the direct costs of approved medical education programs are excluded from the ceiling. We also provided that the target rate percentages for which target amounts are determined will be published in a quarterly Federal Register notice. Target rate percentages will be prorated for cost reporting periods that span portions of two calendar years. We made it explicit in the regulation that no retroactive adjustment will be made to the prospectively set target rate percentages if the actual increase in the market basket differed from the estimate.

Comment—Several commenters were of the opinion that the distinct part units that are excluded from the prospective payment system should also be excluded from the target rate ceiling.

Response—There is no statutory basis for the exclusion of distinct part units from the rate of increase ceiling. Section 1886(d)(1)(B) of the Act, as enacted by Pub. L. 98–21, provides that psychiatric and rehabilitation units are excluded from the prospective payment system. Although this section provides an exclusion from the prospective payment

system, it does not provide for an alternative payment method for such units. Thus, the existing reasonable cost reimbursement principles will continue to apply to these units.

Distinct part units are subject to the rate of increase limits under the current regulations in § 405.463. Therefore, such units will continue to be subject to a rate of increase ceiling. It is our belief that the application of a ceiling on the rate of hospital cost increases may be advantageous to some units since under this provision a unit could be paid an incentive or bonus for keeping its costs under the ceiling.

• *Limits on compensation for services of physicians in providers*—Section 405.482 was amended to provide that the reasonable compensation equivalent (RCE) limits do not apply to physician compensation related to inpatient hospital services paid for under the prospective payment system. Effective October 1, 1983, we will apply the RCE limits to inpatient operating costs for cost reporting periods, or portions thereof, that are not subject to the prospective payment system. The RCE limits continue to apply to hospital outpatient costs.

We received several comments endorsing our policy decision on this change. Some commenters noted that this policy will substantially reduce the recordkeeping requirements for physicians and will provide hospitals with flexibility in compensating physicians.

• *Conditions for payment of charges for physician services to patients in providers: General provisions* (effect of physician's assumption of operating costs)—Section 405.550(e), Conditions for payment of charges: anesthesiology services—Section 405.552, and *Reasonable charges for anesthesiology services*—Section 405.553 were amended to ensure that physician charges appropriately exclude payment for inpatient hospital services furnished by nonphysicians. These changes were required as the result of the unbundling provisions contained in Pub. L. 98–21 and have an effective date of October 1, 1983.

We received a number of comments on these changes, which are summarized below.

Comment—Several commenters noted that the effective date of October 1, 1983 did not provide enough time to make the necessary operational changes to implement these changes. One commenter pointed out that there appeared to be a conflict where physicians were obligated under § 405.550(e) to change their methods of billing in a leased facility on October 1, 1983, but the hospital's fiscal year allows the prospective payment system to begin on a different date.

Response—Generally, these changes were made to conform the final rules published on March 2, 1983 in the **Federal Register** (48 FR 8902) concerning the implementation date of § 405.550(e) to the unbundling provisions contained in section 1862(a)(14) of the Act, as enacted by Pub. L. 98–21. The unbundling provisions are effective for services furnished to hospital inpatients on or after October 1, 1983, regardless of when, or if, a hospital becomes subject to prospective payment.

Comment—One commenter stated that "the elimination of the delayed effective date for leases in effect prior to Medicare" again makes a drastic change for those involved, with no advance notice, and too little time and consideration of the impact. In addition, the commenter stated that it is difficult to understand HCFA's rationale that the unbundling concept can be extended to lease arrangements and used to eliminate the implementation schedule provided in the March 2, 1983 regulations concerning the effective date for § 405.550(e) (48 FR 8902). This commenter further stated that unbundling was intended to deal with outside providers such as independent laboratories and that leased laboratories are not independent laboratories. The commenter noted that section 1862(a)(14) of the Act (as enacted by Pub. L. 98–21) is cited as the authority for the inclusion of leased laboratories in unbundling; however, the commenter pointed out that this section of the Act makes no mention of leased laboratories. This commenter stated that the purpose of unbundling was to prevent hospitals from removing services previously provided in the hospital to providers outside the hospital. The commenter pointed out that the delayed effective date giving two years to long-standing leases was intended to give hospitals that had used laboratory arrangements for a long period of time the opportunity to make adjustments in those arrangements. The commenter believes that during the period between the passage of Pub. L. 98–21 and the issuance of the interim final rules on September 1, that HCFA could have found a more equitable mechanism, other than providing 30 days, to advise those entities that were expecting the two year delayed effective date.

The commenter expressed strong opposition to the use of the unbundling provision as the basis for the government's disregard for a commitment made to the delayed effective date published in the March 2, 1983 regulations.

Response—While the March 2, 1983 regulations provided for continuing recognition of lease arrangements that predated the Medicare program until March 3, 1985, this provision was superseded by § 602(e) of Pub. L. 98–21. Section 602(e) added section 1862(a)(14) to the Act and, in effect, provides that effective October 1, 1983 all services, items and supplies, other than physicians' services furnished to hospital inpatients are covered as hospital services unless the hospital is granted a waiver under section 602(k). Since it was necessary to eliminate the delayed effective date for inpatient services furnished by a lease entity, we decided to eliminate it for outpatient services. This consistency in approach was intended to facilitate program administration. Also, since the volume of services furnished by a leased department to inpatients is generally greater than those furnished to outpatients, we did not believe that there would be a significant problem for a leasing entity to make the same change for outpatient services that it was being required to make for inpatient services.

Comment—One commenter voiced opposition to the provisions contained in § 405.550(e) that treat physicians or other entities with lease arrangements as being related to providers. It is the commenter's belief that § 405.427 (costs to related organizations) cannot reasonably be applied to lease arrangements. The commenter believes that lease arrangements were not created for related organizations and pointed out that to apply the related organizations provision to leased laboratories on one hand and then to require open books and records (§ 405.550(e)(4)) for independent contractors on the other hand illustrates the inappropriateness of this association. The commenter stated that while § 405.427 provides for exemptions, it is unlikely that a leased laboratory would or should meet the criteria of having a "substantial part of its business activity of this type carried on with the provider . . . . transacted with others . . . .". It is difficult to comprehend, the commenter further stated, that the rationale used by HCFA to define a laboratory as an entity in which a physician has assumed all operating costs, and either individually or through a professional corporation is not under the ownership or control of the hospital as a related organization. The commenter noted that §§ 405.550(e)(4) is especially puzzling

because it is the commenter's understanding that the access to books provision of the Medicare law (section 1861(v)(1)(i) of the Act) and existing regulations was to be applied to independent contractors. This commenter questioned how a leased laboratory can be two entities: a related organization and an independent contractor.

Finally, this commenter also recommended that the provisions of § 405.550(3) should be withdrawn and reissued as a notice of proposed rulemaking.

Response—The addition of § 405.550(e)(3) merely reflects our policy as set forth in the preamble of the March 2, 1983 final rule entitled, "Payment for Physician Services Furnished in Hospitals, Skilled Nursing Facilities, and Comprehensive Outpatient Rehabilitation Facilities (48 FR 8913). The discussion in that rule concerning a physician's assumption of operating costs points out the close connection inherent in the relationship between a hospital or other provider and its leased departments. This close connection makes it appropriate to treat these entitles as related parties for payment purposes.

• *Cost reimbursement—general* (HMOs)—Section 405.2041(d) was amended to delete inappropriate references to reasonable cost reimbursement. An HMO continues to have an option to elect to have providers that furnish covered services to HMO enrollees paid directly by Medicare. This election continues under the prospective payment system.

We received no comments on this change.

• *Lifetime reserve days*—Section 409.65(e) was revised to provide that if a beneficiary has one or more days of regular coverage available upon entering the hospital, an election not to use lifetime reserve days will apply automatically to all days that are not outlier days. The beneficiary may also elect not to use lifetime reserve days for outlier days but this election must apply either to all outlier days, or to all outlier days after a specified date. If a beneficiary has no regular coverage available upon entering the hospital, an election not to use lifetime reserve days must apply either to the entire hospital stay, to all outlier days, or to all outlier days after a specified date. The revisions to this section were necessitated by the prospective payment system to prevent a beneficiary from manipulating use of his or her lifetime reserve days to gain some unintended advantage not contemplated by the statute.

We received one comment on this change as follows:

Comment—The commenter believes that the options that the Medicare program gives the beneficiary regarding lifetime reserve days under the prospective payment system are unduly complex, difficult for hospitals to explain to beneficiaries, and seem to have little relevance to beneficiary needs.

Response—We agree and have, therefore, revised § 409.65(e). A beneficiary who has any regular benefit days available upon entering the hospital is deemed to have elected not to use lifetime reserve days for any nonoutlier days. Further, any election by the beneficiary not to use lifetime reserve days for outlier days must apply to all outlier days. Also, if a beneficiary has no regular benefit days available upon entering the hospital and he or she elects not to use lifetime reserve days, this election must apply to the entire hospital stay.

XV. SUMMARY OF REGULATIONS CHANGES

For the convenience of the reader, we are summarizing the changes we are making to the regulations as a result of public comments. The reader is referred to the detailed discussions above for a complete explanation of the rationale for these changes. In addition, we note that we made several technical and editorial conforming changes, not in response to public comments, where necessary to make the regulations easier to understand.

A. Applicability

We made the following changes in § 405.471 (Hospitals and hospital services subject to and excluded from the prospective payment system).

• Neurological disorders and burns were added to the list of conditions that help identify rehabilitation hospitals and units (§ 405.471(c)(2)(ii) and § 405.471(c)(3)(iii), respectively).

• We revised the criteria for directors of rehabilitation hospitals and units (§§ 405.471(c)(2)(v) and (c)(3)(iii)(F), respectively) to require that the directors must provide services to the hospital or unit, or to the inpatients of the hospital or unit, on a full-time basis and that the director have, after having completed a one-year hospital internship, at least two years of training or experience in the medical management of inpatients who need rehabilitation services. (We also note that we have revised our program operating instructions that implement the criteria for directors of rehabilitation hospitals and units (§ 405.471(c)(2)(v) and (c)(4)(iii)(F) respectively) to specify that the full-time director criterion will apply to all hospitals and units that wish to qualify for exclusion as rehabilitation hospitals or units, without regard to whether they are accredited by the JCAH or CARF.)

• In § 405.471(c)(4)(ii)(A), we clarified that a psychiatric unit must admit patients only for intensive, active treatment of a psychiatric diagnosis.

• We added requirements in § 405.471(c)(4)(ii)(C) to the effect that excluded psychiatric units must maintain sufficient clinical records and meet special staff requirements.

• A new provision was added (§§ 405.471(c)(3) and (c)(4)(iv)) to provide a special time-limited exclusion for alcohol/drug treatment hospitals and units.

B. Basis of Payment under the Prospective Payment System

• We are clarifying § 405.453(f)(3) to indicate that a provider may request a change in cost reporting period if a change in ownership of the provider occurs.

• We amended § 405.470(c) to—

—State explicitly that an inpatient leave of absence will not be considered a discharge.

—Provide for payment of the full prospective payment rate to a transferring hospital for discharges assigned to DRGs 385 and 456.

—Ensure that full DRG payment will be made to a transferring hospital if a patient is transferred to a hospital that would be excluded from the prospective payment system regardless of its location (for example, a hospital located in a State with a cost control program) or whether its first cost reporting period under the prospective payment system has begun. (Conversely, we note that the transferring hospital will be paid on a per diem basis if a patient is transferred to any hospital that would be subject to prospective payment except that the hospital is located in a State with a cost control program or its first cost reporting period under prospective payment has not yet begun.)

—Make clear that, in order to prevent possible overpayments, the transferring hospital will be paid on a per diem basis in any case where a patient is transferred to a hospital or hospital unit, and it has not yet been officially determined that that hospital or unit is excluded from the prospective payment system.

• We revised § 405.472(a) to clarify the sanctions that HCFA may take against a hospital that violates any conditions for prospective payments.

C. Determination of the Prospective Payment Rates

- We revised § 405.463(C)(5)(iii) to indicate that target rate percentages will no longer be published quarterly.
- Section 405.463(h) was amended to clarify that adjustments to amounts of operating costs considered in establishing cost per case, for rate of increase ceiling purposes, include adjustments for FICA taxes and services billed under part B.
- We are revising § 405.474 to—

—Clarify that the "inadvertent omission" for which recomputations of base period costs are permitted pertain to adjustments to exclude capital-related costs, direct medical education costs, and costs associated with Part B services and payment of FICA taxes as provided under § 405.474(b)(2)(ii).

—Distinguish between base year cost determination actions subject to prospective adjustment based on appeal of disallowed costs, and those modifications to the hospital's base year experience that are not related to payment of a hospital's costs in the base year, but are solely related to establishing a hospital specific rate, and that may not be appealed.

—Incorporate a change to allow for a modification in base period costs for one-time, nonrecurring experiences that decrease costs.

—Permit review of intermediary's estimation of base year costs.

—No longer reduce the case-mix adjusted base year costs for outlier payments.

—Establishes criteria for which hospitals under new ownership through a change in ownership may be classified as "new" hospitals, which allows them to be paid solely on the basis of the Federal rate.

D. Additional Payment Amounts

- Section 405.414(b)(2) was changed to state that a nonrelated purchaser includes a shared service organization not related within the meaning of § 405.427 (related organizations).
- In § 405.414(b)(4), we provided flexibility in the description of when a lease constitutes a purchase.
- We cross-referred § 405.414(g)(2(i) to § 405.414(b) to clarify that the criteria under leases and rentals applies to capital-related equipment.
- We revised the criterion in § 405.414(g)(2)(ii) to clarify that capital-related equipment includes both property that is located on the provider's premises as well as offsite property that is on real estate owned, leased or rented by the provider.
- We revised § 405.421(d)(6) to clarify that the cost involved for clinical training of students not enrolled in an approved education program operated by the provider is a normal operating cost.
- Also, in § 405.421(d)(7), we deleted the provision that allowed costs associated with support of educational activities to be considered as direct medical education costs subject to pass through in situations where the hospital does not actually operate the educational program.
- In § 405.475(c)(1), we provide that day outlier payments may be made in advance on request of the hospital.
- We revised § 405.477(d)(2) to permit the inclusion of interns and residents employed by an organization with a long-standing historical medical relationship with the hospital in determining the additional payment for indirect medical education costs.

E. Interim Payments

- We revised §§ 405.454 (m)(2) and (m)(3) to state that interim payments under prospective payment will be made two weeks after a two-week period of services has ended and that these payments will be reviewed and adjusted if necessary. We revised § 405.454(m) to clarify that the estimate for the indirect teaching adjustment is subject to year-end adjustment.

F. Special Treatment of Certain Hospitals

- We revised § 405.476(b)(3)(i) to permit the inclusion as sole community hospitals of all hospitals whose requests for that classification were received by the appropriate intermediaries prior to October 1, 1983, and subsequently approved, without regard to whether the hospital is located in an urban area.
- Section 405.476(b)(3)(ii)(B) was changed to permit an under 50-bed hospital, located between 25 and 50 miles of neighboring hospitals, to be designated as an SCH if it meets certain utilization criteria. We added a provision permitting utilization patterns to be based on the experience of either 25 percent of the general resident population, or 25 percent of Medicare beneficiaries, in the hospital's service area who would have entered the hospital but for the unavailability of necessary specialty services.
- We revised § 405.476(f)(1)(ii) to clarify that a facility that is a subunit of an acute care general hospital or university-based medical center may not qualify as a cancer hospital.
- In § 405.476(f)(1)(iii), we lowered the percentage criterion for cancer hospitals from 80 to 50 percent in order to ensure that hospitals that are extensively involved in cancer treatment and research will be able to qualify for special treatment. For purposes of clarity, we are also linking the principal diagnosis to neoplastic disease rather than a finding of cancer.
- We revised § 405.476(g)(1)(ii) to change the criteria for referral centers to include hospitals that obtain 50 percent of their patients from other hospitals or by referral from physicians not on the hospital's staff, and to lower the mileage criterion from 100 miles to 25 miles or more.

G. Appeals

- Generally, in §§ 405.1801, 405.1803 and 405.1809 we removed the references that separately identified hospitals receiving payment for inpatient hospital services under reasonable cost subject to the target rate system under § 405.463.
- We revised § 405.1804 to clarify further those matters that cannot be appealed and § 405.1839 to explain in greater detail how the amount in controversy is to be computed for hospitals paid under the prospective payment system.

H. Charges to Beneficiaries

- We revised § 405.472(b)(1) to permit a hospital receiving payment for inpatient hospital services under prospective payment to charge for medically unnecessary services and custodial care furnished after requirements concerning notice to the beneficiary (or to his or her representative) and other safeguards have been met.
- We revised § 409.65 to simplify the process concerning the beneficiary's options in electing lifetime reserve days under the prospective payment system.

I. Review Activities

- We revised § 405.472(d)(2)(i) to require that cautionary language be included in the document used by the hospital for physician attestation. This language warns the physician of the consequences of making false statements.
- We revised § 405.472(d)(2)(ii) to state that—

—DRG validation is to be performed every three months.

—DRG validation may be done at the hospital or another site as opposed to the current requirement that it be done at the hospital.

- We revised § 405.472(e)(3) to clarify that the responsibility for making determinations with respect to sanctions under sections 1862(d) and 1866(b) of the Act rests with the Office of the Inspector General.

• In § 405.475, paragraph (c)(2) was revised to clarify that medical necessity is also the reason for the review of admissions and outlier services in the context of the entire stay in day-outlier cases.

• For purposes of editorial and technical consistency, we revised and restructured §§ 405.1042, 405.1627, and 405.1630. We also changed a cross-reference in § 405.1629.

J. Payment for Nonphysician Services Furnished to Hospital Inpatients

• We revised § 405.232(i) to clarify when payment will be made under Medicare Part B for ambulance services furnished to hospital inpatients.

K. Provider Agreements

• In §§ 489.20, 489.21, and 489.23, we made corrections to cross-references and minor editorial corrections.

• We revised § 489.21(f) to clarify that separate charges may be made to beneficiaries who are hospital inpatients for the services of physician-employed anesthetists who are excepted from the rebundling provision under § 405.553(b)(4).

L. Conforming Changes

• In § 405.421, we made revisions to delete outdated material relating to grants, gifts, and endowments.

• Because we erroneously removed paragraph (g) of § 405.453 in the interim final rule, we are reinserting the paragraph unchanged.

• In § 405.454, we are removing paragraph (g) because cases involving current financing overpayments are no longer recovered by withholding Medicare payments but are referred to the General Accounting Office or to the Department of Justice for collection.

• As noted above in the section dealing with charges to beneficiaries, we revised § 409.65 concerning election of lifetime reserve days by beneficiaries.

XVI. IMPACT ANALYSIS

A. Introduction

A preliminary analysis of the impact of the regulations implementing the prospective payment system was included in the interim final rule published September 1, 1983. The purpose of that analysis was to fulfill, in combination with the preamble to the interim rule, the requirements of Executive Order 12291 and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).

Executive Order 12291 requires that, for any major rule, a regulatory impact analysis be performed and made available to the public. A "major rule" is defined as one that would:

• Result in an annual effect on the national economy of $100 million or more;

• Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

• Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act requires us to prepare and publish a regulatory flexibility analysis for regulations for which a notice of proposed rulemaking is utilized unless the Secretary certifies that the regulations will not have significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all hospitals participating in Medicare as small entities.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives that minimize unnecessary burden or otherwise assure that regulations are cost-effective.

In considering whether the prospective payment regulations required a regulatory impact analysis or regulatory flexibility analysis, we determined that the major features of the prospective payment system are specified in the statute, which allows only limited regulatory discretion. Although the statute does allow the Secretary some administrative discretion in the implementation of some minor aspects of the prospective payment system, it was not immediately clear whether the regulatory provisions for which we had such discretion would, in themselves, meet the criteria for a major rule under the Executive Order. Further, since the statute explicitly required the regulations inplementing the prospective payment system to be promulgated on an interim final basis, rather than first issuing a notice of proposed rulemaking, it was arguable that the Regulatory Flexibility Act did not apply.

However, we believe that the extensive changes in our methods of paying for inpatient hospital services will significantly impact all hospitals participating in the Medicare program. In addition, although the statute requires that the prospective payment system be budget neutral in fiscal years 1984 and 1985, we anticipate that the changed incentives of the system will result in annual program savings exceeding $100 million in subsequent years, meeting the primary Executive Order definition of a "major rule". Therefore, as explained in the interim rules, we have chosen to treat these regulations as a major rule under Executive Order 12291, and are voluntarily providing a discussion that, combined with the rest of this preamble, constitutes a final and voluntary regulatory impact analysis and a final and voluntary regulatory flexibility analysis. We do not expect the overall economic impact and program expenditures resulting from these final regulations to differ significantly from the impacts expected from and analyzed in the interim rule published September 1. Thus, the following discussion does not focus in the differences between the interim rules and these regulations, but rather provides a more extensive discussion than previously published of the anticipated effects of the prospective payment system.

B. Objectives of the Prospective Payment System

The prospective payment system for inpatient hospital services was enacted in response to the increasing costs of hospital services furnished to Medicare beneficiaries. Numerous studies have highlighted the rate of growth in health care spending in the United States, particularly the rapid increase in Medicare payments to hospitals. These issues have been, for many years, a focal point for discussion and action on the part of all levels of government and various sections of the health care industry.

Hospital care represents a significant portion of present and projected health care expenditures. The increases in spending experienced by hospitals and the Medicare program appear to be caused by several factors, including—

• General inflation in the economy;

• The relative weakness, in the marketplace for hospital services, of traditional supply and demand forces;

• The cost reimbursement system used by Medicare and other third party payors; and

• The growth and increasing age of the Medicare beneficiary population.

The combined effect of these factors has been the explosion of overall health care utilization and expenditures, including Medicare utilization and payments. Medicare expenditures for inpatient hospital services have increased more than tenfold since its inception—from about $3 billion in 1967 to more than $33 billion in 1982. From 1979 to 1982, the average cost of a day of hospital care increased at an annual rate of almost 18 percent, and Medicare expenditures for hospital services increased at an annual rate of over 19

percent. In 1982, hospital costs increased by 15.5 percent, three times the rate of inflation in the economy as a whole.

Although a substantial part of the rate of increase in Medicare expenditures is attributable to factors outside the financing system for such services, it has been clear for some time that cost reimbursement has established incentives that greatly contribute to these increases. These incentives have exacerbated the weakness of supply and demand forces, rewarding hospitals and physicians for increasing utilization of services, lengths of stay, and the intensity of services without regard to the relative cost-effectiveness of such practices.

The prospective payment system is designed to alter these past incentives by providing hospitals with a fixed set of payment rates for each type of discharge. Prospective rates represent a set of prices with characteristics similar to the prices a hospital would face in a more conventional market. Therefore, each hospital will know the amount it will be paid per discharge and that the payment rate will remain unchanged regardless of its own operating cost experience. Setting payment rates prospectively places hospitals at risk in terms of the management of their operations and the use of their resources. A hospital that spends, on the average, more than it is paid to treat Medicare beneficiaries, will lose money. Conversely, as in any normal industry, a hospital that spends less than it is paid will make money. Thus, we believe that the prospective payment system will begin to address some of the serious problems inherent in the cost reimbursement payment methodology and, therefore, will allow us to better manage the Medicare program and preserve the integrity of the trust funds.

By establishing prospective payment rates based on DRGs, hospital payments will be related to the treatment provided to each patient. These groupings are designed to take into account the fact that patients have different diagnoses, require different treatments, are of different ages, and differ in other ways. This patient classification system offers the following advantages:

- The category definitions into which cases are classified cover virtually the entire patient population.
- The groupings have been extensively reviewed by physicians for clinical coherence throughout their development.
- The DRGs conform closely to the organization (by clinical specialty) of the delivery of inpatient care in the hospital.
- The DRGs group those inpatient cases together which are generally quite similar in use of resources.
- The DRGs allow inpatient records to be easily classified by an efficient computer program using readily available discharge abstract data.

Based on these considerations, Congress concluded that a DRG-based prospective payment system is currently the best available response to the problems of increased hospital expenditures experienced by the Medicare program. As a result, Pub. L. 98–21 required us to implement such a system, with the expectation that this change would—

- Restructure hospitals' economic incentives, establishing market-like forces;
- Link payment to diagnosis, basing payment on a system that more accurately identifies the product being purchased on behalf of Medicare beneficiaries;
- Establish the Federal government as a prudent buyer of services, adopting an active role in determining payments for inpatient services on behalf of Medicare beneficiaries; and
- Restrain the rate of hospital cost increases, and, therefore, moderate the outflow from the Medicare trust funds.

In the discussion below, we examine how the prospective payment system will achieve these intended effects and what additional consequences may be expected from these rules.

C. Problems of Impact Quantification

In the preliminary analysis published with the interim rules, we discussed the objectives and impacts of the rules in general conceptual terms. At that time, we did not have adequate data, analytic resources, or time to perform a detailed quantitative impact analysis for publication with the interim rules. However, we solicited comments and information that would enable us to better describe and quantify the anticipated effects of the Medicare prospective payments system.

For the most part, commenters addressed specific provisions of the interim rule, rather than the broader considerations of the interactions and the impact of the provisions as a whole. Since we respond to comments on specific provisions in the earlier sections of this preamble, we have decided that we will generally not repeat discussions of the impact of specific provisions in this section. Rather, we see this analysis section as a broader discussion and the conclusion of the many other impact-related discussions of this preamble. Therefore, this section summarizes and generalizes the impact of all the provisions of the regulations, and examines the net effects of those provisions on different groups affected by the rules, such as hospitals, physicians, and beneficiaries.

At present, we have no adequate way to model potential behavioral changes on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Most of the available Medicare program data reflect only patterns and trends of utilization and payment under cost reimbursement. We do have data from, and have published studies of, various State rate-setting systems, including prospective payment systems. However, these systems are so different (in specific rate-setting methods, payors subject to the system, and other matters) from the Medicare prospective payment system that, although they certainly contribute to our conceptual understanding of likely effects, we do not believe they are sufficiently comparable to this system to afford us a basis for making quantitative projections that take into account potential changes of behavior of the various actors affected by the prospective payment system.

Congress recognized that the prospective payment system, as initially implemented, would not be perfect. The intent of Congress was to establish the system as soon as possible, and to make changes and improvements as experience dictates. This is evidenced by the statutory requirements concerning the issuance of interim and final rules, monitoring reports, and periodic recalibration of weights and factors used in rate determination. The three-year transition period was provided for the explicit purpose of buffering the effects of implentation of national payment rates, *because* it was expected that such rates would have dramatic impacts on hospitals and the delivery of inpatient hospital services. It is likely that this transition period will involve not only the blending of rates, but further regulatory amendments, and potential statutory changes. Therefore, we have established various monitoring activities to provide us with timely information on the effects of the implementation of the prospective payment system. Further, we are required by law to make annual reports to Congress on the impact of the prospective payment system. Finally, the process of ongoing problem resolution, inevitable in the case of system changes such as these, necessitates our participation in an extended future dialogue with all affected parties.

In view of these considerations, we believe that the approach we have taken in the specific impact discussions below is the best feasible. Since it is not possible to develop a reliable quantitative analysis and comparison of the costs and benefits to all the various affected parties, we have instead made an effort to explain the kinds of interactions, and the decisions, which those parties will have to consider.

D. Hospitals Under Prospective Payment

1. Initial Impacts

The types and magnitudes of the impacts that the prospective payment system will have on hospitals are significant. The effects range from those "start-up costs" associated with the implementation of any such major system change, to the shifting of incentives for hospital behavior that will increasingly affect hospital services and payment in forthcoming years. The most immediate impacts on hospitals will result from individual hospitals' implementation strategies, the implementation costs that they incur, and the effect of the transition payment rates on hospital revenues.

In order to adapt to a DRG-based prospective payment system, hospitals may make significant internal managment changes. First, each hospital will have to determine its status and needs for computer or data processing capacity, medical records personnel, staff orientation or training programs, and so forth. Each hospital's assessment of these needs will have to take into consideration available resources, past practices, and whatever implementation objectives the hospital governing body and management establish. Many hospitals will be purchasing computers, data processing equipment, or software tailored to management under a DRG-based system. Alternatively, a hospital may choose to acquire such capabilities from a management consulting firm or other outside contractor. Other hospitals may have information systems that are relatively easily adjusted to this system, but may still need to modify medical records activities.

Hospitals that operate under the expectation of achieving a favorable level of Medicare revenue under prospective payment may initially set short-term objectives significantly differently from those that expect to risk a significant gap between Medicare revenues and costs. However, over the long run, all the hospitals paid under this system will experience similar incentives, and may be expected to react in similar ways. That is, whether the immediate expectation is that an action will avoid a loss, or increase a gain, the basic push will be to reduce costs and increase revenues.

For many hospitals, one initial implementation problem will be to determine the actual costs of producing specific services in order to accurately estimate the operating costs of treatment on a per case basis in each DRG. Under prospective payment, revenues and costs flow independently, and accurate data on the true costs of services are necessary for informed managerial decisionmaking. However, under retrospective cost reimbursement, hospital reimbursement specialists have tended to allocate costs to maximize reimbursement, even when such allocations did not otherwise serve to aid hospital management. As a result, a hospital's accounting system may produce misleading information on what it costs to produce a particular service. Thus, implementation of prospective payment will encourage some hospitals to revise their accounting principles and procedures.

2. Payment to Hospitals

During the first year of implementation, total hospital revenues, and the impact of those revenues, are expected to be similar to those that would have occurred under the provisions of Pub. L. 97–248, for two reasons. First, the hospital-specific portion of each hospital's first year rate will be approximately equal to 75 percent of the target amount that would have been set if the hospital had remained subject to the rate-of-increase limit established under section 1886(b) of the Act. Second, during the first two years of the transition period, aggregate payments under the prospective payment system will be adjusted, in accordance with section 1886(e)(1) of the Act, to be "budget neutral"; that is, so that aggregate payments under the prospective payment system, including outlier payments, exceptions, and adjustments, will be neither more nor less than the estimated payment amounts to affected hospitals that would have resulted under the Act in effect before April 20, 1983. To make adjustments for budget neutrality, we have assumed that hospital economic behavior during these first two years will be similar to what it would have been under the case-mix adjusted cost limits and rate of increase ceiling established by Pub. L. 97–248.

However, as the transition period comes to a close, the hospital-specific portion of each hospital's transition payment rate will be set at an increasingly lower percentage, and budget neutrality adjustments will be discontinued. This transition will gradually bring into full force the changes in economic incentives that influence a hospital's decisions in the use of resource inputs for each case. Individual hospitals may experience increasingly substantial revenue changes, perhaps resulting in sizeable losses or surpluses, thus encouraging management and behavior changes. The profit potential inherent in this system should encourage hospitals to begin changing their behavior to decrease their operating costs. We believe that individual hospitals with lower current year operating costs per case will probably do better under this system than hospitals with higher costs that do not reduce or control these costs.

Eventually, we expect that the prospective payment system will create incentives for hospitals to improve their economy and efficiency that are sufficiently strong to result in substantial Medicare program savings, compared to the estimated level of expenditures absent in such a system. Although we cannot reliably estimate how large those anticipated savings may become, we do believe they will eventually substantially exceed $100 million per year.

3. Expected Behavioral Changes

These savings are dependent on the responses hospitals make to the incentives established by this DRG-based prospective payment system. We assume that current hospital operations are such as to afford substantial opportunities for many hospitals to significantly improve performance in terms of economy and efficiency. Although we cannot model or predict exactly how large these opportunities and future changes may be, there has been a large amount of discussion of the incentives created by DRG payment. One of the most important of these, which we have relied on heavily in preparing this impact analysis, is *Diagnosis Related Groups (DRGs) and the Medicare Program: Implications for Medical Technology—a Technical Memorandum* (Washington, D.C., U.S. Congress, Office of Technology Assessment (OTA), OTA–TM–H–17, July 1983). This technical memorandum was prepared as a part of OTA's assessment of medical technology and the costs of the Medicare program.

Although primarily concerned with utilization, adoption, and diffusion of innovations in medical technology, this study examines the general economic incentives of DRG payment, reviews a significant part of the related literature, and incorporates a substantial

bibliography that reflects the full spectrum of analytic perspectives vis-a-vis DRGs and prospective payment.

As discussed in the OTA study, DRG payment creates two fundamental incentives: to reduce the cost to the hospital of each inpatient hospital stay and to increase the number of inpatient admissions.

The incentive to reduce cost per case is the objective of per-case payment systems in the first place. As noted above, per-case payment is predicated on the belief that hospitals have many opportunities to save money by operating more efficiently and offering a more cost-effective mix of services, and is designed to reward hospitals that take advantage of these opportunities.

Reductions in cost per admission can be achieved in several ways, such as—

- Reducing length-of-stay by—
  - —Better scheduling of tests and procedures;
  - —Improved discharge planning; and
  - —More careful review of the need for hospitalization.
- More careful examination of the number, mix, and quality of services furnished during a patient's stay in order to—
  - —Reduce unnecessary utilization of ancillary services;
  - —Ensure appropriate and cost-effective assignment of personnel; and
  - —Reduce waste of supplies and other resources; and
- More careful examination of the prices a hospital pays for the resource inputs into the production of hospital services, including supplies, equipment, and personnel.

Reductions in length-of-stay are likely to have the greatest immediate effects on per-case costs, although such savings would be lower for hospitals already operating at low occupancy rates. A reduction in occupancy rate does not result in a proportional reduction in operating costs, because many of these costs (for example, utilities, housekeeping, administration) are largely fixed. Thus, in hospitals with low occupancy, the incentive to reduce length-of-stay, though present, will be less than in hospitals with a high daily census and a backlog of potential admissions. Nonetheless, as long as its occupancy rate is not a problem, a hospital would have a strong incentive to establish an effective discharge planning program. By ensuring that patients are transferred to a lower level of appropriate care (such as skilled nursing or home care) as soon as possible, such discharge planning can contribute to efficiency by reducing a hospital's average length-of-stay, while ensuring that patients continue to receive appropriate and high quality care.

A hospital could also seek to reduce its cost per case by reviewing the cost-effectiveness of ancillary services. If ancillary services, particularly diagnostic tests, have been provided in the past without adequate consideration for their impact on total hospital costs, then per-case payment would encourage reduction of the intensity or amount of these services per stay. A recent report from the General Accounting Office (GAO) claimed that a significant portion of the charges for ancillary services furnished to a sample of Medicare beneficiaries represented unnecessary care. (GAO, *Need to Eliminate Payments for Unnecessary Hospital Ancillary Services.* HRD–83–74; September 30, 1983.) However, the cost of ancillary services whose use would, on the average, shorten hospital length-of-stay, would be weighed against the savings from reductions in length-of-stay. For example, hospitals might provide certain high-cost services more frequently if these were shown to substantially reduce the average length-of-stay, such as through reductions in hospital-acquired infection rates.

For these reasons, the effect of the prospective payment system on any particular ancillary service would depend on the nature of cost tradeoffs. In the absence of good information on such trade-offs, it is hard to predict a general trend for utilization of ancillary services. A probable byproduct of DRG payment will be an increase in the demand for a supply of information on such cost tradeoffs.

A hospital may also seek to reduce its cost per case by more effective procurement of drugs, biologicals, and medical supplies. In the past 10 years, hospitals have increasingly used group purchasing plans and generic substitution programs. The pressure to find new ways to save on the purchase of drugs and supplies should continue.

In addition to improving the ratio of costs to revenues by reducing cost per case, a hospital could attempt to improve its revenues by increasing admissions. Whereas cost and charge-based reimbursement gave the hospital an incentive to keep occupancy rates high by increasing either admissions or lengths-of-stay, only admissions increases produce or increase revenue under DRG payment. Every new admission generates new revenue (in the amount of the DRG price) and new costs. In general, a hospital benefits from any admission for which the revenue for that patient exceeds the marginal cost of furnishing services to that patient, even if the hospital's average cost for treating a patient in that DRG equals or exceeds the DRG payment rate. As a result, hospitals may adopt a variety of "marketing" strategies to increase their admissions, including—

- Public relations campaigns designed to influence patient choice;
- Recruitment of physicians; and
- Expansion, adoption, or specialization of services.

These strategies may be called "competitive" in that they are designed to increase admissions by attracting patients from other hospitals.

In addition to adopting competitive strategies such as those discussed above, some hospitals may turn to noncompetitive means to increase admissions and lower per-case-costs. There has been extensive concern that this incentive could result in an increase in inappropriate admissions. For example, physicians or staff might be encouraged (directly or indirectly) to hospitalize marginally ill patients and to discharge and readmit patients at a later date for deferrable procedures that might otherwise be performed as part of a single stay. This strategy is both easy for physicians to implement and difficult for third-party payors to control.

Alternatively, a hospital could attempt to identify and avoid admitting unprofitable patients. Patient selection strategies could conceivably be used to exclude patients in unprofitable DRGs or unprofitable patients within DRGs. However, although hospitals may be able to avoid admissions in some unprofitable DRGs by not offering the necessary facilities or services, for many patients the DRG is unknown at the time of admission, and such adverse selection requires active cooperation from physicians. To discriminate against the less profitable (i.e., more costly) patients within a specific DRG, a physician would have to be able to predict with reasonable accuracy the relative costliness of different patients within the same DRG at the time of admission, and would have to be induced not to admit his or her costly (and presumably sicker) patients to that hospital.

In recognition of the potential adverse effect of the incentive to increase admissions, we have established an admission monitoring program, as discussed in section XI, above. However, we wish to point out that we believe that the environment in which hospitals and physicians operate already provides certain constraints on behaviors that would optimize revenues at the expense of the quality of care. Both physicians and hospital decision-

makers have ethical, legal and financial reasons to practice high-quality medicine.

In developing the prospective payment system, we were concerned that it was possible that these constraints would not be sufficient. Therefore, we considered whether it was possible to incorporate into the payment system a mechanism that would provide a counter-incentive to the admissions increase incentive. For example, we considered setting a volume threshold such that if the admissions growth of a particular hospital exceeded a certain rate of increase, certain reviews or reductions in per case payments would be triggered. However, our current experience did not certainly demonstrate the necessity of such a mechanism. Since such volume adjustments would be controversial and administratively complex, we decided not to impose a volume adjustment or other counter-incentive mechanism at this time.

None the less, we recognize that there may be problems in individual cases. Therefore, we have provided that, if a hospital is found to be inappropriately admitting patients, or furnishing care of inadequate quality, we may withhold payment (in full or in part) or terminate the hospital's provider agreement and participation in the Medicare program. We plan to monitor admissions patterns, and, if a widespread pattern of abuse does emerge under the prospective payment system, we will develop additional appropriate sanctions and counter-incentive mechanisms.

In summary, hospitals affected by the prospective payment system are likely to change their behavior in some or all of the following ways:

- Improving medical records and accounting systems, including expansion of departments, personnel, and use of better qualified personnel;
- Involving the medical staff in managing hospital operations;
- Adopting improved management information systems;
- Devoting more attention to reducing average length-of-stay, including improved discharge planning, designed to ensure that appropriate patients are placed in skilled nursing facilities earlier, or that appropriate home care is arranged;
- Identifying and increasing utilization of services and treatment modes linked to shorter length-of-stay or lower costs;
- Indentifying and decreasing utilization of ancillary services not demonstrated to be sufficiently efficacious or cost effective;
- Increasing specialization of services that afford an opportunity for revenue increases in excess of the costs of greater specialization;
- Increasing competition among hospitals for physicians and other health professionals whose services afford a hospital an opportunity to improve its revenue cost ratio; and
- Adopting services and strategies designed to attract patients and increase admissions relative to other hospitals.

4. Summary of Costs and Benefits

These changes cannot be simply characterized as either costs or benefits; rather they are actions taken in an attempt to avoid costs and to take advantage of opportunities for benefit. Their actual effects will vary from hospital to hospital, depending on each hospital's initial relationship between Medicare costs and revenue, and the relative success of its strategies. This will in turn depend on the proximity and relative success of competing hospitals, and on other factors affecting the demand for and utilization patterns of the services hospitals offer.

The costs associated with these changes would be the implementation and operating costs incurred by hospitals in seeking to adapt to prospective payment. Hospitals would accrue benefits from improved economy and efficiency of operations, and an improved ratio of Medicare costs to Medicare revenues. The net effect of these costs and benefits would differ for each hospital, and is at present inestimable.

Some commenters have suggested that, in the extreme, some hospitals will experience such a gap between costs and revenues that they would be forced to close. In view of the transition period payment system, we do not expect this to occur. Since we are required to use a transition period payment formula that blends both hospital-specific cost experience and Federal rates, the initial impact resulting from differences in bed size or other economic factors should not be significant between hospitals. This difference in impacts could be more pronounced in the long-run relative to each hospital's ability to respond to the incentives of this payment system. A hospital that has significant problems of management, finances, or low utilization may not be able to respond well to the new system and could conceivably determine that it must close. Such cases have occurred prior to the implementation of the prospective payment system, and must be expected to occur occasionally in the future. However, we do not believe that such closures can justly be attributed to this payment system.

E. Hospitals and Units Excluded from Prospective Payment

The fact that long-term hospitals, children's hospital, psychiatric hospitals and units, and rehabilitation hospitals and units are excluded from prospective payment does not mean that these facilities will continue unchanged. Rather, the implementation of other regulation changes associated with, but not limited in application to, prospective payment, has also restructured the overall payment system and fiscal incentives for these hospitals and units. For example, the prohibition of unbundling applies to these hospitals and units as well as to hospitals under prospective payment. Also, although payment to these hospitals and units will not be affected directly by DRGs or case-mix measures, the allowable rate of increase of cost-based payments is subject to a per case limit. Further, each hospital and unit subject to this limit is eligible for bonus payments if it keeps the annual increase of its costs per case below a specified target rate.

In addition, the criteria for exclusion from the prospective payment system set forth requirements that establish certain compliance incentives. Based on whether or not these criteria are met, hospitals and units *must* be either paid under or excluded from prospective payment. Thus, although a hospital or unit would ordinarily be expected to adapt its organization and operation to meet these criteria in order to be excluded, it could, alternatively, choose to not meet some criterion in order to be included under prospective payment.

F. Hospital Employees

The employees of hospitals affected by these regulations will experience the impact of these rules as hospitals adapt to the prospective payment system. Data processing, accounting, and medical records personnel in many hospitals will experience an increased demand for their services. All employees, regardless of whether they are directly involved in the implementation of DRG-based management, can be expected to experience pressure from the hospital to increase productivity in terms related to cost-effectiveness. Any employee group that is involved in furnishing services for which productivity or cost-effectiveness measures are problematic may reasonably expect to be challenged to justify the continuation of the level of services they furnish.

Hospital inpatient care is very labor-intensive. This is suggested by our

estimate, used in determining payment rates, that 79.15 percent of hospital inpatient operating costs are labor-related. Clearly a major means for hospitals to limit or reduce their per case costs is to seek ways to reduce their labor-related costs. The implementation of DRG-based management information systems will undoubtedly result in the identification of labor resoures used to produce the services necessary for patients in each DRG, and to relate the cost of those labor resources to the hospital's projected revenue for those DRGs. Such applications of newly developed management information systems will not be simple, and this may delay the full force of the incentive to reduce labor costs.

There are many different types of hospital employees. Of these, some, such as nursing personnel and the various types of specialized therapists (physical, occupational, respiratory, and so forth), are involved in furnishing patient care services directly to patients in a manner that could perhaps be related to particular DRGs relatively easily. For others, such as administrative, support, and housekeeping staffs, the relationship to DRGs would not be so simple. For such groups, the relationship of labor costs and productivity to particular DRGs will be indirect, and difficult to determine.

However, it is reasonable to expect that hospital managers will be increasingly concerned with measuring and documenting the productivity and cost-effectiveness of staff of all kinds. This will not affect all types of staff equally; for example—

- Staff or functions viewed as "luxuries" will be scrutinized particularly closely.
- Since the direct costs of medical education are a pass-through, the labor-related costs allocated to those education activities may not be as strongly affected.
- There may be a general tendency for hospitals to substitute lower-cost, lesser qualified personnel where they believe it would be cost-effective. However, this may be complicated by the countervailing incentive for hospitals to have certain services furnished by physicians, if the payment for those services could be made on a Part B reasonable charge basis.

Services "incident to" physician services illustrate functions provided to hospital inpatients that can result in payments on a Part B reasonable charge basis. Our definition of these services and the comments were received on it are discussed in section XII.C. of this preamble. In this analysis section we are concerned with the potential effects of prospective payment and the rebundling provision on hospital employees. For discussion purposes, we will use as an example those health professionals who administer anesthesia. We chose this area for illustration because of the numerous comments we received on it even though an exception to the rebundling provision for the transition period is provided for some professionals who administer anesthesia.

Under prospective payment, hospitals may choose to reduce their cost per case by substituting physicians for CRNAs. Physicians can bill under Part B for their services and during the transition period, the services of CRNAs they employ. We doubt that many hospitals will resort to this practice to reduce their labor costs. First, a shortage of anesthesiologists has been documentated by GMENAC. We expect that few hospitals will be able to convince anesthesiologists to perform functions CRNAs can perform in the hospital. We know that other physicians also administer anesthesia, however, we do not have information on the number and type of such physicians and we do not believe that there is a sufficient number of them to replace CRNAs.

Second, hospital financial managers are not unilateral decisionmakers. They are responsible to the hospital's governing body. Further, they must consider and work with employee unions and the community the hospital serves. These managers will not be able to significantly alter the hospital's staffing configuration without consulting, cooperating with, and answering to these entities.

Third, hospitals and those health professional administering anesthesia will use the time provided them during the transition period to redefine their roles and relationships as they relate to employer-employee arrangements for the purpose of providing anesthesia services to hospital inpatients. There is no way to predict what types of new arrangements can be negotiated to provide for these services in the most appropriate and cost efficient configuration of physician and non-physician personnel.

G. Physicians

Physicians will be affected in various ways by the changes made to implement the prospective payment system. First, the rebundling provision immediately affects all those physicians who have included in their charges for services to impatients amounts for supplies or services furnished incident to their physicians' services, Second, as hospitals make adjustments to a payment system based on DRGs, they will undoubtedly attempt to influence those physician activities that affect the hospitals' ratio of revenue to costs per case. (For physicians compensated by hospitals for services furnished to either the hospital or the hospital's patients, there will be additional changes resulting from other regulations, such as the rules on payment for physician services in providers, published March 2, 1983 or the elimination of combined billing, published September 1, 1983. However, these changes are discussed here only as they are interrelated with the changes resulting from the interim rule on prospective payment.)

The effect of the rebundling requirement will vary according to whether a physician was charging for items or supplies, or for the services of persons employed by the physician. Those physicians who have included the costs of intra-ocular lenses, pacemakers, and other items in their charges for services to inpatients will no longer do so. Rather, payment for these will go to the hospital. We expect that hospitals will not ordinarily wish to purchase these from the physician, rather than directly from the supplier. In some cases, physicians may wish to sell existing inventory to a hospital. In others, they may be returnable to the supplier for a credit. However, there may be cases, such as a surgical specialist operating in more than one hospital, in which a physician may be able to establish a more favorable relationship with a supplier than would the hospital. In such cases, the physician may be reimbursed by the hospital for furnishing items or supplies to the hospital's inpatients. Such a relationship might also be established where the other payors do not require rebundling and the hospital is bearing the cost of such items and services only for Medicare patients. In any event, there are a variety of ways in which physicians and hospitals will be able to adjust their operations and practices to take the rebundling requirement into account.

The rebundling requirement will, however, have a more profound impact when the physician's former unbundled charges included amounts for the services of nonphysicians, whether employees of, or under contract to, the physician. Under the new rules, we will pay only the hospital for these services when furnished to inpatients. As a result, there is an incentive for physicians to stop furnishing these services incident to their own services, and to utilize only hospital personnel.

However, this incentive will not be the only determinant of behavior. First, if a hospital has not previously employed (or contracted with) the type of personnel involved, it will be reluctant to incur a new cost, or to increase its existing staff. However, a hospital that has not borne such costs in the past will also be reluctant to reimburse the physician for such costs. Second, a physician may have excellent reasons for not choosing to sever an existing employer/employee relationship in response to a single payor's change in practices. Many such physician employees probably furnish a large proportion of their services to patients other than hospital inpatients. In such cases, rebundling may affect only a small proportion of services of a given type, weakening the incentive to change employment relationships and practices accordingly.

Further, we expect that the largest number of such physician employees involved in furnishing services to hospital inpatients work in hospital departments for which a physician, group, or other entity has assumed the operating costs. In these cases, it has been clear since the publication of final regulations on payment for physician services furnished in providers on March 2, 1983 that we would only pay the provider for the operating costs incurred by such departments. The physicians associated with these departments may have to revise the agreements they have with these hospitals, but we expect that in almost all cases reasonable accommodations would be possible without severing the relationship.

The effect of DRG-based payment will not into full force as quickly as the rebundling changes, but will probably be more profound. In reacting to the DRG system, hospitals will develop many new kinds of management information, as discussed above. They will undoubtedly apply this information to assess the practice patterns of their medical staffs, and will attempt to encourage physicians to alter admission, practice, or discharge patterns that hinder hospitals from controlling their costs and maximizing their revenue. For example, hospitals are likely to encourage each physician to:

- Use preadmission diagonstic tests (laboratory tests, X-rays, and so forth) that may be paid for separately;
- Discharge patients as early as feasible to nursing homes, hospices, or home;
- Complete records more timely than in the past and work with medical records specialists to ensure completeness and accuracy of the discharge data needed to assign DRGs;
- Moderate any behaviors that lead to per case costs that are higher than other physicians'.

Hospitals will attempt to identify and control any physician that, by the hospital's standards, overutilizes services. For the most part, we expect that hospital objectives will be met by review discussions, training programs, and providing pattern monitoring feedback to such physicians. However, as hospitals attempt to increase their effective influence on physician behavior, there may be attempts to reduce or terminate hospital privileges for certain physicians, based on the hospitals' internal review of the necessity of the amount of resources consumed in furnishing services to those physicians' patients.

H. Beneficiaries

1. General Discussion

We do not expect the prospective payment system to have an immediate significant financial impact on beneficiaries. Perhaps the first difference they will notice is the changes in billing resulting from rebundling and the elmination of combined billing. The charges to most beneficiaries, as explained in Section X. of this preamble, will be similar to those under cost reimbursement, especially since we have decided to permit a hospital to bill a beneficiary for noncovered care for which the beneficiary (or person acting in his or her behalf) acknowledges liability. Some beneficiaries will be advantaged by our prohibiting the "unbundling" of Part A services (as discussed in section XII of the preamble). Their previous Part B coinsurance payments for these services are eliminated as these services are now considered inpatient hospital services subject to the prospective payment methodology. With this exception, over the longer run, beneficiaries would benefit from any restraint on cost increases resulting from prospective payment. First, the incentives created for competiton and cost control should ensure that hospital care does not become unaffordable for some. Second, reducing growth of Medicare expenditures will also reduce the growth of the out-of-pocket deductibles that beneficiaries must pay.

However, although it is clear that the prospective payment system will benefit beneficiaries financially, great concern had been expressed that the incentives for economy and efficiency created by this system may adversely affect the quality of or access to care. As we made clear in the interim rule, we do not agree. We anticipate that quality of care for beneficiaries will be maintained or improved. Quality of care is protected in a number of ways separate from this regulation, and results of several recent studies indicate that prospective payment programs operating to date have not compromised the quality of care provided in hospitals, even while such programs generally reduce the intensity of care provided to patients. In addition, insofar as prospective payment encourages specialization in certain services, we believe treatment may be improved for beneficiaries and other patients. Further, to the extent that prospective payment acts to constrain cost increases, it will contribute to maintaining the affordability and accessibility of quality care. Finally, as discussed earlier, we intend to monitor admission, utilization and quality to ensure that beneficiaries continue to receive care that is reasonable and necessary and of good quality.

However, some commenters have differed strongly from our view, and the particular arguments and issues they have raised deserve attention. Their concern is evident, and the consequences they envision, if they were to occur, are clearly undesirable. We merely disagree as to the expectations that these undesirable outcomes will actually occur.

For the initial discussion, we will consider quality of care and access to care separately. In practice, in the real lives of beneficiaries, they are not separable, but they are also not the same. In some cases, they may move together, increasing or decreasing in response to a common situation. But this is not always the case, and some of the differences are crucial to the impact evaluation of the prospective payment system.

2. Quality of Care

A basic premise of those who criticize the prospective payment system is that the changes it will engender in the behavior of hospitals and physicians will tend to decrease the quality of care furnished, unless some strong mechanism is in place to assure that quality is maintained. Thus, the commenters tend to identify four separable issues: the relation of incentives for economy to assurances of quality, the expected perverse changes in hospital behavior, the concomitant changes in physician behavior, and the adequacy of the medical review system.

Comment—Some commenters stated that the incentives for economy established by this system will encourage hospitals to reduce their costs per case in ways that would adversely

affect the quality of care. Examples of such perverse economies mentioned by commenters include:

- Unnecessary admissions;
- Premature or inappropriate discharge;
- Reduction of intensity of nursing and other services; and
- Inappropriate controls on utilization of diagnostic tests and ancillary services.

Response—Although the commenters' assertions have a certain intuitive appeal, in that it seems easy to believe that a reduction in services, length-of-stay, or intensity of services implies a reduction in quality, such statements are not as simple as they seem. Although the potential for such effects is real, the possibility of adverse effects on access to and quality of care under DRG payment is moderated by several built-in constraints.

First, the physician, not the hospital administrator, makes the decision to admit and discharge patients and order procedures. The physician's income often is dependent on hospitalization, as in the case of surgical admissions. Physician visits to hospitalized patients may be more lucrative relative to their time requirements than are office visits. Perhaps most important, the physician's professional and ethical standards protect the patient from the withholding of needed care. And, in a DRG payment system not covering all payors, the physician would still be likely to engage in a uniform style of practice for all patients.

Second, both hospitals and physicians are subject to potential malpractice suits. As a result, physicians are unlikely to engage in risky practices merely to increase hospital revenue. Hospitals themselves are increasingly adopting risk management programs, operating in close conjunction with quality assurance efforts, that are designed to reduce the incidence of opportunities for malpractice liability.

Third, we expect that the hospital's efforts to reduce costs, particularly by reducing the length-of-stay, will not necessarily affect quality of care. Considered in itself, a hospital's attempts to reduce average length-of-stay could have either positive or negative effects on patients' health. On the one hand, hospitalization itself carries certain risks, such as those of nosocomial infections and iatrogenic illness; shorter lengths-of-stay reduce this risk. Psychological factors associated with hospitalization may also be important in adversely affecting outcomes. Further, we believe that effective discharge planning affords hospitals an opportunity to reduce the length of stay, without adversely affecting quality. On the other hand, we grant, and Congress recognized, that too early discharge could place patients at risk of inadequate care and threaten recovery, and we have therefore implemented a monitoring system designed to review the appropriateness of admissions and discharges.

Comment—Several commenters stated that this system, even when coupled with the new PRO program, may be inadequate to assure the maintenance of quality standards in hospitals. They asserted that the inappropriate focus in the PRO program is on dollar savings, as opposed to assurances of quality health services. The emphasis on cost-cutting through the review process could serve as a catalyst for diminution in the quality of care available to Medicare beneficiaries in hospitals.

Response—As discussed in sections VIII.E., above, we disagree. First of all, the quality standards of hospital services have never been maintained solely to meet Federal requirements. As noted above, many other factors contribute to both hospitals and physicians being strongly motivated to deliver a quality product. Second, quality review is an integral part of the PRO system design. Each PRO will be obligated to conduct meaningful quality review and to achieve significant impact in the quality of care furnished to Medicare beneficiaries. We wish to further point out that even those reviews that some commenters seem to consider to be related solely to payment, such as determination of medical necessity, have a significant relationship to the quality of care.

3. Access to Care

Comment—Commenters suggest that access to care could be affected in three ways: a hospital could be forced to close as a result of inadequate revenue; a hospital could withdraw from the Medicare program; or a hospital could choose to reduce or discontinue particular services.

One commenter noted that the proposed Conditions of Participation for hospitals would leave surgical services, anesthesia services, rehabilitation services, respiratory care, nuclear medicine services, outpatient services, and emergency services as optional services that a hospital could provide. The commenter was concerned that, with the incentive under the prospective payment system to not provide services, access to such optional services will be increasingly more difficult for patients who could benefit from these services.

Response—As discussed above in relation to the impacts in hospitals, we do not expect hospitals to close suddenly as a result of the prospective payment system. The law and the regulations provide a transition period to cushion the initial impact. We expect that, if any hospital were to close, a good examination of its case would show it had difficulties with finances, management, and, probably a low census, well before the beginning of the prospective payment system. Theoretically, of course, a hospital could simply choose not to participate in the DRG payment system by refusing all Medicare patients. While this response is infeasible in an all-payor system, it might be attractive to some hospitals under this Medicare-only system. Total nonparticipation would be financially attractive to a hospital if the average DRG payment level were to lie below the additional (marginal) cost of serving patients in any DRG. However, we do not expect the payment levels to be lower than marginal costs in most hospitals, and we know of no hospital that is seriously considering refusing Medicare patients.

As regards particular services, we expect some will be discontinued, just as we expect that other hospitals would then respond to increased demand by expanding the same services. We expect this system to produce changes in the patterns of service delivery, particularly by encouraging competition and specialization. Of course, as a result some hospitals would benefit as others experienced problems. We wish to point out that such specialization in service delivery may have desirable effects on quality as well as cost, since for many services there is a positive relationship between quality and volume, particularly in furnishing certain high-cost services such as cardiac surgery.

We cannot at present predict the patterns of specialization that may occur in response to prospective payment. As a result, it would be presumptuous to guarantee that access to certain services will not be a problem. Therefore, among other things, the patterns of service specialization will be considered in monitoring the ongoing impact of the prospective payment system.

I. Technology Diffusion

Another issue that is closely related to the quality of and access to care is the effect of the prospective payment system on the adoption of new technology. Technology diffusion, that is, the rate of adoption of innovations for the support and improvement of medical care, is one of the areas that is

likely to be affected as hospitals attempt to reduce their costs per case. Prospective payment may alter technology diffusion by changing the way hospitals allocate their limited resources to increase their cost-effectiveness.

Congress recognized this issue when it provided for the establishment of a Prospective Payment Assessment Commission to be appointed by the Director of the Office of Technology Assessment (OTA). DRG classification and weighting factors will be adjusted "to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources" (section 1886 (d)(3)(C) of the Act). The Commission's mission is to make recommendations to the Secretary concerning these adjustments "based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities" (section (d)(4)(D) of the Act). The Commission is also charged with reviewing the applicable percentage increase factor (market-basket plus 1 percent) to ensure that it accounts for hospital productivity, technological and scientific advances, the quality of health care provided in hospitals and long-term effectiveness of the provision of inpatient hospital services, and make recommendations to the Secretary accordingly.

Individual hospitals, in their quest to reduce operating costs per case under prospective payment, will, among several options, focus on the adoption of technologies that save operating costs. Under cost-reimbursement hospitals had few, if any, incentives to focus on the development and adoption of cost-saving technologies. Initially, hospitals may focus on the adoption of information processing technologies. There may be a large margin for improvement and heretofore unrealized savings in this area because information exchange comprises a large part of what hospitals do.

While the effect of prospective payment on the adoption of cost-saving technologies seems rather straightforward, there is little evidence to indicate its effect on the diffusion of technologies that are expensive in the early stages of diffusion, but save costs once operating efficiently, and technologies that raise total operating costs, but enhance the overall quality of patient care. As discussed in the OTA study:

> New technology will have to compete with alternative uses of funds, such as employee wage and benefit increases, additional nursing staff, etc. New technology may be at an additional disadvantage relative to other uses of funds because of the relative uncertainty about its benefits in the early stages of diffusion. The implications are obvious: with limited resources, hospitals will need to assess new technologies more closely and ration resources more carefully. (OTA, *DRGs and the Medicare Program*, page 41.).

Hospitals will examine more closely whether the benefits of implementing a particular technology outweigh the costs. This problem is no different from that experienced by a firm in any other industry considering a new capital investment. For technologies that are expected to reduce costs in the long-run, hospital managers will calculate the appropriate time discount rate and use this information in their decisionmaking. Hospitals will be inclined to purchase technologies in a more selective way than under cost-reimbursement. They will require more evidence of the short-term and long-term benefits of those technologies. They will strive to effectively manage the adoption of the technologies. For example, they will require their staffs to educate physicians about the uses of the technologies so that the time lag between installation and operating efficiency is reduced and the savings can be realized earlier. Hospitals will question the benefits of a particular technology that is expensive to adopt. Pressure will be generated on the producers of these technologies to identify their uses, lower their prices, and ensure that they are efficiently designed and produced. A reduction in the costs of adopting these technologies will undoubtedly result.

Furthermore, hospitals are influenced by the communities they serve and some hospitals will choose to subsidize the costs of certain technologies with the profits from other DRGs. The prevalence of this practice will depend on each hospital's objectives and strategies for optimizing resource utilization.

Provision of pass-throughs such as capital-related costs and direct medical education complicate the incentives affecting technology diffusion under prospective payment. The capital-related costs of technologies that require major capital investments will be passed through. Therefore, adoption of technologies that are capital-intensive and cost-saving may be encouraged more than if capital costs were included in the DRG payment. However, many capital-related expenditures also have an unintended multiplier effect on operating costs. Further, Congress indicated in the statute its future intent to include capital-related costs in the DRG rates. Therefore, hospitals will carefully weigh the risks associated with purchasing a capital-intensive technology that may affect operating costs and not be fully reimbursed under a future DRG rate.

The methods for adjusting the relative prices of the DRGs also affect technology diffusion under prospective payment. When the DRG prices are updated, cost-saving as well as cost-increasing technologies will be reflected in the new DRG prices. As discussed earlier, the Commission has the responsibility of advising the Secretary as to how these adjustments should be made. The statute requires that the DRG classification and weight factors be adjusted for fiscal year 1986 and at least once every four years thereafter. The methods for systematically incorporating the changes in resource utilization resulting from new technologies have yet to be determined by the Commission.

We received several comments concerning the effect of prospective payment on technology diffusion. Many of these comments are related to the recalibration of DRG weights; those comments and our responses to them are discussed in section III. B. of this preamble. Below is a summary of the other comments and our responses to them.

Comment—A few commenters were concerned that the interim final rule did not provide an adequate mechanism for assessing the cost impacts of emerging technologies in a timely manner.

Response—We agree that there is a need for a mechanism to identify and assess the costs and benefits of emerging technologies and the effect of prospective payment on their diffusion. Congress also recognized this need when it provided for the Commission and defined its responsibilities. We expect that an early task of the Commission will be to develop and provide for such a mechanism.

Comment—One commenter cited the following conclusion of the OTA study: "Though DRG payment does not imply that technological change will approach a standstill, its directions are likely to be altered, and the adoption of technologies that are cost-raising to the hospital is likely to decline by an unknown quantity." This commenter felt that this result would lead to a decline in the quality of patient care.

Response—We discussed the effect of prospective payment on the adoption of cost-raising technologies above. OTA is correct to conclude that a decline in the adoption of these technologies cannot be quantified. We can only speculate as to the effects of prospective payment on technology diffusion at this time and monitor them closely to ensure that they

do not adversely affect the quality of patient care.

Comment—Some commenters contended that the 1 percent addition to the market-basket percentage increase factor was insufficient to cover the increased costs associated with medical technology.

Response—We do not agree with this comment. First, the addition of one percent to the market-basket is required by the statute. Second, hospitals have had an incentive under cost-reimbursement to selectively implement cost-increasing technologies over cost-saving technologies. This means that any historical rate of increase due to technology is probably too high. If the incentives had been reversed, as under prospective payment, the rate of increase due to a focus on cost-saving technologies and increased productivity might have been negative. Viewed in this light, we believe one percent is probably sufficient. However, we do expect to monitor the impact on technology diffusion, and to be engaged in future discussions on this issue, once we have had an opportunity to accumulate experience and appropriate data.

J. Impacts Summary

1. General conclusions

As is apparent from the above discussion, we expect the impacts of the prosepctive payment system to be extensive, complex, and long-standing. We have been aware of the profundity of these changes throughout the policy development process, and have accordingly endeavored to exercise appropriate care in the development of the regulations implementing the prospective payment system.

In making provision for the transition period, exclusion criteria, special treatment of certain classes of hospitals, and in setting rates, we have tried to provide appropriate flexibility, minimize the economic impact on small entities, recognize geographic and other differences, and use performance rather than design standards. We have reviewed a tremendous number of comments on the interim rules, and have considered a wide range of options both before and after publication of the interim rules. For the most part our selection of options has been constrained by statutory provisions and objectives. Where we have had discretion regarding a particular regulatory provision or portion of the rate-setting methodology, we have explained our decision and its basis in the preambles of this document and the interim rules. We have taken into account the current conditions of the hospital industry, the types and magnitudes of the effects these rules are likely to have, and have chosen those alternatives that we believe involve the least net cost to society.

For the above reasons, we believe that these rules meet the objectives of Executive Order 12291 and of the Regulatory Flexibility Act. We also believe that the benefits resulting from the prospective payment system will significantly outweight the cost associated with the system. The above discussion explains why we cannot, at this time, quantify these costs and benefits. The following sections, for summary purposes, set forth those Medicare cost and expenditure impacts that we can estimate with reasonable confidence, and identify anticipated benefits.

2. Medicare program costs and expenditures

The implementation of the prospective payment system will result in changes in both the program operating costs, including the costs of intermediary operations, and in program expenditures for hospital services. Intermediaries will be required to make some changes in their claims processing system, increase auditing activities, and train providers to submit appropriate forms. The intermediaries will be reimbursed in full for their costs. The estimated incremental administrative costs for implementing and operating the prospective payment plan are: $27.5 million in FY 1983, $17 million in FY 1984, and $3.8 million in FY 1985.

During fiscal years 1984 and 1985, the payment rates for inpatient hospital services will be adjusted to maintain budget neutrality, as discussed above. Thus, the payment rates reflect the savings that would have been achieved by the case-mix adjusted limits and rate-of-increase ceiling established under section 101 of Pub. L. 97–248. (See 48 *FR* 39412 and 48 *FR* 39426, both published August 30, 1983, for a discussion of the impacts of these limits.)

In addition, we estimate that rebundling will reduce expenditures from the Part B trust fund, and, for FY 1984, increase expenditures from the Part A trust fund. These Part B reductions are in addition to the Part B savings resulting from the regulations on payment for physician services published March 2, 1983, but we have considered both regulations together in reestimating the effect on Part B expenditures. This is necessary because both regulations have the same effective date, affect services in the same departments, and, to some extent, overlap in effect. We estimate that the hospital-based physician regulation and the rebundling requirement together will result in Medicare savings of $151 million and $145 million in FY 1984 and FY 1985, respectively.

3. Benefits of the Prospective Payment System

This change in our payment methods will result in numerous net benefits to society and to the Medicare program. In the near term, these benefits will probably not result in a significant impact on the economy. Due to our phasing-in of the payment system, the full extent of the anticipated benefits will be realized only when the system is fully operational and hospitals have responded with cost-effective management strategies.

Included among these benefits are:

- Restructuring the economic incentives facing the health care system to establish market-like forces;
- Restraining hospital cost increases, which will preserve the integrity of the Medicare trust funds and the financial status of other payors;
- Adopting an active role on behalf of Medicare beneficiaries in determining payments made for inpatient services. This will establish the Federal government as a prudent buyer of services;
- Payment being based upon the type of discharge will identify, more accurately than the present system, the product being purchased on behalf of Medicare beneficiaries. This approach over time will have desirable effects regarding hospitals' decisions on which services to provide.
- A strong link between payment and diagnosis, along with the ability for hospitals to retain any amounts by which their prospective payment rates exceed their costs. This will invite more active medical participation in the financial and operating routines of hospitals; and,
- Providers being able to identify, in terms of revenue to the institution, what services they deliver well and what services they do not provide efficiently.

We expect that these benefits will be substantial, and that the accumulated data from the extensive monitoring system will progressively demonstrate the cumulative positive effects of this prospective payment system.

XVII. OTHER REQUIRED INFORMATION

A. Effective Dates

The provisions of the interim final rule generally were effective on October 1,

1983. (See 48 FR 39802, which contains a list of exceptions to the October 1, 1983 effective date.) For the most part, the changes to regulations contained in this final rule consist of corrections to the interim final rule or technical or editorial clarifications necessary to clear up ambiguities contained in the interim final rule. Therefore, except with respect to the unbundling and other regulations as noted below, these changes are effective with cost reporting periods beginning on or after October 1, 1983.

The clarifying changes to the following unbundling regulations, which implement sections 1862(a)(14) and 1866(a)(1)(H) of the Act, are applicable to items and services furnished on or after October 1, 1983, regardless of hospital cost reporting periods.

§ 405.232 Medical and other health services; conditions, limitations and exclusions.
§ 489.20 Basic commitments.
§ 489.21 Specific limitations on charges.
§ 489.23 Special provisions for waiver of certain inpatient hospital services requirements.

In addition, as noted above in Section IV.C.1 of this preamble, the change to § 405.475(b)(5), which deletes the outlier adjustment of base year costs, is effective with cost reporting periods beginning on or after October 1, 1983.

September 1, 1983

As stated in the interim final rule, under section 604(a)(1) of Pub. L. 98–21, the procedures in §405.453(f)(3) relating to changes in cost reporting periods are effective for cost reporting periods ending on or after September 1, 1983. The clarifying changes to this section contained in this final rule are also effective on that date.

January 1, 1984

Some of the changes in this final rule may affect hospital payment amounts and would involve significant administrative difficulties if we applied them retroactively. For example, the changes in § 405.474 could result in different hospital-specific rates. To apply those changes retroactively would necessitate reprocessing of every claim submitted by the hospital and perhaps result in recovery of overpayments. As mentioned earlier in this preamble, we do not believe it is consistent with the concept of prospectively determined rates to retrospectively revise hospital payment rates. In addition, a retroactive effective date for the revised distinct part unit criteria in § 405.471 would necessitate a resurvey of 237 psychiatric and 95 rehabilitation units. Therefore, we are making the changes in the following regulations effective for hospital cost reporting periods beginning on or after January 1, 1984. (For those hospitals with cost reporting periods beginning on or after October 1, 1983 and before January 1, 1984, these changes are effective with each hospital's next cost reporting period occurring on or after January 1, 1984.)

§ 405.471(c) Hospitals and hospital services subject to and excluded from the prospective payment system.
§ 405.474(c)(1)(ii) Determination of transition period payment rates-concerning new hospitals.
§ 405.477 Payments to hospitals under the prospective payment system.

We are making the changes to the following sections effective on January 1, 1984 without respect to beginning dates of cost reporting periods so as not to deny the benefit of these changes to hospitals whose cost reporting periods under prospective payment began during the period October 1, 1983–December 31, 1983.

§ 405.475(c)(2) Payment for outlier cases-payment of day outliers prior to medical review.
§ 405.476 Special treatment for sole community hospitals, Christian Science sanatoria, cancer hospitals, referral centers, and renal transplantation centers.

As a matter of equity, we are making the amendments to the conditions for payment under the prospective payment system in §§ 405.472 (a) and (b) and the rules on lifetime reserve days in § 409.65(e) effective prospectively. We revised § 405.472(a) to clarify the sanctions that may be imposed for violations of the conditions of payment. This change is effective for sanctions imposed on or after January 1, 1984. We revised § 405.472(b) to allow hospitals to charge beneficiaries in situations not previously permitted. The changes in § 405.472(b) are effective for items and services furnished on or after January 1, 1984. We revised § 409.65(e) by reducing the options of the beneficiary concerning his or her election not to use lifetime reserve days. This change is effective for elections made on or after January 1, 1984.

Effective 30 days after date of publication

We are making the change in § 405.463(c)(5)(iii) regarding the publication of target rate percentages effective 30 days after publication of this final rule.

The changes to § 405.472(d)(2)(i) are effective 30 days after the date of publication. In this section we added a requirement that language must be included in the hospital form used for physician attestation to caution the physician about the consequences of making false statements. The delay in effective date provides hospitals with extra time to implement the requirement.

Effective for discharges occurring after 30 days after date of publication

Under section 604(c)(2) of Pub. L. 98–21, the changes to §§ 405.475(c)(3) and (d)(6), which result in a reduction of payment rates, are effective for discharges occurring after 30 days after the date of publication of this final rule. Similarly, Table 1 (Standardized Amounts) in the Addendum to this final rule is effective for discharges occurring after 30 days after the date of publication.

B. Waiver of 30-day Delay of Effective Dates

As noted above, the regulations in the interim final rule are in effect. As stated previously, to the extent that regulations are amended or revised in this **Federal Register** document, the effective dates generally apply to hospital cost reporting periods beginning on or after October 1, 1983.

Section 604(c) of Pub. L. 98–21 requires us to affirm or modify the interim final rules (published in the **Federal Register** on September 1, 1983) by December 31, 1983. As a practical matter, we would be unable to implement this final rule by December 31, 1983 if we were to provide the customary 30-day delay in the effective date. Therefore, we find good cause to waive the delay in the effective date.

As indicated earlier, this final rule also includes clarifying editorial and technical changes to the interim final rules. To facilitate implementation of the prospective payment system, and to comply with the statutory requirement to affirm or modify the interim final rule, we are making regulatory changes both to prevent perverse interactions between existing rules and rules implementing the prospective payment system, and to ensure that the objectives of the prospective payment system are realized. Therefore, we find good cause to waive the delay in the effective date of these amendments.

C. Paperwork Reduction Act

Certain sections of these regulations contain information collection requirements that are subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). As required by that Act, we requested Office of Management and Budget (OMB) approval of these requirements.

Under 44 U.S.C. 3507(g), OMB granted approval through November 30, 1983 under the following control numbers:

Section	Control No.
405.476(b)	0938-0309
405.476(d)(2)	0938-0308
405.1042(c)	0938-0305
405.1627 and 405.1629	0938-0306
489.23(b)(1) and (c)	0938-0304

We have submitted to OMB a request for continued approval of four of the five information collection requirements. We will publish a notice in the **Federal Register** when the continued approval is obtained. We are not requesting continued OMB approval for the information collection requirements in §§ 489.23(b)(1) and (c) because the information was collected before September 10, 1983, and is not a recurring requirement.

In addition, § 405.471(c)(3)(ii) and (c)(3)(iii)(C)of this final rule contains information collection requirements. OMB approval will be sought for these information collection requirements. A notice will be published in the **Federal Register** when approval is obtained.

D. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 409

Blood, Health insurance, Home health, Hospitals, Inpatients, Medicare, Nursing homes.

42 CFR Part 489

Clinics, Health care, Health facilities, Medicare, Provider Agreements, Rural health clinics, Termination procedures.

Accordingly, the interim final rules published on September 1, 1983, at 48 FR 39807–39838 are confirmed as final with the following amendments.

42 CFR Chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

Part 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart B is amended as follows:

Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Coverage, Exclusions, and Payment

1. The authority citation for Subpart B is revised to read as follows:

Authority: Secs. 1102, 1831–1843, 1861, 1862, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395j–1395v, 1395x, 1395y, 1395cc, and 1395hh).

2. In section 405.232, paragraph (i)(1) is amended by adding a definition for "hospital inpatient" in alphabetical order and revising the definition of "institution"; paragraph (i)(3) is redesignated as (i)(4); and a new paragraph (i)(3) is added to read as follows:

§ 405.232 Medical and other health services; conditions, limitations, and exclusions.

* * * * *

(i) *Ambulance service.*

(1) *Definitions.* For purposes of this paragraph—

* * * * *

"Hospital inpatient" means a beneficiary who has been formally admitted to a hospital and does not include a beneficiary who is in the process of being transferred from one hospital to another.

"Institution" means a hospital or skilled nursing facility that meets the requirements of sections 1861(e)(1) or 1861(j)(1) of the Act.

* * * * *

(3) *Limits on Medicare Part B payment for hospital inpatients.* Medicare Part B payment will be made for ambulance services as described in paragraph (i)(2)(iii) of this section for hospital inpatients only if—

(i) Medicare Part A payment is not available for the service; or

(ii) The hospital in which the beneficiary is an inpatient has been granted a waiver in accordance with § 489.23 of this chapter.

* * * * *

B. Subpart D is amended as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. The table of contents for Subpart D is amended by revising the title of § 405.414 to read as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

Secs.

* * * * *

Specific Categories of Costs

405.414 Capital-related costs.

* * * * *

3. Section 405.414 is amended by: revising the title; reprinting the introductory language of paragraph (a) unchanged; and revising paragraph (a)(1), the introductory language of paragraphs (b)(2) and (b)(4), and paragraph (g)(2) to read as follows:

§ 405.414 Capital-related costs.

(a) *General rule.* Capital-related costs and allowance for return on equity are limited to the following:

(1) Net depreciation expense as determined under §§ 405.415, 405.417, and 405.418, adjusted by gains and losses realized from the disposal of depreciable assets under § 405.415(f):

* * * * *

(b) *Leases and rentals.*

(1) * * *

(2) A provider must include incurred rental charges in its capital-related costs, as specified in a sale and leaseback agreement with a nonrelated purchaser (including shared service organizations not related within the meaning of § 405.427) involving plant facilities or equipment, only if—

* * * * *

(4) A lease that meets the following conditions will generally establish a virtual purchase:

* * * * *

(g) *Costs of supplying organizations.*

(1) * * *

(2) *Supplying organizations not related to the provider.* If the supplying organization is not related to the provider within the meaning of § 405.427, no part of the charge to the provider may be considered a capital-related cost (unless the services, facilities or supplies are capital-related in nature) unless—

(i) The capital-related equipment is leased or rented (as described in paragraph (b) of this section) by the provider;

(ii) The capital-related equipment is located on the provider's premises, or is located offsite and is on real estate owned, leased or rented by the provider; and

(iii) The capital-related portion of the charge is separately specified in the charge to the provider.

* * * * *

4. Section 405.421 is amended by: reprinting the introductory language of paragraph (d) unchanged, revising paragraph (d)(5), redesignating and revising paragraph (d)(6) as (d)(7) and adding a new paragraph (d)(6); redesignating and revising paragraph (g)(1) as (g), and removing paragraphs (g)(2) and (h) to read as follows:

§ 405.421 Cost of educational activities.

* * * * *

(d) *Activities not within the scope of this principle.* The costs of the following activities are not within the scope of this principle but are recognized as normal operating costs and are reimbursed in accordance with applicable principles—

(1) * * *

(5) Training of a patient or patient's family in the use of medical appliances;

(6) Clinical training of students not enrolled in an approved education program operated by the provider; and

(7) Other activities that do not involve the actual operation of an approved education program including the costs of interns and residents in anesthesiology who are employed to replace anesthetists.

* * * * *

(g) *Calculating net cost.* Net costs of approved educational activities are determined by deducting, from a provider's total costs of these activities, revenues it receives from tuition. For this purpose, a provider's total costs include trainee stipends, compensation of teachers, and other direct and indirect costs of the activities as determined under the Medicare cost-finding principles in § 405.453.

5. Section 405.453 is amended by revising the introductory language of paragraph (f)(3) and adding a new paragraph (g) to read as follows:

§ 405.453 Adequate cost data and cost finding.

* * * * *

(f) *Cost reports.* * * *

(3) *Changes in cost reporting periods.* A provider may change its cost reporting period if a change in ownership is experienced or if—

* * * * *

(g) *Exception from full cost reporting for lack of program utilization.* If a provider does not furnish any covered services to Medicare beneficiaries during a cost reporting period, it is not required to submit a full cost report. It must, however, submit an abbreviated cost report, as prescribed by HCFA.

* * * * *

6. Section 405.454 is amended by removing and reserving paragraph (g), and revising paragraphs (m)(2), (m)(3), and (m)(4) to read as follows:

§ 405.454 Payments to providers.

* * * * *

(g) [Reserved]

* * * * *

(m) *Prospective payments.*

(1) * * *

(2)(i) No year end retroactive adjustment is made for prospective payments. However, hospitals meeting the criteria in paragraph (j) of this section may elect to receive periodic interim payments. Therefore, at the discretion of the intermediary, the hospital's proposective payments will be estimated and made on a periodic interim basis (26 biweekly payments). These payments are subject to final settlement. Each payment will be made two weeks after the end of a biweekly period of services, as described in paragraph (j)(4) of this section. Hopitals electing periodic interim payments may convert to payments on a per discharge basis at any time.

(ii) For the hospitals receiving periodic interim payments for inpatient operating costs, the biweekly interim payment amount is based on the total estimated Medicare discharges for the reporting period multiplied by the hospital's estimated average prospective payment amount. These interim payments are reviewed at least twice during the reporting period and adjusted if necessary.

(iii) For purposes of determining periodic interim payments under this paragraph, the intermediary computes a hospital's estimated average prospective payment amount by multiplying its transition payment rates as determined under § 405.474(a)(3), but without adjustment by a DRG weighting factor, by the hospital's case-mix index, and subtracting from this amount estimated deductibles and coinsurance.

(3) For items applicable to inpatient hospital services not reimbursed on a prospective basis (capital-related costs and direct medical education costs), interim payments are made subject to final cost settlement. Interim payments for the estimated cost of capital-related and approved medical education items (applicable to inpatient costs payable under Part A and for kidney acquisition cost in hospitals approved as renal transplantation centers) are determined by estimating the reimbursable amount for the year based on the previous year's experience and on substantiated information for the current year and divided into 26 equal biweekly payments. Each payment will be made two weeks after the end of a biweekly period of services, as described in paragraph (j)(4) of this section. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary.

(4) Payments for the indirect costs of medical education (described in § 405.477(d)(2)) are paid based on an estimate of the total for the Federal portion of the DRG revenue to be received in the current period. The total estimated annual amount of the adjustment will be divided into 26 equal biweekly payments and included with other inpatient costs reimbursed on a reasonable cost basis. This estimate is subject to year end adjustment. Each payment will be made two weeks after the end of a biweekly period of services. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary.

* * * * *

7. In § 405.463, paragraphs (c)(5)(iii), (h)(1) (i) and (ii) are revised to read as follows:

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).*

(1) * * *

(5) *Applicable target rate percentage.*

(i) * * *

(iii) The applicable target rate percentage will be the prospectively determined percentage published by HCFA.

The percentage will be published as part of the notice described in § 405.470(e). The notice will include the applicable estimate of the market basket rate of increase and the resulting target rate percentage for the next two calendar years. The target rate percentages included in this notice will apply to all hospital cost reporting periods that begin on or after the first day of the Federal fiscal year to which the notice applies and before the beginning date of the subsequent Federal fiscal year. The percentages will be applied prospectively and will be prorated in accordance with paragraph (c)(5)(ii) of this section, but will not be retroactively adjusted if the actual market basket rate of increase differs from the estimate.

* * * * *

(h) *Adjustments*—(1) *Comparability of cost reporting periods.* (i) HCFA may adjust the amount of the operating costs

considered in establishing cost per case for one or more cost reporting period(s), including both periods subject to the ceiling and the hospital's base period, to take into account factors which could result in a significant distortion in the operating costs of inpatient hospital services. The adjustments include, but are not limited to, adjustments of the base period costs to include explicitly FICA taxes (if the hospital did not incur costs for FICA taxes in its base period), and services billed under Part B of Medicare during the base period, but paid under Part A during the subject cost reporting period.

(ii) In determining the target amount for cost reporting periods beginning on or after October 1, 1983, the intermediary will adjust the base period costs to explicitly include in the costs subject to the ceiling malpractice insurance costs.

* * * * *

8. Section 405.470 is amended by revising paragraphs (c)(1), (c)(2), and (c)(4) to read as follows:

§ 405.470 Prospective payment: general provisions.

* * * * *

(c) *Discharges and transfers.*

(1) *Discharges.* A hospital inpatient is discharged when—

(i) The patient is formally released from the hospital (release of the patient to another hospital as described in paragraph (c)(2) of this section, or a leave of absence from the hospital, will not be recognized as a discharge for the purpose of determining payment under the prospective payment system);

(ii) The patient dies in the hospital; or

(iii) The patient is transferred to a hospital or unit that is excluded from the prospective payment system under § 405.471.

(2) *Transfers.* Except as provided under paragraph (c)(1)(iii) of this section, a discharge of a hospital inpatient is not counted for purposes of the prospective payment system when the patient is transferred—

(i) From one inpatient area or unit of the hospital to another area or unit of the hospital;

(ii) From the care of a hospital paid under this section to the care of another such hospital;

(iii) From the care of a hospital paid under this section to the care of another hospital—

(A) Excluded from the prospective payment system only because of its participation in an approved statewide cost control program or demonstration; or

(B) That would be paid under this section except that its first cost reporting period under the prospective payment system has not yet begun; or

(iv) From the care of a hospital paid under this section to the care of another hospital or hospital unit not officially determined to be excluded from the prospective payment system under § 405.471.

(3) * * *

(4) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital paid under the prospective payment system transfers an inpatient to another such hospital, as described in paragraphs (c)(2) (ii) and (iii) of this section, the transferring hospital is paid a per diem rate for each day of the patient's stay in that hospital, not to exceed the amount that would have been paid under §§ 405.473 or 405.474 if the patient had been discharged to another setting. The per diem rate is determined by dividing the appropriate prospective payment rate (as determined under §§ 405.473 or 405.474) by the average length of stay for the specific DRG into which the case falls. However, if a discharge is classified into DRG No. 385 (Neonates, died or transferred) or DRG No. 456 (Burns, transferred to another acute care facility), the transferring hospital is paid in accordance with paragraph (b)(2) of this section.

* * * * *

9. Section 405.471 is amended by: revising the title of paragraph (a); revising paragraphs (b)(2) and (b)(3); and amending paragraph (c) by reprinting the introductory language of paragraphs (c) and (c)(2) unchanged, revising paragraphs (c)(2)(ii) and (c)(2)(v), redesignating paragraphs (c)(3) through (c)(7) as (c)(4) through (c)(8) respectively, adding a new paragraph (c)(3), revising the title and the introductory language of newly redesignated paragraph (c)(4), revising newly redesignated paragraph (c)(4)(ii), reprinting the introductory language of paragraph (c)(4)(iii) unchanged, revising newly redesignated paragraph (c)(4)(iii)(A), revising newly redesignated paragraph (c)(4)(iii)(F), and adding a new paragraph (c)(4)(iv) to read as follows:

§ 405.471 Hospitals and hospital services subject to and excluded from the prospective payment system.

(a) *Services subject to the prospective payment system.*

* * * * *

(b) *Excluded hospitals: general rules.*

(1) * * *

(2) *Cost reimbursement.* Except for those hospitals specified in paragraph (b)(3) of this section, all excluded hospitals (and distinct part hospital units, as described in paragraph (c)(4)(i) of this section) are reimbursed under the cost reimbursement rules set forth in this subpart, and will be subject to the ceiling on the rate of hospital cost increases described in § 405.463.

(3) *Special payment provisions.* The following classifications of hospitals are paid under special provisions and therefore are not generally subject to the cost reimbursement or prospective payment rules of this subpart:

(i) Veterans Administration hospitals.

(ii) Hospitals reimbursed under State cost control systems approved under Part 403 of this chapter.

(iii) Hospitals reimbursed in accordance with demonstrations projects authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)).

(iv) Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

(c) *Excluded hospitals and hospital units: classifications.* Hospitals and distinct part units of hospitals that meet the requirements for the classifications set forth in this paragraph may not be reimbursed under the prospective payment system.

(1) * * *

(2) *Rehabilitation hospitals.* A rehabilitation hospital must—

(i) * * *

(ii) Have treated, during its most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(A) Stroke.

(B) Spinal cord injury.

(C) Congenital deformity.

(D) Amputation.

(E) Major multiple trauma.

(F) Fracture of femur (hip fracture).

(G) Brain injury.

(H) Polyarthritis, including rheumatoid arthritis.

(I) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(J) Burns.

* * * * *

(v) Have a director of rehabilitation who—

(A) Provides services to the hospital or its inpatients on a full-time basis;

(B) Is a doctor of medicine or osteopathy;

(C) Is licensed under State law to practice medicine or surgery; and

(D) Has had, after completing a one-year hospital internship, at least two

years of training or experience in the medical-management of inpatients requiring rehabilitation services.

* * * * *

(3) *Alcohol/Drug hospitals.* An alcohol/drug hospital will be excluded from the prospective payment system until October 1, 1985, if it meets the following requirements:

(i) Treats only patients whose admission to the hospital is required for diagnosis or treatment of alcohol or drug dependence, or both.

(ii) Provides treatment using a multidisciplinary team consisting of at least—

(A) A doctor of medicine or osteopathy;

(B) A registered nurse;

(C) A certified alcohol/drug counselor; and

(D) To the extent deemed necessary by the program director, other qualified health professionals (for example, clinical psychologists or social workers).

(iii) Ensures that each inpatient is admitted on the authority of, and his or her care is under the direction of, a doctor of medicine or osteopathy who is a member of the hospital's medical staff.

(iv) Has a program director to whom the governing body of the hospital has delegated responsibility for maintaining proper standards and assuring quality medical care. The director must be a doctor of medicine or osteopathy who has one year of post-medical school education, or equivalent clinical experience, in the alcohol/drug field, including at least six months of education or experience in an alcohol/drug treatment inpatient program.

(v) Has a full-time director of nursing services who is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent from a school or nursing accredited by the National League for Nursing, or with equivalent experience in alcohol/drug treatment.

(vi) Has a written treatment plan for each inpatient that is established, reviewed, and revised as needed by the multidisciplinary team. The plan must include a medical assessment and a social/psychological assessment, a record of progress during the course of treatment, and a plan of treatment upon discharge.

(vii) Involves inpatients in individual, group, and family educational or therapy programs and other medical or psychological approaches designed to treat the psychological and physical aspects of alcohol/drug dependence and to motivate them to use suitable community support and facilities for long-range rehabilitation.

(viii) Coordinates its program with appropriate alcohol/drug abuse programs of other organizations operating in the vicinity such as community mental health centers and Veterans Administration hospitals, voluntary programs such as halfway houses and recovery homes and the Salvation Army, and self-help groups such as Alcoholics Anonymous, Al-Anon and Alateen.

(4) *Psychiatric, rehabilitation, and alcohol/drug units (distinct parts).* A psychiatric unit must meet the requirements of paragraphs (c)(4)(i) and (c)(4)(ii) of this section. A rehabilitation unit must meet the requirements of paragraphs (c)(4)(i) and (c)(4)(iii) of this section. An alcohol/drug unit must meet the requirements of paragraphs (c)(4)(i) and (c)(4)(iv) of this section.

(i) * * *

(ii) A psychiatric unit (distinct part) must—

(A) Admit only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in the Third Edition of the American Psychiatric Association's Diagnostic and Statistical Manual, or in Chapter Five ("Mental Disorders") of the International Classification of Diseases, Ninth Revision, Clinical Modification.

(B) Furnish, through the use of qualified personnel, psychological services, social work services, psychiatric nursing, occupational therapy, and recreational therapy.

(C) Maintain medical records that permit determination of the degree and intensity of the treatment provided to individuals who are furnished services in the unit, and that meet the following requirements:

(1) Development of assessment/diagnostic data. Medical records must stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the inpatient is treated in the unit.

(i) The identification data must include the inpatient's legal status.

(ii) A provisional or admitting diagnosis must be made on every inpatient at the time of admission, and must include the diagnoses of intercurrent diseases as well as the psychiatric diagnoses.

(iii) The reasons for admission must be clearly documented as stated by the inpatient or others significantly involved or both.

(iv) The social service records, including reports of interviews with inpatients, family members, and others must provide an assessment of home plans and family attitudes, and community resource contacts as well as a social history.

(v) When indicated, a complete neurological examination must be recorded at the time of the admission physical examination.

(2) Psychiatric evaluation. Each inpatient must receive a psychiatric evaluation that must—

(i) Be completed within 60 hours of admission;

(ii) Include a medical history;

(iii) Contain a record of mental status;

(iv) Note the onset of illness and the circumstances leading to admission;

(v) Describe attitudes and behavior;

(vi) Estimate intellectual functioning, memory functioning, and orientation; and

(vii) Include an inventory of the inpatient's assets in descriptive, not interpretative fashion.

(3) Treatment plan.

(i) Each inpatient must have an individual comprehensive treatment plan that must be based on an inventory of the inpatient's strengths and disabilities. The written plan must include a substantiated diagnosis; short-term and long-term goals; the specific treatment modalities utilized; the responsibilities of each member of the treatment team; and adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out; and

(ii) The treatment received by the inpatient must be documented in such a way as to assure that all active therapeutic efforts are included.

(4) Recording progress. Progress notes must be recorded by the doctor of medicine or osteopathy responsible for the care of the inpatient, a nurse, social worker and, when appropriate, others significantly involved in active treatment modalities. The frequency of progress notes is determined by the condition of the inpatient but must be recorded at least weekly for the first two months and at least once a month thereafter and must contain recommendations for revisions in the treatment plan as indicated as well as precise assessment of the inpatient's progress in accordance with the original or revised treatment plan.

(5) Discharge planning and discharge summary. The record of each patient who has been discharged must have a discharge summary that includes a recapitulation of the inpatient's hospitalization in the unit and recommendations from appropriate services concerning follow-up or

aftercare as well as a brief summary of the patient's condition on discharge.

(D) Meet special staff requirements in that the unit must have adequate numbers of qualified professional and supportive staff to evaluate inpatients, formulate written, individualized comprehensive treatment plans, provide active treatment measures and engage in discharge planning, as follows:

(1) Personnel. The unit must employ or undertake to provide adequate numbers of qualified professional, technical, and consultative personnel to—

(i) Evaluate inpatients;

(ii) Formulate written individualized, comprehensive treatment plans;

(iii) Provide active treatment measures; and

(iv) Engage in discharge planning.

(2) Director of inpatient psychiatric services; medical staff. Inpatient psychiatric services must be under the supervision of a clinical director, service chief, or equivalent who is qualified to provide the leadership required for an intensive treatment program. The number and qualifications of doctors of medicine and osteopathy must be adequate to provide essential psychiatric services.

(i) The clinical director, service chief, or equivalent must meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neuorology and Psychiatry.

(ii) The director must monitor and evaluate the quality and appropriateness of services and treatment provided by the medical staff.

(3) Nursing services. The unit must have a qualified director of psychiatric nursing services. In addition to the director of nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each inpatient's active treatment program and to maintain progress notes on each inpatient.

(i) The director of psychiatric nursing services must be a registered nurse who has a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing, or be qualified by education and experience in the care of the mentally ill. The director must demonstrate competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(ii) The staffing pattern must ensure the availability of a registered nurse 24 hours each day. There must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide the nursing care necessary under each inpatient's active treatment program.

(4) Psychological services. The unit must provide or have available psychological services to meet the needs of the inpatients. The services must be furnished in accordance with acceptable standards of practice, service objectives, and established policies and procedures.

(5) Social services. There must be a director of social services who monitors and evaluates the quality and appropriateness of social services furnished. The services must be furnished in accordance with accepted standards of practice and established policies and procedures. Social service staff responsibilities must include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital.

(6) Therapeutic activities. The unit must provide a therapeutic activities program.

(i) The program must be appropriate to the needs and interests of inpatients and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(ii) The number of qualified therapists, support personnel, and consultants must be adequate to provide comprehensive therapeutic activities consistent with each inpatient's active treatment program.

(iii) A rehabilitation unit (distant part) must—

(A) Have treated, during its most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(*1*) Stroke.

(*2*) Spinal cord injury.

(*3*) Congenital deformity.

(*4*) Amputation.

(*5*) Major multiple trauma.

(*6*) Fracture of femur (hip fracture).

(*7*) Brain injury.

(*8*) Polyarthritis, including rheumatoid arthritis.

(*9*) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(*10*) Burns.

* * * * *

(F) Have a director of rehabilitation who—

(*1*) Provides services to the unit or its inpatients on a full-time basis;

(*2*) Is a doctor of medicine or osteopathy;

(*3*) Is licensed under State law to practice medicine or surgery; and

(*4*) Has had, after completing a one-year hospital internship, at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

(iv) An alcohol/drug unit (distinct part) will be excluded from the prospective payment system until October 1, 1985, if it meets the following requirements:

(A) Treats only patients whose admission to the unit is required for diagnosis or treatment of alcohol or drug dependence, or both.

(B) Provides treatment using a multidiciplinary team consisting of at least—

(*1*) A doctor of medicine or osteopathy;

(*2*) A registered nurse;

(*3*) A certified alcohol/drug counselor; and

(*4*) To the extent deemed necessary by the unit director, other qualified health professionals (for example, clinical psychologists or social workers).

(C) Ensures that each inpatient is admitted on the authority of, and his or her care is under the direction of, a doctor of medicine or osteopathy who is a member of the unit's medical staff.

(D) Has a director to whom the governing body of the hospital has delegated responsibility for maintaining proper standards and assuring quality medical care. The director must be a doctor of medicine or osteopathy who has one year of post-medical school education, or equivalent clinical experience, in the alcohol/drug field, including at least six months of education or experience in an alcohol/drug treatment inpatient unit.

(E) Has a full-time director of nursing services who is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing, or with equivalent experience in alcohol/drug treatment.

(F) Has a written treatment plan for each inpatient that is established, reviewed, and revised as needed by the mulitidisciplinary team. The plan must include a medical assessment and a social/psychological assessment, a record of progress during the course of treatment, and a plan of treatment upon discharge.

(G) Involves inpatients in individual, group, and family educational or therapy programs and other medical or psychological approaches designed to

treat the psychological and physical aspects of alcohol/drug dependence and to motivate them to use suitable community support and facilities for long-range rehabilitation.

(H) Coordinates its program with appropriate alcohol/drug abuse programs of other organizations operating in the vicinity such as community mental health centers and Veterans Administration hospitals, voluntary programs such as halfway houses and recovery homes and the Salvation Army, and with self-help groups such as Alcoholics Anonymous, Al-Anon and Alateen.

* * * * *

10. In section 405.472, the phrase "medical review agent" is changed to read "medical review entity "in paragraphs (d) and (e); and paragraphs (a), (b), (c), (d)(2)(i), (d)(2)(ii), (d)(2)(iii), and (e)(3) are revised to read as follows:

§ 405.472 Conditions for payment under the prospective payment system.

(a) *General requirements.*

(1) A hospital must meet the conditions of this section to receive payment under the prospective payment system for inpatient hospital services furnished to Medicare beneficiaries.

(2) If a hospital fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, HCFA may, as appropriate—

(i) Withhold Medicare payment (in full or in part) to the hospital until the hospital provides adequate assurances of compliance; or

(ii) Terminate the hospital's provider agreement.

(b) *Charge to beneficiaries.*

(1) *Permitted charges—stay covered.* A hospital furnishing covered inpatient hospital services to a Medicare beneficiary for which payments may be made under the prospective payment system may charge only for the following items and services furnished during the stay—

(i) The applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this chapter;

(ii) Items and services, furnished at any time during a covered stay, that are excluded from coverage on some basis other than the requirements at § 405.310(g) (custodial care), § 405.310(k) (medically unnecessary items and services), § 405.310(m) (nonphysician services furnished to hospital inpatients by other than the hospital or a provider or supplier under arrangements made by the hospital), Subpart A of Part 408 of this chapter (nonentitlement to Part A), or § 409.61 of this chapter (exhaustion of benefits);

(iii) Items and services excluded from coverage on the basis of § 405.310(g) (custodial care) or § 405.310(k) (medically unnecessary items and services) and furnished by the hospital after all of the following conditions have been met:

(A) The hospital (acting directly or through its utilization review committee) determines that the beneficiary no longer requires inpatient hospital care (including an SNF level of care considered unavailable under Medicare criteria outside of the hospital).

(B) The attending physician agrees with the hospital determination in writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the medical review entity (that is, a PSRO, PRO or intermediary). Concurrence by the medical review entity in the hospital's determination will serve in lieu of the physician's agreement.

(C) The hospital (acting directly or through its utilization review committee) notifies the beneficiary (or person acting on his or her behalf) in writing that—

(1) In the hospital's opinion, and with the attending physician's concurrence or that of the medical review entity, the beneficiary no longer requires inpatient hospital care;

(2) Customary charges will be made for continued hospital care beyond the second day following the date of the notice;

(3) The medical review entity will make a formal determination on the validity of the hospital's finding if the beneficiary remains in the hospital after he or she is liable for charges;

(4) The determination of the medical review entity made after the beneficiary received the purportedly noncovered services will be appealable by the hospital or the beneficiary under the appeals procedures that apply to medical review entity determinations affecting Medicare Part A payment; and

(5) The charges for continued care will be invalid and refunded if collected by the hospital, to the extent that a finding is made that the beneficiary required continued care beyond the point indicated by the hospital.

(D) If the beneficiary remains in the hospital after the appropriate notification, and the hospital, the physician that concurred in the hospital determination on which the notice was based, or medical review entity subsequently finds that the beneficiary requires an acute level of inpatient hospital care, the hospital may not charge the beneficiary for continued care until the conditions in paragraphs (b)(1)(iii) (A), (B), and (C) of this section are met once again.

(iv) Diagnostic procedures and studies, and therapeutic procedures and courses of treatment (for example, experimental procedures) that are excluded from coverage under § 405.310(k) (medically unnecessary items and services), even though the beneficiary requires continued inpatient hospital care, and that are furnished after the beneficiary (or the person acting on his or her behalf) has acknowledged in writing that the hospital (acting directly or through its utilization review committee and with the concurrence of the intermediary) has informed him or her that—

(A) In the hospital's opinion, which has been agreed to by the intermediary, the items or services to be furnished are not considered reasonable and necessary under Medicare;

(B) Customary charges will be made if he or she receives the items or services;

(C) The intermediary will make a formal determination on the validity of the hospital's finding if the beneficiary receives the items or services;

(D) The determination of the intermediary is appealable by the hospital or the beneficiary under the appeals procedure that applies to determinations affecting Medicare Part A payment; and

(E) The charges for the services will be invalid and, to the extent collected, will be refunded by the hospital if the services are found to be covered by Medicare;

(v) Customary charges for noncovered items and services furnished on outliers days (as described in § 405.475) for which payment is denied because the beneficiary is not entitled to Medicare Part A or his or her Medicare Part A benefits are exhausted (if payment is considered for outlier days, the entire stay is reviewed and days up to the number of days in excess of the outlier threshold may be denied on the basis of nonentitlement to Part A or exhaustion of benefits, and, in applying this rule, the latest days will be denied first); and

(vi) The customary charge differential for a private room or other luxury service that is more expensive than is medically required and is furnished for the personal comfort of the beneficiary at his or her request (or the request of the person acting on his or her behalf).

(2) *Review.* The medical review entity or intermediary may review any cases in which the hospital advises the beneficiary (or the person acting on his or her behalf) of the noncoverage of the

services in accordance with paragraph (b)(1)(iii)(C) or (b)(1)(iv) of this section. The hospital must identify such cases to the medical review entity or intermediary in accordance with HCFA instructions.

(3) *Prohibited charges.* A hospital may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital is paid under the prospective payment system.

(c) *Admissions and quality review.* Beginning on October 1, 1984, a hospital must have an agreement with a Utilization and Quality Control Peer Review Organization (PRO) to have the PRO review, on an ongoing basis, the following:

(1) The appropriateness of the hospital's admissions, admission patterns, discharges, lengths of stay, transfers, and services furnished in outlier cases.

(2) The validity of the hospital's diagnostic and procedural information.

(3) The completeness, adequacy, and quality of the services furnished in the hospital.

(d) *Medical review activities for hospitals paid under the prospective payment system.*

(1) * * *

(2) *DRG validation.* (i) The attending physician must, shortly before, at or shortly after discharge (but before a claim is submitted), attest to in writing the principal diagnosis, secondary diagnoses, and names of procedures performed. The following statement must immediately precede the physician's signature: "I certify that the identification of the principal and secondary diagnoses and the procedures performed is accurate and complete to the best of my knowledge. (Notice: Intentional misrepresentation, concealment, or falsification of this information may, in the case of a Medicare beneficiary, be punishable by imprisonment, fine, or civil penalty.)"

(ii) The medical review entity will review, at least every three months, a random sample of discharges for the previous three-month period or the period since the last review, to verify that the diagnostic and procedural coding, used by the hospital for DRG assignment, is substantiated by the corresponding medical records. DRG validation must be done on the basis of a review of medical records and, at HCFA's discretion, may take place at the hospital or away from the hospital site.

(iii) If the diagnostic and procedural information, attested to by the attending physician, is found to be inconsistent with the hospital s coding or DRG assignment, the hospital's coding for the Medicare claim will be appropriately changed and payments recalculated, based on the appropriate DRG assignments.

* * * * *

(e) *Denial of payment as a result of admissions and quality review.*

(1) * * *

(3) A determination under paragraph (e)(1) of this section, related to a pattern of inappropriate admissions and billing practices that have the effect of circumventing the prospective payment system, will be referred to the Office of the Inspector General for a determination in accordance with section 1866(b)(2) of the Act. Such determination will be effective in the manner provided in section 1866(b) (3) and (4) of the Act, and regulations in Part 489 of this chapter, with respect to terminations of agreements, and will remain in effect until the Office of the Inspector General finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

* * * * *

11. Section 405.474 is amended by: revising the title of paragraph (b)(1), paragraph (b)(1)(iii), the title of paragraph (b)(2), paragraph (b)(2)(i), the introductory language of paragraph (b)(2)(ii), and paragraph (b)(2)(iii); adding a new paragraph (b)(2)(iv); removing paragraph (b)(5); redesignate paragraphs (b)(6), (b)(7), and (b)(8) as paragraphs (b)(5), (b)(6), and (b)(7), respectively; and revising paragraph (c)(1) to read as follows:

§ 405.474 Determination of transition period payment rates.

* * * * *

(b) Determining the hospital-specific rate. (1) Base-year cost experience.

(i) * * *

(iii) A hospital that becomes subject to the prospective payment system beginning on or after October 1, 1983 and before November 16, 1983, may request their intermediary, up to November 15, 1983, to recompute their base period costs to take into account inadvertent omissions in their previous submissions to the intermediary related to changes made by the prospective payment legislation for purposes of determining the base period costs. The intermediary may also initiate changes to the determination for any reason prior to the date the hospital becomes subject to prospective payment, and before November 16, 1983, for corrections to take into account inadvertent omissions in the hospital's previous submissions related to changes made by the prospective payment legislation for purposes of determining the base period costs. Such omissions pertain to adjustments to exclude capital-related costs and the direct medical education costs of approved educational activities and to adjustments specified in paragraph (b)(2)(ii) of this section. The intermediary must notify the provider of any change to the hospital-specific amount as a result of the provider's request within 30 days of receipt of the additional data. Any change to base period costs made pursuant to the above exception will be made effective retroactively, beginning with the first day of the affected hospital's fiscal year.

* * * * *

(2) *Modifications to base year cost experience.*

(i) The intermediary will use the best data available at the time in estimating each hospital's base year costs. Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base year inpatient operating costs, as necessary, to eliminate nursing differential costs (as described in § 405.430), direct medical education costs (as described in § 405.421), capital-related costs (as described in § 405.414), and kidney acquisition costs incurred by hospitals approved as renal transplantation centers (as described in § 405.476(h)). Kidney acquisition costs in the base year will be determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants covered by Medicare Part A during the base period. Malpractice insurance costs will be included in the inpatient operating costs, as described in § 405.452. Also, higher costs that were incurred for purposes of increasing base year costs, or either one-time nonrecurring higher costs or revenue offsets that have the effect of distorting base year costs as an appropriate basis for computing the hospital-specific rate, or higher costs that result from changes in hospital accounting principles initiated in the base year, will be excluded from base year costs for purposes of this section.

(ii) Prior to the date it becomes subject to the prospective payment system, a hospital may request the intermediary to further adjust its estimated base period costs to take into account—

* * * * *

(iii) If a hospital requests its base period costs to be adjusted under

paragraph (b)(2)(ii) of this section, it must timely provide the intermediary with sufficient documentation to justify the adjustment and adequate data to compute the adjusted costs. The intermediary will decide whether to use part or all of the data based on audit, survey, and other information available.

(iv) An intermediary's estimation of a hospital's base year costs, made for purposes of determining the hospital-specific rate, is subject to administrative and judicial review only with respect to whether the intermediary followed the provisions of this paragraph. In any administrative or judicial review of whether the intermediary used the best data available at the time, as required by paragraph (b)(2)(i) of this section, an intermediary's estimation will be revised based on this review only if the estimation was unreasonable and clearly erroneous in light of the data available at the time the estimation was made. Specifically excluded from administrative or judicial review are any issues based on data, information, or arguments not presented to the intermediary at the time of the estimation. In the event that an estimation is revised based on administrative or judicial review in accordance with this paragraph, the revision may be made retroactive to the time of the intermediary's estimation.

* * * * *

(c) *Determining transition payment rates for new hospitals.* (1) For purposes of this section, a new hospital is a hospital that meets either of the following requirements:

(i) The hospital—

(A) Is newly participating in the Medicare program (under previous and present ownership); and

(B) Does not have a 12-month cost reporting period ending before September 30, 1983; or

(ii) The hospital is under new ownership and can document to the satisfaction of its intermediary that—

(A) Its base period reflects previous ownership and control under which the hospital's operation was deliberately phased out in expectation of sale or termination of operations;

(B) Its occupancy rate during the current period is 150 percent of the occupancy rate during the base year;

(C) Previous ownership and management took deliberate steps to curtail services in the base period by reducing operations, laying off or transferring employees to non-inpatient areas, reducing physician staff, and reducing inpatient admissions; and

(D) The change in ownership and the corresponding growth in inpatient services and occupancy occurred between the base period and the first prospective payment period.

* * * * *

12. Section 405.475 is amended by revising the title of paragraph (c), paragraphs (c)(1), (c)(2) and (c)(3), the introductory language of paragraph (d)(3), and paragraph (d)(6) to read as follows:

§ 405.475 Payment for outlier cases.

* * * * *

(c) *Payment for extended length of stay (day) outliers.* (1) If the hospital stay reflected by a discharge includes covered days of care beyond the applicable threshold criterion, the intermediary will make an additional payment, on a per diem basis, to the provider for those days. A special request or submission by the hospital is not necessary to initiate this payment. However, a hospital may request payment for day outliers prior to the medical review provided for in paragraph (c)(2) of this section.

(2) The medical review entity (that is, a PSRO, PRO, or intermediary) must review and approve—

(i) The medical necessity and appropriateness of the admission and outlier services in the context of the entire stay; and

(ii) The validity of the diagnostic and procedural coding.

(3) The per diem payment made under paragraph (c)(1) of this section will be derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rate as determined under § 405.475(a)(2)(ii) by the mean length-of-stay for that DRG. The resulting amount will then be multiplied by the applicable Federal portion of the blend as follows:

Cost reporting periods beginning on or after	Federal portion (percent)
Oct. 1, 1983	25
Oct. 1, 1984	50
Oct. 1, 1985	75
Oct. 1, 1986	100

* * * * *

(d) *Payment for extraordinarily high-cost cases (cost outliers).*

(1) * * *

(3) The hospital must request review by a medical review entity and approval of all services. The entity using the medical records and itemized charges must determine that:

* * * * *

(6) The additional payment amount will be derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (d)(3) of this section) and the threshold criteria established under paragraph (a)(2) of this section. The resulting amount will then be multiplied by the applicable Federal portion of the blend as indicated in paragraph (c)(3) of this section.

* * * * *

13. Section 405.476 is amended by revising paragraphs (b)(3), (f)(1), and (g) to read as follows:

§ 405.476 Special treatment of sole community hospitals, Christian Science sanitoria, cancer hospitals, referral centers, and renal transplantation centers.

* * * * *

(b) *Requests and criteria for classification as a sole community hospital (SCH).*

(1) * * *

(3) Criteria for classification as a sole community hospital.

(i) A hospital that has been granted an exemption from the hospital cost limits under § 405.460(e)(1) prior to October 1, 1983, or whose request for the exemption was received by the appropriate intermediary prior to October 1, 1983, and was subsequently approved, will be automatically classified as a sole community hospital under the prospective payment system unless the hospital's classification has been cancelled under paragraph (b)(6) of this section, or unless a change occurs in the circumstances under which the hospital was approved.

(ii) A hospital will be classified as a sole community hospital if it is located in a rural area; and

(A) The hospital is located more than 50 miles from other like hospitals;

(B) The hospital is located between 25 and 50 miles from other like hospitals and meets one of the following criteria:

(1) No more than 25 percent of the residents or, if data on general resident utilization are not available, no more than 25 percent of the Medicare beneficiaries in the hospital's service area are admitted to other like hospitals for care:

(2) The hospital has less than 50 beds and the PSRO or intermediary certifies that the hospital would have met the criteria in paragraph (b)(3)(ii)(B)(*1*) of this section were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital; or

(3) Because of local topography or periods of prolonged severe weather conditions, the other like hospitals are

inaccessible for at least one month out of each year; or

(C) The hospital is located between 15 and 25 miles from other like hospitals but because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least one month out of each year.

* * * * *

(f) *Cancer hospitals*

(1) *Criteria for classification.* HCFA will consider a hospital's request for an adjustment to a cancer hospital's prospective payment rates only if the hospital—

(i) Was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983:

(ii) Demonstrates that the entire facility is organized primarily for treatment of and research on cancer (that is, the facility is not a subunit of an acute general hospital or university-based medical center); and

(iii) Has a patient population such that at least 50 percent of the hospital's total discharges have a principal diagnosis that reflects a finding of neoplastic disease. (The principal diagnosis for this purpose is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital. For the purposes of meeting this definition, only discharges with ICD–9–CM principal diagnosis codes of 140 through 239, V58.0, V58.1, V66.1, V66.2, or 990 will be considered to reflect neoplastic disease.)

* * * * *

(g) *Referral centers.*

(1) *Criteria.* HCFA will consider a hospital's request for a referral center adjustment to the hospital's prospective payment rates only if the hospital is an acute care hospital that has a provider agreement under Part 489 of this chapter to participate in Medicare as a hospital; and

(i) Is located in a rural area (as defined in § 405.473(b)(6)) and has 500 or more beds available for use; or

(ii) Has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries must be furnished to beneficiaries who live more than 25 miles from the hospital.

(2) *Payments to rural referral centers with 500 or more beds.* A hospital that meets the criteria of paragraph (g)(1)(i) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473(b)(10) or (c)(6), as adjusted by the hospital's area wage index.

* * * * *

14. Section 405.477 is amended by revising paragraphs (d)(2)(v), adding a new paragraph (d)(2)(vi), and revising paragraph (e)(3) to read as follows:

§ 405.477 Payments to hospitals under the prospective payment system.

* * * * *

(d) *Additional payments.*

(1) * * *

(2) *Indirect medical education costs.*

(i) * * *

(v) In order to be included in the count of interns and residents under paragraph (d)(2)(ii)(A) of this section, the interns and residents must be enrolled in a teaching program approved under § 405.421 (excluding those employed by the hospital, but furnishing services at another site). The interns and residents must also be employed by the hospital or by an organization that—

(A) Has a long-standing historical medical relationship with the hospital in which the stability of the graduate medical education program is dependent upon the relationship between the hospital and the employing organization such as the type described in § 489.23(a) of this chapter (approval or disapproval of waiver will not be a factor in this determination);

(B) Is the sole employer of substantially all the interns and residents furnishing services at the hospital;

(C) Agrees to supply documentation of the names and assigned time in the hospital of each intern and resident and agrees to permit the intermediary to audit its records to verify that no intern or resident is counted at more than one hospital.

(vi) The number of full-time equivalent interns and residents under paragraph (d)(2)(ii)(A) of this section must equal the sum of—

(A) Interns and residents employed for 35 hours or more per week; and

(B) One half of the total number of interns and residents working less than 35 hours per week (regardless of the number of hours worked).

(e) *Reductions to total payments*—

(1) * * *

(3) Part P payment to outside suppliers. HCFA will reduce payments for inpatient hospital services to take into account 100 percent of the reasonable charges (before application of Medicare Part B deductible and coinsurance amounts) for nonphysician services furnished, to beneficiaries entitled to benefits under Medicare Part A, by an outside supplier under § 489.23 of this chapter.

* * * * *

C. Subpart J is amended as follows:

Subpart J—Conditions of Participation; Hospitals

1. The authority citation for Subpart J is revised to read as follows:

Authority: Sections 1102, 1154(a)(10), 1861 (e), (f), (g), and (k), 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320c–3(a)(10), 1395x (e), (f), (g), and (k), 1395hh, and 1395ww).

2. The table of contents for Subpart J is amended by revising the title of § 405.1042 to read as follows:

Subpart J—Conditions of Participation: Hospitals

Secs.

* * * * *

405.1042 Condition of participation—Special utilization review requirements for services subject to the prospective payment system.

* * * * *

3. Section 405.1042 is amended by revising the title of the section and paragraphs (c)(1) and (c)(2) to read as follows:

§ 405.1042 Condition of participation: Special utilization review requirements for services subject to the prospective payment system.

* * * * *

(c) *Standard: Scope and frequency of reviews.*

(1) The UR plan must provide for review with respect to the medical necessity of admissions to the institution and, as provided in paragraph (c)(2) of this section—

(i) The duration of stays; and

(ii) Professional services furnished, including drugs and biologicals.

(2) In hospitals paid for inpatient hospital services under the prospective payment system (see § 405.470–405.477), the UR plan must provide for:

(i) Review of the duration of stays as required under paragraph (c)(1)(i) of this section only in cases reasonably assumed by the hospital to be outlier cases based on extended length of stay, as described in § 405.575(a)(1); and

(ii) Review of services furnished as required under paragraph (c)(1)(ii) of this section only in cases reasonably assumed by the hospital to be outlier

cases based on extraordinarily high costs, as described in § 405.475(a)(2).

* * * * *

D. Subpart P is amended as set forth below:

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

1. The table of contents is amended by revising the title of § 405.1627 and the authority citation to read as follows:

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

Secs.

* * * * *

405.1627 Inpatient hospital services other than inpatient psychiatric or tuberculosis hospital services: Certification and recertification.

* * * * *

Authority: Secs. 1102, 1814, 1835, 1871 and 1883 of the Social Security Act, as amended (42 U.S.C. 1302, 1395f, 1395n, 1395hh and 1395tt).

2. Section 405.1627 is revised to read as follows:

§ 405.1627 Inpatient hospital services other than inpatient psychiatric or tuberculosis hospital services: Certification and recertification.

(a) *Content of Certification.* The certification and recertification statements must contain the following information:

(1) An adequate written record of the reasons for either—

(i) Continued hospitalization of the patient for medical treatment or for medically required inpatient diagnostic study; or

(ii) Special or unusual services for cost outlier cases (under the prospective payment system described in § 405.470).

(2) The estimated period of time the patient will need to remain in the hospital and, for cost outlier cases, the period of time for which the special or unusual services will be required; and

(3) Any plans, where appropriate, for posthospital care.

(b) *Certification when a skilled nursing facility (SNF) bed is not available.*

(1) A physician may certify or recertify need for continued hospitalization if the physician finds that the patient could receive proper treatment in an SNF but no bed is available in the participating SNF.

(2) If this is the basis for the physician's certification or recertification, the required statement must so indicate; and the physician is expected to continue efforts to place the patient in a participating SNF as soon as a bed becomes available.

(c) *Signature of certification.*

(1) Certifications and recertifications must be signed by the physician responsible for the case, or by another physician who has knowledge of the case and who is authorized to do so by the responsible physician or by the hospital's medical staff.

(2) Certification of the need to admit a patient, in connection with dental procedures, because his or her underlying medical condition and clinical status or the severity of the dental procedures, require hospitalization, may, if the intermediary requests such certification, be signed by the dentist caring for the patient.

(d) *Waiver of recertification statement.* A separate recertification statement is not necessary if the requirements for a second or subsequent recertification are satisfied through utilization review in accordance with paragraph (e)(3) of this section. It is sufficient if records of the UR committee show that consideration was given to the reasons for continued hospitalization, estimated time the patient will need to remain in the hospital, and plans for posthospital care.

(e) *Timing of certifications and recertifications.*

(1) *For cases not subject to the payment system.* For cases that are not subject to the prospective payment system, certification is required no later than as of the 12th day of hospitalization. A hospital may, at its option, provide for the certification to be made earlier, or it may vary the timing of the certification within the 12-day period by diagnostic or clinical categories. The first recertification is required no later than as of the 18th day of hospitalization. Thereafter, subsequent recertifications are required at intervals established by the UR committee (on case-by-case basis if it so chooses), but no less frequently than every 30 days.

(2) *For cases subject to the prospective payment system.* For cases subject to the prospective payment system, certification is required as follows:

(i) For day-outlier cases, certification is required no later than one day after the hospital reasonably assumes that the case meets the outlier criteria, established in accordance with § 405.475(a)(1), or no later than 20 days into the hospital stay, whichever is earlier. The first and subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses) but not less frequently than every 30 days.

(ii) For cost-outlier cases, certification is required no later than the date on which the hospital requests cost outlier payment or 20 days into the hospital stay, whichever is earlier. If possible, certification must be made before the hospital incurs costs for which it will seek cost outlier payment. In cost outlier cases, the first and subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses).

(3) *Recertification requirement fulfilled by utilization review.*

(i) At the hospital's option, extended stay review by its UR committee may take the place of the second and subsequent physician recertifications required for cases not subject to the prospective payment system, and for prospective payment day-outlier cases.

(ii) A utilization review that is used to fulfill the recertification requirement is considered timely if performed no later than the seventh day after the day the physician recertification would have been required. The next physician recertification would need to be made no later than the 30th day following such review; if review by the UR committee took the place of this physician recertification, the review could be performed as late as the seventh day following such 30th day.

(4) *Description of procedure.* The hospital must have available in the files a written description of the procedure it adopts on timing of certifications and recertifications—that is, the intervals at which the necessary statements are required and whether review of long-stay cases by the UR committee serves as an alternative to recertification by a physician in the case of the second or subsequent recertifications required under paragraphs (e)(1) and (e)(2)(i) of this section.

3. In § 405.1629, the uncoded introductory language is revised to read as follows:

§ 405.1629 Inpatient tuberculosis hospital services and inpatient psychiatric hospital services; certification and recertification.

The requirements for physician certification and recertification for inpatient psychiatric and tuberculosis hospital services are generally similar to the requirements for certification and recertification for inpatient hospital services under § 405.1627. However, for inpatient tuberculosis and psychiatric hospital services, certification is required at the time of admission or as soon thereafter as is reasonable and practicable, and the content of the

certification and recertification statements is to conform with the requirements of this section and, in the case of patients admitted to the hospital on or after January 1, 1970, recertification statements are to be obtained in accordance with the intervals set forth in § 405.1627(e)(1). The content requirements differ because of recognition that there frequently is a difference between treatment provided in mental and tuberculosis hospitals and the treatment provided in other hospitals. Often the care provided in such hospitals is purely custodial, while the Medicare program's intent is to cover only active care and not to cover custodial care.

* * * * *

4. Section 405.1630 is revised to read as follows:

§ 405.1630 Certification and recertification for beneficiary admitted to a hospital before entitlement to benefits.

If an individual is admitted to a hospital before becoming entitled to Medicare Part A, the following rules apply:

(a) Certification and recertification are not required until the individual becomes entitled.

(b) Except as specified in paragraph (c) of this section, the applicable requirements for content, signature, and timing of certifications and recertifications are those set forth—

(1) For tuberculosis and psychiatric hospitals, in § 405.1629; and

(2) For all other hospitals, in § 405.1627.

(c) *Exception.* The time limits for certification and recertification are computed from the date of entitlement instead of the date of admission.

E. Subpart R is amended as follows:

Subpart R—Provider Reimbursement Determinations and Appeals

1. The authority citation for Subpart R reads 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 405.1801 is amended by revising the definition of "intermediary determination" in paragraph (a), and revising paragraphs (b)(1) and (c) to read as follows:

§ 405.1801 Introduction.

(a) *Definitions.* * * *

"Intermediary determination" means the following:

(1) With respect to a provider of services that has filed a cost report under §§ 405.406 and 405.453(f), the term means a determination of the amount of total reimbursement due the provider for items and services furnished to beneficiaries for which reimbursement may be made on a reasonable cost basis under Medicare for the period covered by the cost report.

(2) With respect to a hospital that receives payments for inpatient hospital services under the prospective payment system (§§ 405.470–405.477), the term includes a determination of the total amount of payment due the hospital under that system for the hospital's cost reporting period covered by the determination.

(3) For purposes of appeal to the Provider Reimbursement Review Board, the term is synonymous with the phrases "intermediary's final determination" and "final determination of the Secretary", as those phrases are used in section 1878(a) of the Act.

(4) For purposes of § 405.374 concerning claims collection activities, the term does not include an action by HCFA with respect to a compromise of a Medicare overpayment claim, or termination or suspension of collection action on an overpayment claim, against a provider or physician or other supplier.

* * * * *

(b) *General Rule.*

(1) *Providers.* The principles of reimbursement for determining reasonable cost and prospective payment are contained in Subpart D of this part. In order to be reimbursed for covered services furnished to Medicare beneficiaries, providers of services are obliged to file cost reports with their intermediaries as specified in § 405.453(f). Where the term "provider" appears in this subpart, it includes hospitals paid under the prospective payment system for purposes of applying the appeal procedures described in this subpart to those hospitals.

* * * * *

(c) *Effective dates.*

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section or in § 405.1885(e), this subpart applies to all cost reporting periods ending on or after December 31, 1971, for which reimbursement may be made on a reasonable cost basis.

(2) Sections 405.1835–405.1877 apply only to cost reporting periods ending on or after June 30, 1973, for which reimbursement may be made on a reasonable cost basis.

(3) With respect to hospitals under the prospective payment system (see §§ 405.470–405.477), the appeals procedures in §§ 405.1811–405.1877 that apply become applicable with the hospital's first cost reporting period beginning on or after October 1, 1983.

3. Section 405.1803 is amended by revising paragraph (a) to read as follows:

§ 405.1803 Intermediary determination and notice of amount of program reimbursement.

(a) *General requirement.* Upon receipt of a provider's cost report, or amended cost report where permitted or required, the intermediary must within a reasonable period of time (see § 405.1835(b)), furnish the provider and other parties as appropriate (see § 405.1805) a written notice reflecting the intermediary's determination of the total amount of reimbursement due the provider. The intermediary must include the following information in the notice, as appropriate:

(1) *Reasonable cost.* The notice must—

(i) Explain the intermediary's determination of total program reimbursement due the provider on the basis of reasonable cost for the reporting period covered by the cost report or amended cost report; and (ii) Relate this determination to the provider's claimed total program reimbursement due the provider for this period.

(2) *Prospective payment.* With respect to a hospital that receives payments for inpatient hospital services under the prospective payment system (see § 405.470–405.477), the intermediary must include in the notice its determination of the total amount of the payments due the hospital under that system for the cost reporting period covered by the notice. The notice must explain (with appropriate use of the applicable money amounts) any difference in the amount determined to be due, and the amounts received by, the hospital during the cost reporting period covered by the notice.

* * * * *

4. Section 405.1804 is revised to read as follows:

§ 405.1804 Matters not subject to administrative and judicial review under prospective payment.

Neither administrative nor judicial review is available for controversies about the following matters:

(a) The determination of the requirement, or the proportional amount, of any budget neutrality adjustment in the prospective payment rates.

(b) The establishment of—

(1) Diagnosis related groups (DRGs);

(2) The methodology for the classification of inpatient discharges within the DRGs; or

(3) Appropriate weighting factors that reflect the relative hospital resources used with respect to discharge within each DRG.

5. Section 405.1809 is amended by revising paragraph (a) to read as follows:

§ 405.1809 Intermediary hearing procedures.

(a) *Hearings.* Each intermediary must establish and maintain written procedures for intermediary hearings, in accordance with the regulations in this subpart, for resolving issues that may arise between the intermediary and a provider concerning the amount of reasonable cost reimbursement, or prospective payment due the provider (except as provided in § 405.1804) under the Medicare program. The procedures must provide for a hearing on the intermediary determination contained in the notice of program reimbursement (§ 405.1803), if the provider files a timely request for a hearing.

* * * * *

6. Section 405.1839 is revised to read as follows:

§ 405.1839 Amount in controversy.

(a) *Single appeals.* The $1,000 amount in controversy required under § 405.1809 for an intermediary hearing and the $10,000 amount in controversy required under § 405.1835 for a Board hearing is, as applicable to the matters for which the provider has requested a hearing, the combined total of the amounts computed as follows:

(1) *Providers under prospective payment.* For providers that are paid under the prospective payment system, by deducting—

(i) The total of the payment due the provider on other than a reasonable cost basis under the prospective payment system from the total amount that would be payable after a recomputation that takes into account any exclusion, exception, adjustment, or additional payment denied the provider under §§ 405.470–405.477, as applicable;

(ii) The total of the payment due the provider on a reasonable cost basis under the prospective payment system from the total reimbursable costs claimed by the provider; and

(iii) The adjusted total reimbursable costs due the provider on a reasonable cost basis under other than the prospective payment system from the total reimbursable costs claimed by the provider.

(2) *Providers not under prospective payment.* For providers that are not paid under the prospective payment system, by deducting the adjusted total reimbursable program costs due the provider on a reasonable cost basis from the total reimbursable costs claimed by the provider.

(b) *Group appeals.* The $50,000 amount in controversy required under § 405.1837 for group appeals to the Board is, as applicable to the common matters for which the group of providers have requested a hearing, the combined total of the amounts computed as follows:

(1) *Providers under prospective payment.* For providers that are paid under the prospective payment system, by deducting—

(i) The total of the payment due the providers (in the aggregate) on other than a reasonable cost basis under the prospective payment system from the total amount that would be payable to the providers (in the aggregate) after a recomputation that takes into account any applicable exception, exclusion, adjustment, or additional payment denied the providers under §§ 405.470–405.477;

(ii) The total of the payment due the providers (in the aggregate) on a reasonable cost basis under the prospective payment system from the total reimbursable costs claimed in the aggregate by the providers; and

(iii) The adjusted total reimbursable costs due the providers (in the aggregate) on a reasonable cost basis under other than the prospective payment system from the total reimbursable costs claimed in the aggregate by the providers.

(2) *Providers not under prospective payment.* For providers that are not paid under the prospective payment system, by deducting the adjusted total reimbursable program costs due the providers (in the aggregate) on a reasonable cost basis from the total reimbursable costs claimed in the aggregate by the providers.

II. Part 409, Subpart A is amended as follows:

PART 409—MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS

Subpart A—Hospital Insurance

A. The authority citation for Subpart A reads as follows:

Authority: Secs. 1102, 1812, 1813, 1814, 1861, 1866, 1871, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395f, 1395x, 1395cc, 1395hh, 1395rr, and 1395tt), and Sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395y (note)).

B. Section 409.65 is amended by revising paragraphs (e)(2) (i) and (ii) to read as follows:

§ 409.65 Lifetime reserve days.

* * * * *

(e) *Period covered by election.*

(1) * * *

(2) *Exception.* A beneficiary election not to use lifetime reserve days for an inpatient hospital stay for which payment may be made under the prospective payment system (see §§ 405.470–405.477) is subject to the following rules:

(i) If the beneficiary has one or more regular benefit days (see § 409.61(a)(1) of this chapter) remaining in the benefit period upon entering the hospital, an election not to use lifetime reserve days will apply automatically to all days that are not outlier days. The beneficiary may also elect not to use lifetime reserve days for outlier days but this election must apply to all outlier days.

(ii) If the beneficiary has no regular benefit days (see § 409.61(a)(1) of this chapter) remaining in the benefit period upon entering the hospital, an election not to use lifetime reserve days must apply to the entire hospital stay.

III. Part 489, Subpart B is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

Subpart B—Essentials of Provider Agreements

A. The authority citation for Part 489 reads as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

B. Section 489.20 is amended by reprinting the introductory language and paragraph (a) unchanged and revising paragraphs (b), (c), and (d) to read as follows:

§ 489.20 Basic commitments.

The provider agrees—

(a) To limit its charges to beneficiaries and to other individuals on their behalf, in accordance with provisions of Subpart C of this part;

(b) To comply with the requirements of Subpart D of this part for the return or other disposition of any amounts incorrectly collected from a beneficiary or any other person in his or her behalf;

(c) To comply with the requirements of § 420.203 of this chapter when it hires certain former employees of intermediaries;

(d) In the case of a hospital that furnishes inpatient hospital services to a

beneficiary, to either furnish directly or make arrangements for all items and services (other than physicians' services as described in § 405.550(b) of this chapter) for which the beneficiary is entitled to have payment made under Medicare; and

* * * * *

C. Section 489.21 is revised to read as follows:

§ 489.21 Specific limitations on charges.

Except as specified in Subpart C of this part, the provider agrees not to charge a beneficiary for any of the following:

(a) Services for which the beneficiary is entitled to have payment made under Medicare.

(b) Services for which the beneficiary would be entitled to have payment made if the provider—

(1) Had in its files the required certification and recertification by a physician relating to the services furnished to the beneficiary;

(2) Had furnished the information required by the intermediary in order to determine the amount due the provider on behalf of the individual for the period with respect to which payment is to be made or any prior period;

(3) Had complied with the provisions requiring timely utilization review of long stay cases so that a limitation on days of service has not been imposed under section 1866(d) of the Act (see Subparts J and K of Part 405 of this chapter for utilization review requirements); and

(4) Had obtained, from the beneficiary or a person acting on his or her behalf, a written request for payment to be made to the provider, and had properly filed that request. (If the beneficiary or person on his or her behalf refuses to execute a written request, the provider may charge the beneficiary for all services furnished to him or her.)

(c) Inpatient hospital services furnished to a beneficiary who exhausted his or her Part A benefits, if HCFA reimburses the provider for those services.

(d) Custodial care and services not reasonable and necessary for the diagnosis or treatment of illness or injury, if—

(1) The beneficiary was without fault in incurring the expenses; and

(2) The determination that payment was incorrect was not made until after the third year following the year in which the payment notice was sent to the beneficiary.

(e) Inpatient hospital services for which a beneficiary would be entitled to have payment made under Part A of Medicare but for a denial or reduction in payments under regulations at § 405.472(e) of this chapter or under section 1886(f) of the Act.

(f) Items and services furnished to a hospital inpatient (other than physicians' services as described in § 405.550(b) of this chapter or the services of an anesthetist as described in § 405.553(b)(4) of this chapter) for which Medicare payment would be made if furnished by the hospital or by other providers or suppliers under arrangements made with them by the hospital. For this purpose, a charge by another provider or supplier for such an item or service is treated as a charge by the hospital for the item or service, and is also prohibited.

D. Section 489.23 is amended by reprinting the introductory language of paragraph (a) unchanged and revising paragraphs (a)(1), (c)(2), and (c)(3) to read as follows:

§ 489.23 Special provisions for waiver of certain inpatient hospital services requirements.

(a) *General rule.* For any cost reporting period beginning before October 1, 1986, HCFA may waive the requirements of §§ 489.20(d) and 489.21(f), regarding items and services furnished to hospital inpatients, for a hospital that—

(1) Since before October 1, 1982, has extensively followed the practice of allowing suppliers of items and services furnished to the hospital's inpatients to bill directly under Medicare Part B for those items and services; and

* * * * *

(c) *Waiver criteria.*

(1) * * *

(2) The criteria in paragraph (c)(1) of this section are met if—

(i) The outside suppliers' reasonable charges for nonphysician services in the hospital's base period (as described in § 405.474(b)(1) of this chapter) were at least 125 percent of the reasonable cost of the nonphysician ancillary services furnished to Medicare inpatients by the hospital exclusive of the costs of operating room, recovery room, labor and delivery room, pharmacy, and medical supplies; and

(ii) The hospital's inpatients received at least three distinct types of ancillary services (such as pathology, radiology, and physical therapy services) primarily from outside suppliers.

(3) The hospital must show that outside suppliers furnishing items and services to its Medicare inpatients under the waiver have agreed that—

(i) The supplier will bill only for services for which payment may be made under Part B (or would be made if the beneficiary were entitled to Part B benefits);

(ii) The supplier will bill the program directly for services furnished to an inpatient of the hospital (even if assignment is not accepted) within 30 days of his or her discharge from the hospital; and

(iii) The supplier's billing will specify that the services were furnished to an inpatient of a particular hospital, identify the nonphysician services that were furnished, and identify the charge for each service.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: December 20, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 22, 1983.

Margaret M. Heckler,

Secretary.

Editorial Note.—The following addendum will not appear in the Code of Federal Regulations.

Addendum—Schedule of Standardized Amounts and Relative Weights Effective with Discharges 30 Days after the Date of Publication

I. Summary and Background

The addendum to the interim final rule published September 1, 1983 contained a very detailed description of the standardized amounts and relative weights effective with cost reporting periods beginning on or after October 1, 1983. That detailed description is repeated here, revised to reflect the changes we have made in the way we will pay for outlier cases, and including revised budget neutrality adjustment factors and the resulting adjusted standardized amounts.

This addendum sets forth the schedule of standardized amounts and relative weights that will be used to calculate prospective payment amounts under the Medicare program for inpatient, nonphysician services associated with a discharge occurring after 30 days after the date of publication, and before October 1, 1984. This schedule is combined, for publication purposes, with the final rule implementing the prospective payment system because of the close relationship between this schedule, applicable for fiscal year (FY) 1984, and the rules governing prospective payment as a whole. In the future, notices, similar to this schedule, will be published on or before September 1, of each year, setting forth

the schedule of standardized amounts and, if appropriate, relative weights applicable for future periods.

II. Calculation of Adjusted Standardized Payment Amounts

This section contains a brief explanation of how the adjusted standardized payment amounts, applicable for FY 84, have been derived. The methodology for arriving at the appropriate rate structure is essentially prescribed in section 1886(d)(2) of the Act.

A. Base Year Cost Data

Section 1886(d)(2)(A) of the Act requires the establishment of base year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. See section III C.1.a of the preamble to the interim final rule which contains a detailed explanation of how base year cost data are established.

B. Updating for Inflation

Section 1886(d)(2)(B) of the Act requires that the base year cost data be updated for FY 84. A two-step process is necessary.

1. The base year cost data, representing allowable costs per Medicare discharge (per hospital), are inflated through FY 83 using actuarial estimates of the rate of increase in hospital costs nationwide.

Note.—As explained in section IV.A.3. of the preamble to these regulations, we have revised the assumptions used to inflate these costs through FY 1983, resulting in a slight reduction of the adjusted standardized amounts set forth in Table I, below.

2. The resulting amounts are further inflated through FY 84 by using the estimated annual rate of increase in the hospital market basket, plus 1 percentage point, in accordance with the section 1886(b)(3)(B) of the Act.

Since July 1, 1979, the hospital cost limit schedules have incorporated a "market basket index" to reflect changes in the prices of goods and services that hospitals use in producing general inpatient services. We developed the current market basket by identifying the most commonly used categories of hospital inpatient operating expenses and by weighting each category to reflect the estimated proportion of total hospital operating expenses attributable to that category. We then obtained historical and projected rates of increase in the resource prices for each category. Based on the rate of increase and the weight of each category, we developed an overall annual rate of increase in the hospital market basket. The categories of expenses used to develop the revised market basket are based primarily on those used by the American Hospital Association in its analysis of costs, and by the U.S. Department of Commerce in publishing price indexes by industry.

For the purpose of updating base year cost data for FY 84, we revised the market basket previously used under the hospital cost limits, which was published in the **Federal Register** (47 FR 43313) on September 30, 1982. First, we have added malpractice insurance as a new category of expense in the market basket. This change was necessary because malpractice insurance premiums, which were excluded from the hospital cost limits, are to be included under the prospective payment rates. Second, because of the addition of this new category, it was also necessary to revise the relative proportions assigned to each expense category.

Table 2, Section VII of the addendum to the interim final rule contains the price variables used to predict price changes for each category of expense. For further background on the development of the market basket index, see Freeland, Anderson and Schendler, "National Hospital Input Price Index", *Health Care Financing Review*, Summer 1979, pp. 37–61.

C. Standardization

Section 1886(d)(2)(C) of the Act requires that the updated base year per discharge costs be standardized. Standardization means the removal of the effects of certain causes of variation in cost among hospitals from the cost data.

1. Variations in Case Mix Among Hospitals

Section 1886(d)(2)(c)(iii) of the Act requires that the updated amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (i.e., the case-mix index) is comparable to that used for the hospital cost limits published in the **Federal Register** on September 30, 1982 (47 FR 43303). A case-mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case-mix index. Table 3a, section VII of the addendum to the interim final rule contains the case-mix index values used for this purpose.

2. Indirect Medical Education Costs

Section 1886(d)(2)(C)(i) of the Act requires that the updated amounts be standardized for indirect medical education costs. Therefore, after adjusting each hospital's inpatient operating cost per discharge for inflation and case-mix, we divided each cost by 1.0 plus the product of double the education adjustment factor (11.59 percent) and the individual hospital's adjusted intern-and-resident to bed ratio. We determined that adjusted ratio by dividing the hospital's number of FTE interns and residents for the cost reporting period by the hospital's bed size determined at the beginning of the cost reporting period represented in the data base period to obtain the hospital's intern-and-resident to bed ratio, and dividing that ratio by .1.

3. Adjustments for Variation in Hospital Wage Levels

Section 1886(d)(2)(C)(ii) of the Act requires that the updated amounts be standarized by adjusting for variations among hospitals in the average area hospital wage level. Therefore, the updated average cost per discharge is divided into labor-related and nonlabor-related portions. We determined the labor-related portions by multiplying each hospital's cost per discharge by 79.15 percent which is the labor-related portion of costs from the market basket. The labor-related portion is then divided by the appropriate wage index for the geographic area in which the hospital is located to remove the effects of local wage differences from hospital costs. An example of standardization for area wage differences follows.

Example:

Assume a hospital has an average cost per Medicare discharge of $3,000 and the wage index for the area is 1.0293.

$3000 \times 79.15\% = 2374.50$ (labor share)

$$\frac{2374.50}{1.0293} = 2306.91 \text{ (wage adjusted labor share}$$

Table 4, section VII of the addendum to the interim final rule contains the wage indexes. Basically, the wage index relates wage and employment data, gathered by the Bureau of Labor Statistics, to a single national average. Since the wage index is used for measuring the differences between wages in any area and the national average, the index does not vary with changes in State or census division designations. The variation in adjusted

standardized amounts between regions (as shown in Table 1) is significantly less than it would have been if regional wage indexes had been used. We considered but rejected using regional wage indexes for the following reasons:

- Since DRG weighting factors are determined using national cost data, regional wage indexes would have to be converted to a national base to derive the appropriate weighting factor for each DRG.
- The use of regional wage indexes would not result in prospective payment rates that are different from those based on a national wage index.
- Regional wage indexes would confuse hospitals because the numerous base levels would result in index values that could not be directly compared across areas.

4. Cost-of-Living Factor for Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii. Generally, these two States have higher levels of cost in comparison to other States in the nation. The high cost of labor is accounted for in the wage index adjustments discussed above. However, the high cost-of-living in these States also affects the cost of nonlabor items (e.g., supplies and equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (i.e., for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor. Below are the factors used for this adjustment.

TABLE—COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.20
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.10

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

The formula used to make the standardization adjustments for the nonlabor related costs in Alaska and Hawaii is as follows:

$$\frac{\text{(Average Cost Per Medicare Discharge)} \times 20.85\%}{\text{(Cost-of-living Adjustment Factor)}}$$

D. Urban/Rural Averages Within Geographic Areas

Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. Table 1, as revised in this addendum, contains the 18 regional standardized amounts (further divided into labor/nonlabor portions). The national standardized amounts are not included in the table because, for FY 84, Federal rates are based on regional averages only. The statute further specifies that the term "urban area" means an area within a Standard Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget (EOMB), or within such similar area as the Secretary has recognized by regulation. As explained in detail in section III.C.1.d. of the preamble to the interim final rule, EOMB began using Metropolitan Statistical Areas (MSAs), in lieu of SMSAs, on June 30, 1983. The term "rural area" means any area outside of urban areas.

As a result, the average standardized amounts per Medicare discharge for each hospital have been grouped according to urban or rural designation into the nine census divisions (i.e. 18 separate means).

E. Adjustment to Average Standardized Amounts

The average standardized amounts, calculated as described above, were further adjusted as explained below.

1. Part B Costs

Section 602(e) of Pub. L. 98–21 amends section 1862(a) of the Act to prohibit payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital or by an entity under arrangements made by the hospital. While this provision applies both to inpatient hospital services paid for on the basis of prospective payment rates and to such services paid for on a reasonable cost basis (i.e., furnished by hospitals excluded from prospective payment), it is discussed here only as it applies to adjustments to the standardized amounts for prospective payment.

Essentially, the prospective payment rates are intended to cover all inpatient services except "physicians' services". Since, in the past, many services for inpatients were billed under Part B, the standardized amounts calculated here were derived from data which did not reflect all services provided to inpatients. Therefore, in order to adjust the standardized amounts per discharge so that they represent costs previously billed under Part B, the amounts were increased by .13 percent. This is an estimate of the costs of inpatient hospital services previously billed to HCFA under Part B (updated to reflect 1984 costs) made by HCFA's Office of Financial and Actuarial Analysis.

2. FICA Taxes

Section 102 of Pub. L. 98–21 requires that certain hospitals (i.e., non-profit organizations), enter the Social Security system and begin paying FICA taxes for employees beginning January 1, 1984. Section 1886(b)(6) of the Social Security Act is also amended requiring that adjustments be made in the base period costs used to determine the hospital-specific portion of the prospective payment rate in recognition of these higher payroll costs. The conference committee report accompanying Pub. L. 98–21 expressed the intent that the Federal rate also be adjusted to reflect this change. HCFA's actuaries have estimated the amount of the adjustment to the standardized amounts necessary to account for additional costs of payroll taxes for hospitals entering the Social Security system to be .18 percent. Therefore, we have increased the standardized amounts by this percentage.

3. Outliers

Section 1886(d)(5)(A) of the Act requires that payments, in addition to the basic prospective payment rates, be made for discharges involving day or cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion which is estimated to reflect additional payments for outlier cases. The statute further directs that outlier payments may not be less than 5 percent or more than 6 percent of total payments projected to be made based on the prospective payment rates in any year. In accordance with these requirements, we have calculated a factor necessary to adjust standardized amounts for FY 84 to take into account outlier payments of 6.0 percent of total payments based on the Federal rate. This factor is .943.

4. Budget Neutrality

Section 1886(e)(1) of the Act requires that the prospective payment system result in aggregate program reimbursement equal to "what would have been payable" under the reasonable cost provisions of prior law; that is, for fiscal years 1984 and 1985, the prospective payment system should be "budget neutral."

Under the Amendments, the prospective payment rates are a blend of a hospital-specific portion and a Federal portion. Section 1886(e)(1)(A) of the Act requires that aggregate payments for the hospital-specific portion should equal the comparable share of estimated reimbursement under prior law. Similarly, section 1886(e)(1)(B) of the Act requires that aggregate reimbursement for the Federal portion of the prospective payment rates plus any adjustments and special treatment of certain classes of hospitals should equal the corresponding share of estimated outlays prior to the passage of Pub. L. 98–21. Thus, for FY 84, 75 percent of total projected reimbursement based on the hospital-specific portion should equal 75 percent of total estimated outlays under law as in effect prior to April 20, 1983. Likewise, total estimated prospective payment system outlays deriving from the 25 percent Federal portion, including adjustments and special payment provisions, should equal 25 percent of projected reimbursement under prior laws.

The adjustment of the Federal portion was determined as follows:

- *Step 1*—Estimate total incurred payments for inpatient hospital operating costs for FY 84 that would have been made on a reasonable cost basis under Medicare prior to Pub. L. 98–21.
- *Step 2*—Multiply total incurred payments by 25 percent, i.e., the Federal portion of total payment amounts for fiscal year 1984.
- *Step 3*—Estimate the Federal portion of total payments that would have been made without adjusting for budget neutrality, but with the adjustment for outlier payments.
- *Step 4*—Add an estimate of total adjustments and payments under special payment provisions to the Federal portion (e.g., outliers, indirect medical education).
- *Step 5*—The difference between the Step 2 and Step 4 amounts is divided proportionally among the standardized amounts, resulting in the budget neutrality adjusted (standardized) amounts.

The resulting adjustment factor, for the Federal portion of payments for discharges in fiscal year 1984 occurring after 30 days after the date of publication, is .970. Payment amounts of hospitals excluded from the prospective payment system (e.g., psychiatric and children's hospitals) and of hospitals not participating in prospective payment because of their participation in demonstrations and studies were not included in the calculations above. For a more detailed explanation of budget neutrality, see section VIII of this addendum.

F. Summary of Calculations Resulting in Adjusted Standardized Amounts

In summary, we began our calculations by developing base year cost data for individual hospitals; we updated these amounts to account for inflation through fiscal year 1984; we standardized the data for variations in case mix, indirect medical education, area wage levels, and cost-of-living in Alaska and Hawaii; we grouped the data from individual hospitals and calculated average standardized amounts for urban and rural hospitals located in the nine census divisions and the nation; and we adjusted the resulting 18 average amounts in accordance with requirements of the Act. Throughout the remainder of this addendum, when we refer to "adjusted standardized amounts," we are referring to the 18 separate average amounts calculated as described above.

III. ADJUSTMENTS FOR AREA WAGE LEVELS AND COST-OF-LIVING IN ALASKA AND HAWAII

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the fiscal intermediaries in determining the prospective payment rates as described in section IV. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as revised in this addendum, contains the actual labor-related and nonlabor-related shares which will be used to calculate the prospective payment rates.

A. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the national and regional prospective payment rates to account for area differences in hospital wage levels. This adjustment will be made by the fiscal intermediaries by multiplying the labor-related portion of the adjusted standardized amount by the appropriate wage index for the area in which the hospital is located. The wage indexes applicable for fiscal year 1984 are presented in Table 4, section VII of the addendum to the interim final rule.

B. Adjustment for Cost-of-Living in Alaska and Hawaii

As explained in section III.C.1.c.iv. of the preamble to the interim final rule the statute provides for an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. The adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii will be made by the fiscal intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table in section II.C.4. of this addendum.

IV. FEDERAL PROSPECTIVE PAYMENT RATES

This section contains a brief explanation of how the adjusted standardized amounts are converted to prospective payment rates per discharge.

A. Discharge

The prospective payment system provides for payment of an amount per discharge. See section III.A. of the attached preamble which provides a detailed discussion of comments and changes regarding discharges and transfers. A "discharge" is defined in § 405.470(c).

B. DRG Classification System

All inpatient hospital discharges will be categorized according to one of 470 DRGs. (Note that no payment is made for DRG numbers 469 and 470.) Every hospital discharge case will fit into a DRG category and no case will apply to more than one category. The assignment is based on the principal diagnosis, secondary diagnoses (if any), procedures performed, and age, sex, and discharge status of the patient. Table 5, section VII of the addendum to the interim final rule, contains the list of DRGs.

C. DRG Weighting Factors

We have developed weighting factors for each DRG that are intended to reflect the relative resource consumption associated with each DRG. Each factor reflects the average cost, across all hospitals, of treating cases classified in that DRG relative to all other DRGs. In establishing the weighting factors, we used data from the MEDPAR file, from

Medicare cost reports, and from non-Medicare discharge records for Maryland and Michigan hospitals. Table 5, section VII of the addendum to the interim final rule contains the weighting factors corresponding to each DRG applicable for FY 84.

V. CALCULATION OF PROSPECTIVE PAYMENT RATES FOR FY 84

To ease the sudden impact of a completely new method of payment for hospital services, Pub. L. 98–21 provides for a 3-year transition period. The addendum to the interim final rule as revised here contains the method that will be used for calculating prospective payment rates for cost reporting periods beginning on or after October 1, 1983.

General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1983 and Before October 1, 1984.

Prospective Payment rate = Hospital-Specific Portion + Federal Portion.

A. Hospital-Specific Portion

The hospital-specific portion (HSP) of the prospective payment rate is based on a hospital's historical cost experience. The conference committee report expresses the committee's expectation that the hospital-specific portion be based on the best data available at the time the rate is established for purposes of the transition period.

The hospital-specific portion is an amount derived from the following formula:

$$\frac{\text{(Base year Costs)}}{\text{(Case-mix Index)}} \times \text{Updating Factor} \times 75 \text{ percent} \times \text{DRG Weight}$$

1. Base-year Costs

Base year costs, necessary for calculating the hospital-specific portion of the prospective payment rates, are developed from cost data for the 12-month (or longer) reporting period ending on or after September 30, 1982 and before September 30, 1983. If the applicable period is less than 12 months, then the preceding 12-month (or longer) period is used.

Costs in excess of the routine cost limits (i.e., the section 223 limits) will be excluded from base year costs in calculating the hospital-specific portion in the same manner as they are excluded when determining base period costs for the rate-of-increase ceiling under 42 CFR 405.463.

Each hospital's total allowable Part A costs will be adjusted:

- To remove any capital-related costs;
- To remove any medical education costs;
- To remove the nursing differential previously permitted;
- To remove net kidney acquisition costs incurred in hospitals approved as renal transplantation centers;
- To include allowable malpractice insurance costs;
- To include estimated FICA taxes for those hospitals that did not incur such costs in the base period;
- To include the costs of services that were billed under Part B of the program during the base period but will be billed under Part A as inpatient hospital services effective October 1, 1983.

In order to make some of these adjustments, the intermediary must receive documentation from the hospitals as outlined in PRM Chapter 2800 (Transmittal 291).

Total allowable Medicare inpatient operating costs for each hospital, resulting from the above adjustments, are divided by the number of Medicare discharges during the applicable base year. The amount resulting from this calculation will be used as the base year cost per case for purposes of calculating the hospital-specific portion (HSP) of the transition period prospective payment rates.

2. Case-Mix Adjusted Base Year Cost

In order to take into consideration the hospital's individual case mix, the base year cost amount is divided by the case-mix index. (See Table 3a, section VII, of the addendum to the interim final rule which contains applicable case-mix indexes.) Adjusted base period costs are divided by the hospital's case-mix index to neutralize them for the effects of the mix of patients treated.

The effects of individual case complexity will be taken into account at the time the rate is applied by multiplying the hospital-specific rate by the weighting factor for the corresponding DRG in which the case is classified to determine the hospital-specific portion of payment for each case.

3. Budget Neutrality

The hospital-specific portion of the payment rates will be adjusted for cost reporting periods that begin between October 1, 1983 and October 1, 1985, to maintain budget neutrality in accordance with section 1886(e)(1)(A) of the Act. The hospital-specific portion of the rate is set at 75 percent in the first year.

An adjustment will be made to the otherwise applicable target rate percentage to maintain budget neutrality of the hospital-specific portion of the payment. To determine the necessary adjustment we estimated total expenditures under the reasonable cost methodology under TEFRA. The appropriate share of this estimate is compared to a projection of aggregate payments from the hospital-specific portion of the prospective payment amount. For example, if estimated outlays for inpatient operating payments under the law as in effect before April 20, 1983 would have been $10 billion, the total payments under the hospital-specific portion must equal $7.5 billion (75 percent of $10 billion) for FY 84. In making the above estimates, the statute specifies that payments made or estimated to be made for utilization review activities be excluded. The applicable adjustment factor for maintaining budget neutrality in the hospital-specific portion is .983. This factor has been included in the updating factor discussed in section 4 below.

4. Updating Factor

The hospital-specific rate is calculated by increasing the case-mix adjusted base year costs by an applicable updating factor in accordance with sections 1886(d)(2)(B) and 1886(e)(1)(A). The revision of the estimated rates of increase in hospital costs nationwide requires a modification of the budget neutrality factor incorporated in the applicable updating factor in order to meet the requirements of section 1886(e)(1)(A). This modification results in a reduction in the hospital-specific portion of the rate and applies to discharges occurring after 30 days after the date of publication. The delay in application is in accordance with section 604(c)(2) of Pub. L. 98–21, which directs that modifications which reduce prospective payment rates shall apply only to discharges occurring after 30 days after publication in the Federal Register. For discharges occurring after 30 days following publication of this final rule for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, the updating factor is equal to the compounded applicable target rate percentage (as used for the rate of increase ceiling under revised 42 CFR 405.463),

multiplied by the modified adjustment factor for budget neutrality (.983). The table below sets forth the updating factors applicable to discharges in FY 1984 occurring after 30 days after the date of publication.

If base year cost reporting period ends	And first cost reporting period under PPS ends	Updating factor
Sept. 30, 1982	Sept. 30, 1984	1.13242
Oct. 31, 1982	Oct. 31, 1984	1.12936
Nov. 30, 1982	Nov. 30, 1984	1.12635
Dec. 31, 1982	Dec. 31, 1984	1.12333
Jan. 31, 1983	Jan. 31, 1985	1.12395
Feb. 28, 1983	Feb. 28, 1985	1.12456
Mar. 31, 1983	Mar. 31, 1985	1.12517
Apr. 30, 1983	Apr. 30, 1985	1.12578
May 31, 1983	May 31, 1985	1.12639
June 30, 1983	June 30, 1985	1.12701
July 31, 1983	July 31, 1985	1.12762
Aug. 31, 1983	Aug. 31, 1985	1.12823

If a hospital's base year cost reporting period ends on a day other than those listed above, the update factor for the month nearest to (i.e., either before or after) the actual ending date will be used. For example, if a hospital's cost reporting period ends between October 16 and November 15, the October 31 update factor will be used.

5. Example of Calculation of Hospital Specific Rate

Assume that a hospital's base year costs equal $3,000, its case-mix index is 1.0235, and the update factor for its cost reporting period is 1.13455 percent. The hospital-specific rate would be computed as follows:

$$\frac{\text{Base year costs}}{\text{Cases-mix index}} \times \text{Updating Factor} = \text{Hospital-specific rate}$$

$$\frac{\$3,000}{1.0235} \times 1.13455 = \$3,325.50$$

6. Calculation of Hospital-Specific Portion

The hospital-specific portion of a hospital's payment rate for a given discharge is calculated by:

Step 1—Multiplying the hospital-specific rate (as determined in subsection 1 through 5 above) by 75 percent, and

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge. The result is the hospital-specific portion.

7. New Providers

Hospitals that have not completed a 12 month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983 will be considered new providers for purposes of the prospective payment system. These hospitals do not have any historical cost experience from which we could calculate a hospital-specific rate. Therefore, prospective payment rates for new providers will be computed without regard to the hospital-specific portion. Thus, new providers will be paid 100 percent of the Federal regional rate for discharges occurring on or after October 1, 1983 and before October 1, 1984.

B. Federal Portion

For discharges occurring before October 1, 1984, the Federal portion of the prospective payment rate is 25 percent of the Federal regional prospective rate. The Federal rates are determined by:

Step 1—Selecting the appropriate regional adjusted standardized amount considering the location and urban/rural designation of the hospital;

Step 2—Multiplying the labor-related portion of the standardized amount by the appropriate wage index;

Step 3—For hospitals in Alaska and Hawaii, multiplying the nonlabor-related portion of the standardized amount by the appropriate cost-of living adjustment factor;

Step 4—Summing the amounts from Step 2 and the nonlabor portion of the standardized amount (adjusted if appropriate under Step 3); and

Step 5—Multiplying the final amount from Step 4 by the weighting factor corresponding to the appropriate DRG Classification.

VI. ADDITIONAL PAYMENT AMOUNTS

In addition to prospective payment rates per discharge, payments will be made for items or services as specified below.

A. Outlier

In accordance with the statute, additional amounts are to be paid on a per case basis for atypical cases known as "outliers." These cases are those that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG. See § 405.475 of the regulations regarding payment for outliers cases.

We established as our objectives in fiscal year 84 to define the outlier criteria so that total outlier payments for both types of outlier cases would amount to approximately 6.0 percent of total basic prospective payments (exclusive of outlier payments) that would be payable based on 100 percent of Federal (regional) rates and that approximately 85 percent of the outlier payments would be paid for day outliers and the remaining 15 percent would be paid for high cost outliers.

We analyzed the 1981 MEDPAR file to identify the criteria that would meet our objectives. In doing so, we set the per diem payment for day outliers at 60 percent of the hospital's Federal rate divided by the national geometric mean length of stay for the DRG. For high cost outliers, we set the payment at 60 percent of the difference between adjusted covered charges and the applicable cost criterion for the DRG. We calculated the adjusted covered charges by inflating the covered charges for the case to fiscal year 84, multiplying them by .72 (the national ratio of operating cost to total inpatient charges) and dividing the result by the hospital's educational adjustment factor.

We tested alternative sets of criteria to identify the combination that would result in the desired levels of outlier payments. Based on this analysis, we are providing that a discharge in fiscal year 84 will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 20 days or 1.94 standard deviations. The first criterion will primarily identify cases in the long-stay resource intensive DRGs whereas the second criterion should identify slightly less than 2.5 percent of the cases within primarily short-stay DRGs as outliers. In total, we estimate 4.4 percent of all cases will qualify as day outliers.

For fiscal year 84, we are also providing that a discharge that does not qualify as a day outlier will be considered a high cost outlier if the cost of covered services exceeds the greater of 1.5 times the Federal rate (regional) for the DRG or $12,000. Both criteria will be adjusted for area wage differences. The first criterion will operate only for the relatively few DRGs with a Federal rate of $8,000 or more. In most cases, the $12,000 criterion will operate. In total, we estimate 1.0 percent of all cases will qualify as high cost outliers.

B. Additional Payments on Reasonable Cost Basis

1. Capital-Related Costs

In accordance with the statute, payment for capital-related cost (as described in § 405.414) will be determined on a reasonable cost basis.

The capital-related costs must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under § 405.474(b).

2. Direct Medical Education

In accordance with the statute, the direct costs of medical education programs will be paid on the basis of reasonable cost subject to applicable regulations at § 405.421.

3. Direct Medical and Surgical Services of Teaching Physicians

In accordance with the statute, payment for direct medical and surgical services of physicians in teaching hospitals will be made on a reasonable cost basis under § 405.465 where the hospital exercises the election as provided for in § 405.521(d).

C. Bad Debts

An additional payment will be made to each hospital in accordance with § 405.420 for bad debts attributable to deductibles and coinsurance amounts related to covered services received by beneficiaries.

D. Indirect Medical Education

Section 1886(d)(5)(B) of the Act provides for additional payments to be made to hospitals under the prospective payment system for the indirect costs of medical education. This payment is computed in the same manner as the indirect teaching adjustment under the notice of hospital cost limits published September 30, 1982 (47 FR 43310), except that the educational adjustment factor is to equal twice the factor computed under that method.

If a hospital has a graduate medical education program approved under 42 CFR 405.421, an additional payment will be made equal to 11.59 percent of the aggregate payments made to the hospital, based on the Federal portion of prospective payments and outlier payments related to those portions, for each .1 increase (above zero) in the hospital's ratio of full-time equivalent (FTE) interns and residents (in approved programs) to its bed size.

The number of FTE interns and residents is the sum of:

1. Interns and residents employed for 35 hours or more per week, and
2. One-half of the total number of interns and residents working less than 35 hours per week (regardless of the number of hours worked).

For purposes of this payment, a hospital will be allowed to count only interns and residents in teaching programs approved under § 405.421 who are employed at the hospital. See § 405.477(d)(2) regarding exceptions in counting interns and residents employed by an organization with a long-standing history of medical relationship.

VII. TABLES

This section contains revisions to Table 1 and the headings on Table 5 as set forth below. Tables 2, 3a, 3b, 4a, and 4b are unchanged (See the addendum to the interim final rule.).

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS

[Labor/Nonlabor]

Region	Urban		Rural	
	Labor related	Non labor related	Labor related	Non labor related
1. New England (CN, ME, MA, NH,RI, VT)	2,332.56	695.51	1,994.31	462.14
2. Middle Atlantic (PA, NJ, NY)	2,098.87	628.04	1,984.97	488.97
3. South Atlantic (DL, D.C., FL, GA, MD, NC, SC, VA, WV)	2,183.42	581.98	1,796.04	406.30
4. East North Central (IL, IN, MI, OH, WS)	2,330.77	677.44	1,950.90	456.12
5. East South Central (AL, KT, MS, TN)	1,982.32	517.99	1,811.73	380.17
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,273.55	602.65	1,820.63	390.59
7. West South Central (AR, LA, OK, TX)	2,137.03	570.02	1,754.37	378.77
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,099.73	605.05	1,818.61	425.19
9. Pacific (AK, CA, HA, OR, WA)	2,210.17	708.49	1,900.63	495.70

In response to a comment received requesting clarification of the "outlier cutoff" day in Table 5 of the addendum in the interim final rule (48 FR 39876), we are changing the column heading from "OUTLIER CUTOFFS" to "OUTLIER THRESHOLD". In accordance with § 405.475(c)(1), outlier payments are applicable for covered days of care beyond the threshold day. We are providing below the revised title and column headings for Table 5.

LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER THRESHOLD POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC	TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD

VIII. TECHNICAL EXPLANATION OF THE BUDGET NEUTRALITY ADJUSTMENT METHODOLOGY

A. Overview

Section 1886(e)(1) of the Act requires that, for Federal fiscal years 1984 and 1985, prospective payments be adjusted so that aggregate payments for the operating costs of inpatient hospital services are neither more nor less than we estimate would have been paid under prior legislation for the costs of the same services. To implement this provision, we are making actuarially determined adjustments to the average standardized amounts used to determine Federal national and regional payment rates and to the updating factors used to determine the hospital-specific per case amounts incorporated in the blended transition payment rates for fiscal years 1984 and 1985. Section 1886(d)(6) of the Act requires that the annual published notice of the methodology, data and rates include an explanation of any budget neutrality adjustments. This section is intended to fulfill that requirement.

In determining the amount of the budget neutrality adjustment factors, we have considered all hospital costs, including pass-through costs such as capital-related and direct medical education costs. However, it should be noted that the *aggregate payments* that will be adjusted to be budget neutral do not include payment for capital-related costs or direct medical education costs, payments for hospital and distinct part unit services excluded from the prospective payment system, payment of a return or equity capital, or payments on a reasonable cost basis to hospitals under the prospective payment system for outpatient services.

The budget neutrality adjustments required by the statute are determined by comparing an estimate of fiscal year 1984 reimbursement per discharge, under the law in effect prior to enactment of Pub. L. 98–21, with an estimate of DRG-related payments per

discharge (Federal rates, outlier payments, and payments for the indirect costs of medical education, before budget neutral adjustment) and with an estimate of the hospital-specific payments per discharge (before budget neutral adjustment). Therefore, payment under each of the three systems (reasonable cost reimbursement, Federal rates, and hospital-specific rates) must be estimated separately.

Although, for methodological reasons, the budget neutrality adjustment is calculated on a per discharge basis, it should be emphasized that the ultimate comparison is between the aggregate payments to be made under the prospective payment system and the aggregate payments that would have been incurred under the prior legislation. Therefore, changes in hospital behavior from that which would have occurred in the absence of the prospective payment system are required to be taken into account in determining the budget neutrality adjustment if they affect aggregate payment. For example, any expectation of increased admissions beyond the level that would have occurred under prior law would have to be considered in the adjustment. To assist in making the budget neutrality adjustment for fiscal year 1985, HCFA will monitor for, and take account of, changes in hospital behavior attributable to the new system.

Subsequent adjustments, exceptions and other occurrences not included in the calculations of budget neutrality will be carefully analyzed to determine what costs would have occurred under TEFRA and under the prospective payment system. Generally, changes will be made prospectively. Changes which would differentially affect projected TEFRA costs and prospective payments in a significant manner will ordinarily prompt a recalibration of the rates to preserve budget neutrality.

Based on the estimates of projected payments under all three systems, we must derive two budget neutrality adjustment factors for Federal fiscal year 1984. The first such factor will be applied in computing Federal regional rates for cost reporting periods beginning during Federal fiscal year 1984. The second budget neutrality adjustment factor will be applied in computing the updating factors used to determine the hospital-specific portion of transition payment rates for cost reporting periods beginning during the fiscal year.

B. Assumptions and Data

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) established a DRG-adjusted limit on the allowable amount of inpatient operating costs per case and a per case limit on the rate of increase of operating costs of inpatient hospital services. Due to these per case limits, the incentives that influence hospital admission patterns are similar under TEFRA and prospective payment. Accordingly, we have assumed that the number of admissions under both prior law and the prospective payment system will be the same. As a result, the budget neutrality factors can be calculated by comparing reimbursement per discharge for each of the systems, and there is no need to estimate an actual number of hospital admissions. (Since the interim rule was published on September 1, 1983, we have revised certain assumptions that affect the determination of budget neutrality adjustment factors. However, the revised assumptions relate to rates of cost increase nationwide *prior to* the implementation of the prospective payment system. This change has slightly lowered the estimated payment per discharge under all three payment systems considered in the comparisons described below, and has resulted in revised adjustment factors. This revision does not reflect any change in our assumptions about numbers of admissions under prospective payment.)

A hospital will begin receiving payment under the prospective payment system at the beginning of its first cost reporting period starting on or after October 1, 1983. Therefore, most hospitals will not be under the prospective payment system for the entire Federal fiscal year 1984. Hence, the payment per discharge under each of the systems should be estimated only for those portions of hospital cost reporting periods beginning October 1, 1983 or later that overlap Federal fiscal year 1984. To properly compute payment per discharge, total payment is divided by the number of discharges across all hospitals. We developed a distribution of discharges that occur between the start of a hospital's cost reporting period (that starts in Federal fiscal year 1984) and September 30, 1984. This distribution, which was developed from the March 1983 update of the 1982 discharge notice file, was applied to the number of discharges in the hospital's 1981 data. This procedure properly weights the relative sizes of hospitals and cost reporting period distributions for computing payments per discharge.

Since the prospective payment system is to be budget neutral for included hospitals, and since the prospective payment system will not change payments to hospitals that are excluded from that system, excluded hospitals were removed from the determinations (for example, long term care, psychiatric, and children's hospitals). Further, four States (Maryland, Massachusetts, New Jersey, and New York) currently operate alternative reimbursement systems under Medicare waivers. Since payment amounts in these States will not change because of the prospective payment system, hospitals in these States were removed from the determination of payment per discharge under each of the three systems for purposes of determining budget neutrality.

We also assumed that the means of affording exceptions or special treatment for sole community hospitals under different systems would provide comparable relief to those relatively few hospitals that qualify for such exceptions and treatment. Since the amounts of special payments to these hospitals are assumed to be the same under the different systems, the budget neutrality determination is not affected by these payments. Therefore, we did not make explicit allowance for additional payments to these hospitals in our estimates and comparisons.

Section 1881(e)(1) of the Act requires that total payments under the DRG system and under the HSP system be the same as total payments that would have been payable under provisions of the prior law (that is, for fiscal year 1984, the limits that would have been implemented under provisions of TEFRA). To achieve this we have equalized the amounts payable under the Federal rate and HSP systems with those that would have been payable on a periodic basis under TEFRA, not with the total end-of-year cash amounts. As a result, changes of cash flow, timing of payments, and retroactive payments will not affect the budget neutrality determination.

Operating costs are defined differently under the different systems. We excluded malpractice costs and kidney acquisition costs from operating costs under the TEFRA limits. However, the Federal rate and HSP systems exclude the same kidney acquisition costs but include malpractice costs under operating costs. We must use a method of comparing costs that takes into account "the payment amounts which would have been payable for such services for those same hospitals", as required by law. If we were to compare only the operating costs of the different payment systems we would not fulfill the statutory requirement, since the actual amounts paid are comparable only if we include both operating and nonoperating costs. Hence, nonoperating costs (excluding payments to

proprietary hospitals for a return on equity capital) must also be included in the calculation of the budget neutrality adjustment factors. By using total costs, including nonoperating costs, in the comparisons necessary to determine budget neutrality adjustments, we will ensure that the amounts considered under the Federal and hospital-specific rate systems are comparable to amounts payable under prior law.

These comparisons will yield adjustments reflecting *differences* between the systems in a way that prevents distortions by differing definitions of operating costs. The equations below illustrate that comparing total costs in determining budget neutrality adjustments produces results identical to those that would have been produced using only operating costs under the Federal rate system and comparable costs under the TEFRA system.

Cost Components Under Federal rate and TEFRA systems

Federal rate × budget neutral factor = TEFRA operating costs + Malpractice costs

Federal rate × budget neutral factor + (kidney acquisition costs + capital costs + direct medical education costs) = TEFRA operating costs + (Malpractice costs + capital costs + kidney acquisition costs + direct medical education costs)

Federal rate × budget neutral factor + Federal system nonoperating costs = TEFRA operating costs + TEFRA nonoperating costs

The analysis is identical for the hospital-specific rate system. Note that payments for a return on equity (which are not classified as operating costs) are excluded from the equations. Since the amounts for return on equity differ among the systems, adding in return on equity would unbalance the equations. (Under prior law, which must be reflected in the TEFRA estimates, the rate of return was set at 1.5 times the Hospital Insurance Trust Fund interest rates, whereas under Pub. L. 98–21 the rate of return applicable to the costs related to inpatient hospital services was reduced to 1.0 times that rate.)

C. Estimated Payment per Discharge Under Prior Law (TEFRA Limits)

To estimate payment per discharge under prior law, the TEFRA limits that would have been published must first be determined. These limits are calculated in the same manner as the fiscal year 1983 limits, except that the most recent data available (that is, 1981 cost report and billing data) are used, and the fiscal year 1984 limit is set at 115 percent of the mean, instead of 120 percent of the mean, in accordance with section 1886(a)(1)(A)(ii) of the Act.

To estimate payment per discharge under the TEFRA limits, cost per discharge must be estimated for each hospital and compared to the costs allowable under the TEFRA limits, that is, DRG-adjusted cost per case limits on inpatient operating costs and the separate limit on the rate of increase of those costs. Since the rate of increase target rate percentage is less than the average rate of increase in hospital costs, comparison of the rate of increase target rate percentage to the average rate of increase in hospital costs would lead to the conclusion that all hospitals would be penalized by the rate of increase limit and that no hospital would receive a bonus. (Under section 1886(b)(1) of the Act, a hospital that has per case costs less than its target amount would be paid a bonus of 50 percent of the amount by which the target amount exceeds its cost, or five percent of its target amount, whichever is less. Alternatively, a hospital that has costs in excess of its target amount would, for cost reporting periods beginning in Federal fiscal years 1983 or 1984, be paid only 25 percent of its costs in excess of the target amount.) To overcome this erroneous conclusion, the rate of increase target must be compared to cost increases that vary by hospital.

Hospital cost per discharge data for cost report years 1978, 1979, 1980, and 1981 were analyzed for patterns in rates of increase in costs per discharge. Study found that the statistical distributions of rates of increase in cost per discharge closely fit the normal distribution. Since the second year of TEFRA uses a two-year rate of increase target over the hospital's base year, we analyzed two-year rates of increase and found that a normal distribution with a standard deviation of 12 percent closely approximated the distributions. To compute a hospital's cost per discharge for comparison to the hospital's TEFRA rate-of-increase target amount, the hospital's base year costs were increased by a randomly determined factor. This factor was computed by adding the estimated two-year average rate of increase in cost per case to a random number. This random number is generated from a statistical distribution that is normal with a mean of zero, and has a standard deviation of 12 percent. Further, the random numbers were restricted so that none were further than three standard deviations from the mean. This randomly determined cost per admission for a hospital was compared to the rate of increase limit target amount for determining the reimbursement per discharge under TEFRA. Because of the randomizing process, not all hospitals are shown to be penalized by the targets; hospitals with cost per case over the target amount are shown as receiving one quarter of their excess costs over that limit (in accordance with section 1886(b) of the Act), and some hospitals are shown to receive bonus payments. To measure the overall stability, the model was tested with ten different sets of random numbers and found to be stable.

The cost per discharge that is compared to the TEFRA limits was adjusted by 0.1326 percent before comparison to the TEFRA limts to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physicians' services to patients and providers, published March 2, 1983. (These rules implement section 1887 of the Act, established by section 108 of TEFRA. (48 FR 8902; 42 CFR 405.480 through 405.482, and 405.550 through 405.556.)) Since this adjustment increases the costs of hospitals below the limits, it will have the effect of raising slightly the estimate of TEFRA payment per discharge.

D. Estimated Payment on a Federal Rate (DRG) Basis

The estimated payment per discharge based on DRG-related payments (that is, Federal rates plus outlier payments) was estimated by directly using the adjusted average standardized amounts, adjusted by the applicable wage index, cost of living adjustment (for hospitals in Alaska and Hawaii), and case mix for each hospital. Additional outlier payments were computed using each hospital's historical experience in the MEDPAR file. The payment amounts were further adjusted to include the indirect costs of medical education.

Before the ratio of estimated DRG-related payments to the estimated payments under prior law is computed, the estimated DRG-related payment was increased by 3.38 percent to reflect improvements and greater completeness in the coding of diagnoses and procedures on the bills. This adjustment is necessary because payment will depend on the diagnoses and procedures coded on the bill, and hospitals will have the incentive to be more complete than in the past in reporting diagnoses and procedures.

Hospitals reported diagnoses on the bills that are included in the 1981 MEDPAR data. For a variety of reasons, these diagnoses were not always completely or accurately coded, especially when payment did not depend on the diagnoses coded. Since payments under the prospective system

depend on the diagnoses and procedures coded, hospitals will submit complete and accurate data. We studied the differences between bills coded for the MEDPAR and bills coded after medical review. The carefully and completely coded bills were provided from the PSRO Uniform Hospital Discharge Data Set (UHDDS) data base. The data base included about 9 million bills from all States except Nebraska and Texas. The study found that reimbursement under the prospective system using the PSRO data would be 3.38 percent higher than reimbursement using the MEDPAT DATA. Since the prospective rates are set using the MEDPAR data, actual reimbursement under the prospective system will be higher than predicted from the MEDPAR data; hence, the factor (3.38 percent) for improvements in diagnostic coding must be used for the budget neutral calculation.

E. Estimated Hospital-Specific (HSP) Payment per Discharge

To properly estimate the payments per discharge based on the hospital-specific rates to be used during the transition period, the hospital's base year cost per case must first be estimated, since actual base year data are not available. To estimate the base year, the 1981 cost report data were adjusted by the change in the nursing differential from 1981 to the base year. These data were updated to the base year and the resulting routine operating costs were compared with the appropriate routine cost limit applicable to base year cost reporting periods, as calculated from the September 30, 1981 **Federal Register** notice, to compute the savings resulting from application of the routine cost limits. Total costs were also reduced by the remainder of the amounts based on the Medicare nursing differential, since section 103 of TEFRA, by amending section 1861(v)(1)(J) of the Act, eliminated this differential effective with services furnished on or after October 1, 1982.

Operating costs were computed by carving out of total costs direct medical education, capital-related, and certain kidney acquisition costs. Operating costs were increased by 0.18 percent and 0.13 percent to adjust, respectively, for the extra estimated costs hospitals will report for their base year because of required coverage of their employees under FICA (as required by section 1886(b)(6) of the Act) and for the requirement that certain services are now required to be paid under Part A of Medicare which were formerly paid under Part B (as required by section 1886(b)(5)(D) of the Act). Operating costs were further increased by 0.1326 percent to account for the shift of certain types of costs to Part A of Medicare because of regulations on payment for physicians' services to patients and providers, published March 2, 1983. These rules implement section 1887 of the Act, established by section 108 of TEFRA (48 *FR* 8902; 42 CFR 405.480 through 405.482, and 405.550 through 405.556.) The base year operating costs were increased by two years of the market basket index increased by one percentage point for each year. This result was further increased by 3.38 percent to allow for improvements and greater completeness in the coding of diagnoses and procedures. This adjustment, discussed above under the Federal rate system, is necessary because the hospital-specific portion will be adjusted by the DRG weighting factors.

F. Adjustment for Outlier Payments

Sections 1886 (d)(2)(E) and (d)(3)(B) of the Act require that the average standardized amounts for the Federal rates be reduced so that, when combined with the outlier payments, the resulting payments will be the same as payments under a DRG-related system with no outlier payments but full standard DRG-adjusted rates.

For cost-reporting periods beginning during Federal fiscal year 1984, transition payment rates will be a blend of 25 percent of the applicable Federal rate and 75 percent of the applicable hospital-specific rate. As explained in the interim rules published September 1, 1983, we had decided to pay the full outlier payment for outlier cases, rather than to pay only a percentage equal to the Federal portion percentage of the blended rate. As a result, we adjusted both the Federal rates and the hospital-specific rates so that when estimated payments based on them were combined with the outlier payments, the resulting aggregate payments equaled the payments from full Federal or hospital-specific rates with no outliers. However, as explained in section III. of the preamble to these final regulations, we have now decided not to reduce the hospital-specific portion for outlier payments, and to pay only the Federal portion of outlier payments during the transition period. This has affected the budget neutrality computations. The revised computations are shown below.

The determination of the outlier payment criteria budget neutrality adjustment was done only with respect to hospitals that will be reimbursed under the prospective payment system, since outlier payments and standard payments under the prospective payment system will not be on behalf of exempt hospitals and hospitals in waiver States. Reimbursement to exempt hospitals and hospitals in waiver States is not changed by the provisions of the prospective payment system.

The outlier criteria were calibrated using experience in the 1981 MEDPAR file so that outlier payments would be 6 percent of standard payments. Since budget neutrality is determined based on total payments, the outlier payments should be compared to total payments (the sum of standard payments and outlier payments). Example: Suppose standard payments are $100 so that the desired outlier payments would be $6. Outlier payments as a percent of total payments would be $6 divided by ($100 + $6) = 5.7 percent.

The outlier adjustment ratio for Federal rates is calculated by dividing the total estimated payments on the basis of Federal rates by the sum of the Federal rate payments and the outlier payments. The outlier adjustment ratio is not applied to hospital-specific rates. The budget neutrality adjustments are applied to the outlier-adjusted Federal rates and the hospital-specific rates.

Example: Computation of outlier adjustment ratio of Federal rates.

Estimated Values:	
Federal rate payment per discharge (before outlier adjustment)	$3,385.03
Federal rate outlier payment per discharge (before outlier adjustment) *	205.80
Computation of Federal Rate Outlier Adjustment ($3,385.03+$205.80)×Federal rate outlier adjustment=$3,385.03	
Federal rate outlier adjustment=$3,385.03 divided by ($3,385.03+$205.80)	
Federal rate outlier adjustment=.943	
Outlier adjusted Federal rate payment per discharge=$3,385.03×.943=$3,192.08	

* This payment per discharge was calculated by applying the cost and length-of-stay outlier criteria to the MEDPAR experience and using all discharges, including discharges for which no outlier payments would be made.

G. Calculation of Budget Neutrality Adjustment Factors

As noted above, we must compute two budget neutrality adjustment factors—one for adjusting Federal rates and the other for adjusting the updating factors used to determine the hospital-specific rates.

For the Federal rate system, the following equation must be solved:

(Federal standard (outlier adjusted) payment per discharge + Outlier payment per discharge (computed from outlier adjusted Federal rates)) × Federal rate budget neutral factor (FRBN) + Federal rate system nonoperating cost per discharge = TEFRA operating reimbursement per discharge + TEFRA nonoperating cost per discharge.

Example: Computation of Federal Rate Budget Neutrality Adjustment Factor.

Estimated Values:

TEFRA operating reimbursement per discharge	$3,253.14
TEFRA nonoperating cost per discharge	347.55
Federal rate standard payment (outlier adjusted) per discharge	3,192.08
Federal rate outlier payment (based on above number) per discharge	194.07
Federal nonoperating cost per discharge	316.00

Solve:

($3,192.08+$194.07)×FRBN+$316.00=$3,253.14+$347.55

$3,386.15×FRBN+$316.00=$3,600.69

FRBN=($3,600.69−$316.00) divided by $3,386.15

FRBN=.970

For the HSP system, the following must be solved:

(HSP payment per discharge × hospital-specific budget netural factor (HSBN)) + HSP system nonoperating cost per discharge=TEFRA operating reimbursement per discharge + TEFRA nonoperating cost per discharge.

Example: Computation of Hospital-Specific Rate Budget Neutrality Adjustment Factor

Estimated Values:

TEFRA operating reimbursement per discharge	$3,253.14
TEFRA nonoperating cost per discharge	347.55
HSP payment per discharge	3,342.12
HSP nonoperating cost per discharge	316.00

Solve:

($3,342.12×HSBN)+$316.00=$3,253.14+$347.55

HSBN=($3,600.69−$316.00) divided by $3,342.12

HSBN=.963

Note that the HSP budget neutral factor is not applied to the outlier payments. Outlier payments are paid based only on applicable Federal rates, which already incorporate an adjustment for budget neutrality.

Note that payments per discharge were computed at 100 percent for purposes of the budget neutrality calculations. The calculated budget neutrality adjustment factors would be unchanged if computed from Federal rates at 25 percent compared with payments under prior law at 25 percent, and HSP rates at 75 percent compared with prior law payments at 75 percent.

H. Summary—Table of Outlier and Budget Neutrality Adjustment Factors—Federal Fiscal Year 1984

Adjustment factors	Federal rates	Hospital-specific rates
Outlier	0.943	
Budget Neutrality	0.970	0.983

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Tuesday
January 3, 1984

Part VII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Target Rate Percentages for Limits on the Rate of Hospital Cost Increases and Updating Factors for Transition Prospective Payment Rates; Second Quarter FY 84; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Schedule of Target Rate Percentages for Limits on the Rate of Hospital Cost Increases and Updating Factors for Transition Prospective Payment Rates (Second Quarter FY 84)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth target rate percentages needed to limit the rate of increase of hospital inpatient operating costs for cost reporting periods ending on or after January 1, 1984 and before September 30, 1984. The notice also—

- Announces the updating factors for computing the hospital-specific portion of transition period prospective payment rates for cost reporting periods beginning on or after January 1, 1984 and before October 1, 1984.
- Implements changes in the budget neutrality adjustment to the hospital-specific portion of the prospective payment rates for discharges occurring after 30 days after the date of publication of the final rule for prospective payment for inpatient hospital services.
- Sets forth, for hospitals not paid under the prospective payment system, the target rate percentages for cost reporting periods beginning on or after January 1, 1984 and before October 1, 1984.
- Describes changes in the way target rate percentages will be announced in the future.

EFFECTIVE DATE: See the text of this notice for an explanation of the application of these target rate percentages to particular cost reporting periods.

FOR FURTHER INFORMATION CONTACT: Marilyn Koch, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982, or TEFRA (Pub. L. 97-248, enacted September 3, 1982), added sections 1886(a) and (b) to the Social Security Act (the Act). These sections supplemented section 1861(v) of the Act by establishing under the Medicare program a limit on the amount of inpatient operating costs per discharge, and a new three-year control on the rate of increase of operating costs of inpatient hospital services. Section 1886(b) of the Act required that we establish a ceiling on the rate of increase of operating costs per case for inpatient hospital services and provided for both incentive payments for hospitals that keep their cost below the target, and a reduction in the amount of Medicare reimbursement for hospitals that incur costs greater than the target.

Title VI of Pub. L. 98-21, enacted April 20, 1983, amended section 1886(b) by providing that:

1. The rate of increase limits (described in regulations at 42 CFR 405.463) apply indefinitely rather than for a three-year period.

2. For cost reporting periods beginning on or after October 1, 1983, capital-related costs and the direct costs of approved medical education programs continue to be excluded from the ceiling.

3. An adjustment of base period costs is required to account for FICA taxes incurred by a non-profit hospital that had not incurred such taxes for all its employees in its base period.

4. The target rate percentages by which target amounts are determined will be established prospectively (rather than retroactively).

In addition to the changes required by Pub. L. 98-21, we amended the regulations at 42 CFR 405.463 and added a new section 405.477(c) in the **Federal Register** on September 1, 1983 (48 FR 39752) to state that:

1. Hospitals must treat capital-related costs and the direct costs of approved medical education programs consistently with the treatment in their base period.

2. Certain kidney acquisition costs are not subject to the rate of increase control.

3. The target rate percentages will be published in a quarterly **Federal Register** notice.

Title VI of Pub. L. 98-21 is, in general, effective for cost reporting periods beginning on or after October 1, 1983. It also amended section 1886(a) of the Act by eliminating the total cost limits on hospital inpatient operating costs effective with cost reporting periods beginning on or after October 1, 1983.

During the first three years of the prospective payment system, as established by Pub. L. 98-21, a portion of each hospital's prospective rate is calculated from each hospital's historical cost experience in its base cost reporting year. For a more indepth discussion of the phase-in period base year, hospital-specific portion and diagnosis related group (DRG) rate for the prospective payment system, see regulations published in the **Federal Register** on September 1, 1983 (48 FR 39752).

The hospital-specific portion consists of the hospital target amount multiplied by the applicable target percentage (as defined in section 1886(d)(1)(C) of the Act). In fiscal years 1984 and 1985, the applicable percentage increase (as defined in section 1886(b)(3)(B) of the Act) that is used to determine the hospital's target amount would be reduced to achieve budget neutrality in relationship to the reimbursement levels that would have been obtained under TEFRA. The adjustment for budget neutrality is modified by the final regulations implementing prospective payment. Since the modification results in a lower rate, that is, a slightly greater reduction for budget neutrality, the applicable percentage increase is less for discharges occurring after 30 days after the date of publication of the final prospective payment regulations. See final propsective payment regulations published elsewhere in this issue of the **Federal Register.**

Although most hospitals will be paid under the prospective payment system, some categories of hospitals as described in section III, of this notice continue to be reimbursed on a reasonable cost basis under the regulations at 42 CFR Part 405, Subpart D. The rate of increase limits in § 405.463 continue to apply to those hospitals reimbursed on a reasonable cost basis.

II. How the Rate of Increase Ceiling Works

We have established in our regulations a target rate percentage system to be applied to control the rates of increase of total hospital inpatient operating costs per case effective for 12-month cost reporting periods beginning on or after October 1, 1982 (see § 402.463(b)). The target rate percentage equals the estimated market basket increase plus one percentage point. In the first year of applicability, this target rate percentage is applied to each hospital's allowable inpatient operating cost per discharge for its immediately preceding cost reporting period (§ 405.463(c)). In the case of a hospital whose first reporting period subject to the rate-of-increase control began October 1, 1982, the target rate percentage was applied to the allowable inpatient operating cost per discharge for the period beginning October 1, 1981. The resulting amount was that hospital's target amount for inpatient operating cost per discharge in the first cost reporting period subject to this provision (§ 405.463(b)). The regulations provide that in each subsequent cost reporting period, the target amount will be

computed by applying the applicable target rate percentage to the previous period's target amount (§ 405.463(c)(4)(ii)).

If a hospital's costs in a subject cost reporting period are below its target amount, we will pay the hospital its actual costs per case plus the lower of 50 percent of the difference between the hospital's cost per case and the target amount, or five percent of the target amount. If a hospital's cost in a subject period is higher than its target amount, we will pay, in the first two years, the target amount plus 25 percent of the excess costs, and, in the third year, the target amount (§ 405.463(d)). For cost reporting periods that began on or after October 1, 1982 and before October 1, 1983, the maximum payment is limited by the TEFRA limits on total inpatient operating cost established under section 1886(a) of the Act.

III. Hospitals Subject to the Rate of Increase Ceiling

Under the rules implementing TEFRA, only new hospitals and risk-basis health maintenance organizations (HMOs) were exempt from the rate of increase ceiling. All other hospitals participating in Medicare were subject to this rate of increase limit on inpatient operating costs for cost reporting periods beginning on or after October 1, 1982.

Under Pub. L. 98–21, most participating short-term acute care hospitals are paid under the prospective payment system and, therefore, are not subject to the rate of increase ceiling for cost reporting periods beginning on or after October 1, 1983. Rather, this ceiling will apply to hospitals and hospital units (that is, distinct part psychiatric and rehabilitation units) that are excluded from the prospective payment system and paid on a reasonable cost basis under our regulations at 42 CFR Part 405, Subpart D. The criteria for identifying these hospitals and units are set forth in the regulations on the prospective payment system (48 FR 39752) issued on September 1, 1983.

In summary, the following classes of hospitals will be subject to the rate of increase ceiling for cost reporting periods beginning on or after October 1, 1983:

- Psychiatric hospitals;
- Rehabilitation hospitals;
- Psychiatric and rehabilitation distinct part units;
- Children's hospitals;
- Long-term hospitals;
- Cancer hospitals that have elected to be reimbursed on a reasonable cost basis; and
- Hospitals outside the 50 States and the District of Columbia (for example, Puerto Rico).

IV. Inpatient Operating Costs Subject to the Rate of Increase Ceiling

The rate of increase ceiling applies to operating costs incurred by a hospital in furnishing inpatient hospital services. These operating costs *include* the operating costs related to ancillary services, to special care units and to routine services, such as nursing services and room and board.

For cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, inpatient operating costs *exclude* capital-related costs, the direct costs of medical education, malpractice insurance costs, and certain costs of kidney acquisition. However, section 601(a)(2) of Pub. L. 98–21 amended section 1886(a)(4) of the Act, which defines inpatient operating costs effective for cost reporting periods beginning on or after October 1, 1983. For those cost reporting periods, costs *excluded* from operating costs are capital-related costs, and certain medical education costs. In addition, because of the unique nature of and special coverage provisions relating to kidney acquisition, we decided to exclude these costs from the rate of increase limits.

V. Application of Target Rate Percentages

The target rate percentages are set at the market basket index plus one percentage point, in accordance with section 1886(b)(3)(B) of the Act. The market basket index is an estimate of the annual rate of increase in the costs of certain goods and services that are representative of the goods and services used by hospitals in the production of inpatient care. The items and services used in the market basket index have been selected and weighted to reflect the effect that general price changes have on hospital inpatient operating costs.

As stated in the Federal Register on September 1, 1983 (48 FR 39764), two changes were made to the market basket previously used under the hospital cost limits. Malpractice insurance is now included in the categories of expense in the market basket since malpractice insurance premiums are included in the prospective payment rates. We also revised the proportions assigned to each expense category to reflect the estimated proportions of total inpatient operating costs including malpractice insurance attributable to each category. For further background on the development of the market basket index, see Freeland, Anderson and Schendler, "National Hospital Input Price Index", *Health Care Financing Review*, Summer 1979, pp. 37–61. The market basket index set forth in this edition of the Federal Register applies this previously announced methodology without any changes.

When a hospital's cost reporting period spans two calendar years (that is, begins in one calendar year and ends in another), the hospital's target rate percentage will be determined by prorating the applicable percentages for the calendar years the period spans. The interim final regulations published in the Federal Register on August 30, 1983, amended § 405.463(c) to provide for quarterly publication of target rate percentages. The first such notice was also published in the Federal Register on September 1, 1983 (48 FR 39746).

However, as we indicated in the final regulations published elsewhere in this issue of the Federal Register, we have determined after further analysis that providing target rate percentages on a quarterly basis for the purpose of setting a hospital's base period cost per discharge under the prospective payment system creates unnecessary administrative difficulties.

Congress determined that certain hospitals will be excluded from the prospective payment system. Under the law, these hospitals will continue to be paid on a reasonable cost basis and will be subject to target rates under § 405.463.

Accordingly, the final regulations published elsewhere in this issue of the Federal Register eliminate the quarterly notices.

However, in order to allow hospitals the opportunity to adjust to this change in policy and to comply with rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553), we are providing in this notice the target rates based on the latest available data since the interim final regulations and notices were published on September 1. However, this notice will be the last of these quarterly notices, and the rates contained in it will apply as indicated below.

Hospitals With Cost Reporting Periods Beginning Before October 1, 1983

For 12-month cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, the applicable target rate percentages will be taken either from this notice or from the Federal Register notice published September 1, 1983 (48 FR 39746). Thus, the percentages published in this notice will be used to determine the rate of

increase ceilings for hospital cost reporting periods *ending* on or after January 1, 1984 and before September 30, 1984. To obtain the applicable target rate percentages for hospital cost reporting periods ending on or after September 30, 1983 and before January 1, 1984, refer to the September 1, 1983 **Federal Register** notice. These percentages will not be adjusted later if the actual rates of increase differ from the market basket estimates.

Cost reporting periods of other than 12 months that *do not* occur along with a change in operations of the facility as a result of changes in ownership, merger, or consolidation, are subject to the rate of increase limit. In such cases, the applicable target rate percentage must be obtained from HCFA. We will adjust the target percentage rate to reflect fewer months in the case of a short reporting period, using a monthly factor corresponding to the annual percentage rate and apply the ceiling. (We will also use such a monthly factor to make adjustments for cost reporting periods longer than 12 months.)

Hospitals Not Subject to the Prospective Payment System With Cost Reporting Periods Beginning On or After October 1, 1983

As noted above, Pub. L. 98–21 specified that, effective for cost reporting periods beginning on or after October 1, 1983, the target rate percentages must be established prospectively (for hospitals not paid under the prospective payment system). Therefore, the target rate percentages published in this notice will also be applied to 12-month cost reporting periods *beginning* on or after January 1, 1984 and before October 1, 1984. Again, these percentage rates will not be revised later based on actual market basket experience.

Prorating Calendar Year Percentages

A hospital's intermediary will prorate the appropriate calendar year percentages from Table A to determine the target rate percentage for a hospital with a cost reporting period that spans two calendar years. The intermediary will compute a prorated target rate percentage as follows:

1. The intermediary will determine the number of months in each calendar year covered by the hospital's cost reporting period.

2. The number of months for each calendar year will be divided by twelve and multiplied by the applicable target rate percentage for that year.

3. The two resulting percentages are added, yielding the hospital's target rate percentage for that cost reporting period.

Example A:

Hospital A has a cost reporting period beginning October 1, 1982 and ending September 30, 1983. Therefore, there are 3 months of the period in 1982 and 9 months of the period in 1983.

The applicable calendar year target rate percentages are:

1982: 10.3 (0.103)
1983: 7.2 (0.072)

Hospital A's rate percentage is calculated as follows:

$$\frac{(3\times0.103)}{12}+\frac{(9\times0.072)}{12}=8.0\%$$

Example B:

Hospital B has a cost reporting period beginning November 1, 1983 and ending October 31, 1984. Therefore, there are 2 months of the period in 1983 and 10 in 1984.

The applicable calendar year target rate percentages are:

1983: 7.2 (0.072)
1984: 7.8 (0.068)

Hospital B's target rate percentage is calculated as follows:

$$\frac{(2\times0.072)}{12}+\frac{(10\times0.068)}{12}=6.9\%$$

Note that in Example A, in which the cost reporting period begins before October 1, 1983, the resulting percentage will be applied retroactively. In Example B, the resulting percentage will be applied prospectively, since the cost reporting period begins after October 1, 1983.

VI. Updating Factors for Determining Transition Payment Rates Under the Prospective Payment System

The prospective payment rates during the initial three-year transition period are determined using a blend of Federal prospective payment rates (based on standardized payment amounts) and rates based on each hospital's cost experience. The hospital-specific portion of the transition payment rates is based on per discharge target amounts computed generally in the same way as are amounts for hospitals subject to the rate of increase ceiling.

For cost reporting periods beginning on or after January 1, 1984, we are publishing in Table B, below, updating factors for computing the hospital-specific portion of transition period prospective payment rates for discharges occurring on or before 30 days following the date of publication of final prospective payment rates in the **Federal Register**. (For cost reporting periods beginning on or after October 1, 1983 and before January 1, 1984, refer to the September 1, 1983 **Federal Register** notice (48 FR 39746)). The updating factors are computed by adjusting the calendar year target rate percentages by an actuarially estimated factor. This adjustment is necessary to implement the budget neutrality provisions of the statute. The factor is computed to ensure that the estimated amount of aggregate Medicare payments made based on the hospital-specific portion of the transition payment rates for Federal fiscal year 1984 is neither greater nor less than 75 percent of the payment amounts that would have been payable for the inpatient operating costs incurred by those same hospitals for fiscal year 1984 under title XVIII of the Act as it was in effect on April 19, 1983.

The budget neutrality adjustment has been modified in final regulations implementing prospective payment. We are publishing in table C the adjusted updating percentages that will apply for discharges occurring after 30 days following the date of publication of the final prospective payment rates in the **Federal Register.**

VII. Tables of Target Rate Percentages and Hospital-Specific Portion Updating Factors

TABLE A.—TARGET RATE PERCENTAGES

[Applicable to Hospitals Subject to the Rate of Increase Ceiling]

Calendar year	Estimated market basket index [1]	Target rate percentage
1983	5.9	6.9
1984	5.9	6.9
1985	6.6	7.6

[1] This market basket index includes malpractice insurance costs.

TABLE B.—UPDATING FACTORS [1]

[Applicable to Hospitals Under the Prospective Payment System for discharges occurring on or before 30 days following the date of publication of the final prospective payment rates.]

If base year cost reporting period ends	And first cost reporting period under PPS ends	Updating factor [2]
Dec. 31, 1982	Dec. 31, 1984	1.12448
Jan. 31, 1983	Jan. 31, 1985	1.12509
Feb. 28, 1983	Feb. 28, 1985	1.12570
Mar. 31, 1983	Mar. 31, 1985	1.12631
Apr. 30, 1983	Apr. 30, 1985	1.12693
May 31, 1983	May 31, 1985	1.12754
June 30, 1983	June 30, 1985	1.12815
July 31, 1983	July 31, 1985	1.12877
Aug. 31, 1983	Aug. 31, 1985	1.12938

[1] Incorporates budget neutrality factor of .984.

[2] If a hospital's base year cost reporting period ends on a date other than as specified above, the fiscal intermediary will contact HCFA for the appropriate adjustment factor.

TABLE C.—UPDATING FACTORS [1]

[Applicable to Hospitals Under the Prospective Payment System for Discharges Occurring after 30 days following the date of publication of the final prospective payment rates]

If base year cost reporting period ends	And first cost reporting period under PPS ends	Updating factor [2]
Dec. 31, 1982	Dec. 31, 1984	1.12333
Jan. 31, 1983	Jan. 31, 1985	1.12395
Feb. 28, 1983	Feb. 28, 1985	1.12456
Mar. 31, 1983	Mar. 31, 1985	1.12517
Apr. 30, 1983	Apr. 30, 1985	1.12578
May 31, 1983	May 31, 1985	1.12639
June 30, 1983	June 30, 1985	1.12701
July 31, 1983	July 31, 1985	1.12762
Aug. 31, 1983	Aug. 31, 1985	1.12823

[1] Incorporates budget neutrality factor of .983.
[2] If a hospital's base year cost reporting period ends on a date other than as specified above, the fiscal intermediary will contact HCFA for the appropriate adjustment factor.

For discharges occurring after 30 days following the date of publication of the final prospective payment rate, the budget neutrality modification can be implemented by multiplying the previous target amount by .99898, the ratio of the revised budget neutrality factor to the original budget neutrality factor.

EXAMPLE

	Base year cost per discharge		Update factor (Table B)		Target amount
Discharges on or before 30 days following publication of final PPS rates	$3,000	×	1.12446	=	$3,373.44

	Target amount		Ratio		Modified target amount
Discharges after 30 days following publication of final PPS rates	$3,373.44	×	.99898	=	$3,369.99

	Base year cost per discharge		Modified update factor (Table C)		Modified target amount
Proof of computation	$3,000	×	1.12333	=	$3,369.99

VIII. Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit hospitals.)

The primary purpose of this notice is to publish the updated target rate percentages for determining the rate of increase ceiling for hospitals subject to our regulations at 42 CFR 405.463, and the updating factors used to determine the hospital-specific portion of transition payment rates under the prospective payment system. These updates are derived by applying the most recent economic index data without revising the methodology.

This notice merely notifies the public of an update of the data derived from the rate of increase ceiling methodology (§ 405.463) and the methodology for determining the hospital-specific portion of the transition prospective payment rates (§ 405.474). The updated target rate percentages and updating factors announced in this notice do not result in an estimable impact because they do not affect these methodologies.

We have, therefore, determined that this notice does not meet any of the criteria of E.O. 12291 and that a regulatory impact analysis is not required. In addition, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is therefore not required.

IX. Other Required Information

A. Response to Public Comments

In the interim notice (48 FR 39746) for the first quarter FY 84 target rate percentages and updating factors and the interim rules implementing the prospective payment system (48 FR 39752), we provided a 45-day comment period. Our responses to comments on those documents are addressed in the final rule on the prospective payment system. Those documents announced the methodology followed in this notice.

B. Paperwork Reduction Act

This final notice does not contain information collection requirements that are subject to review by the Executive Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

C. Waiver of Prior Public Comment Period and 30-Day Delay in Effective Date

The Administrative Procedure Act (5 U.S.C. 553) (APA) provides for a period of public comment and for a 30-day delay in the effective date of substantive rules, unless there is good cause to waive the requirements. Because this notice merely announces the target rate percentages and updating factors computed under a previously established methodology, it is not subject to these APA procedures.

The target rate percentages and updating factors published in this interim notice are necessary for several purposes:

For hospitals reimbursed on a reasonable cost basis—

- To compute appropriate rate of increase ceilings under our regulations at § 405.463 for hospital cost reporting periods ending on or after January 1, 1984 and before September 30, 1984;
- To compute appropriate rate of increase ceilings under § 405.463 for hospital cost reporting periods beginning on or after January 1, 1984 and before October 1, 1984; and

For hospitals paid under the prospective payment system—

- To update the cost data used to determine the hospital-specific portion of transition payment rates.
- To implement the revisions in the calculation of the budget neutrality adjustment for the hospital specific portion adopted in the final prospective payment rules.

The first purpose requires a retroactive application of percentages to cost reporting periods beginning as long ago as January 1, 1983. This retroactive effect is required by § 405.463.

The second purpose requires a prospective application of target rate percentages to cost reporting periods. This prospective effect is also required by § 405.463.

The updating factors for hospitals paid under the prospective payment system are necessary for the calculation of the transition payment rates that we will pay during the first year of that payment system. These updating factors become effective on January 1, 1984 in accordance with §§ 405.463 and 405.474. The modifications to the update factors for changes in the final prospective payment rates are effective for discharges occurring after 30 days following the date of publication in the Federal Register in accordance with § 405.474 of the final prospective payment regulation and section 604(c) of Pub. L. 98–21.

There are no changes in the methodology for computing the target rate percentages and updating factors. The modification of the budget neutrality reduction is the direct result of changes in the regulations implementing the prospective payment system. We invited comments on the interim notice (48 FR 39746) for the first quarter fiscal year 1984 target rate percentages and updating factors and the interim final rule on the prospective payment system (48 FR 39752). In those documents we discussed the methodology to be used in computing the target rate percentages and updating factors. We have reviewed the comments received regarding this methodology and have made appropriate changes, as necessary, in the final rule on the prospective payment system.

In addition, the requirement in the regulation for timely quarterly publication of this notice of target rate percentages and updating factors using the most recent estimates obviates the practicality of a prior public comment period.

For the reasons stated above, we believe that it is not practicable, necessary, or in the public interest to publish this notice as a proposal for public comment or to provide for a delay in the effective date.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

(Sections 1102, 1871, and 1886(b) and (d) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww(b) and (d); 42 CFR 405.463 and 405.474)

Dated: November 28, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 22, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-34634 Filed 12-30-83; 8:11 pm]
BILLING CODE 4120-03-M

Reader Aids

Federal Register
Vol. 49, No. 1
Tuesday, January 3, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
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Code of Federal Regulations

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	523-5266

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Other Services

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TDD for the deaf	523-5229

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
January 3	January 18	February 2	February 17	March 5	April 2
January 4	January 19	February 3	February 21	March 5	April 3
January 5	January 20	February 6	February 21	March 5	April 4
January 6	January 23	February 6	February 21	March 6	April 5
January 9	January 24	February 8	February 23	March 9	April 9
January 10	January 25	February 9	February 24	March 12	April 9
January 11	January 26	February 10	February 27	March 12	April 10
January 12	January 27	February 13	February 27	March 12	April 11
January 13	January 30	February 13	February 27	March 13	April 12
January 16	January 31	February 15	March 1	March 16	April 16
January 17	February 1	February 16	March 2	March 19	April 16
January 18	February 2	February 17	March 5	March 19	April 17
January 19	February 3	February 21	March 5	March 19	April 18
January 20	February 6	February 21	March 5	March 20	April 19
January 23	February 7	February 22	March 8	March 23	April 23
January 24	February 8	February 23	March 9	March 26	April 23
January 25	February 9	February 24	March 12	March 26	April 24
January 26	February 10	February 27	March 12	March 26	April 25
January 27	February 13	February 27	March 12	March 27	April 26
January 30	February 14	February 29	March 15	March 30	April 30
January 31	February 15	March 1	March 16	April 2	April 30

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been changed since last week.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1983
3 (1982 Compilation and Parts 100 and 101)	6.00	Jan. 1, 1983
4	7.50	Jan. 1, 1983
5 Parts:		
1–1199	8.50	Jan. 1, 1983
1200–End, 6 (6 Reserved)	6.00	Jan. 1, 1983
7 Parts:		
0–45	9.00	Jan. 1, 1983
46–51	7.50	Jan. 1, 1983
52	9.00	Jan. 1, 1983
53–209	7.50	Jan. 1, 1983
210–299	7.00	Jan. 1, 1983
300–399	5.50	Jan. 1, 1983
400–699	6.50	Jan. 1, 1983
700–899	6.50	Jan. 1, 1983
900–999	8.50	Jan. 1, 1983
1000–1059	7.50	Jan. 1, 1983
1060–1119	6.50	Jan. 1, 1983
1120–1199	7.00	Jan. 1, 1983
1200–1499	7.00	Jan. 1, 1983
1500–1899	6.50	Jan. 1, 1983
1900–1944	8.00	Jan. 1, 1983
1945–End	7.00	Jan. 1, 1983
8	6.50	Jan. 1, 1983
9 Parts:		
1–199	7.50	Jan. 1, 1983
200–End	7.50	Jan. 1, 1983
10 Parts:		
0–199	9.00	Jan. 1, 1983
200–399	7.50	Jan. 1, 1983
400–499	6.50	Jan. 1, 1983
500–End	7.00	Jan. 1, 1983
11	5.50	July 1, 1983
12 Parts:		
1–199	7.00	Jan. 1, 1983
200–299	8.00	Jan. 1, 1983
300–499	7.00	Jan. 1, 1983
500–End	8.00	Jan. 1, 1983
13	8.00	Jan. 1, 1983
14 Parts:		
1–59	7.00	Jan. 1, 1983
60–139	7.00	Jan. 1, 1983
140–199	5.50	Jan. 1, 1983
200–1199	7.00	Jan. 1, 1983
1200–End	6.50	Jan. 1, 1983
15 Parts:		
0–299	6.50	Jan. 1, 1983
300–399	7.00	Jan. 1, 1983
400–End	7.50	Jan. 1, 1983
16 Parts:		
0–149	7.00	Jan. 1, 1983
150–999	7.00	Jan. 1, 1983
1000–End	7.00	Jan. 1, 1983
17 Parts:		
1–239	8.00	Apr. 1, 1983
240–End	7.00	Apr. 1, 1983
18 Parts:		
1–149	7.00	Apr. 1, 1983
150–399	8.00	Apr. 1, 1983
400–End	6.50	Apr. 1, 1983
19	8.50	Apr. 1, 1983
20 Parts:		
1–399	5.50	Apr. 1, 1983
400–499	7.00	Apr. 1, 1983
500–End	7.50	Apr. 1, 1983
21 Parts:		
1–99	6.00	Apr. 1, 1983
100–169	6.50	Apr. 1, 1983
170–199	6.50	Apr. 1, 1983
200–299	4.75	Apr. 1, 1983
300–499	8.00	Apr. 1, 1983
500–599	6.50	Apr. 1, 1983
600–799	5.00	Apr. 1, 1983
800–1299	6.00	Apr. 1, 1983
1300–End	5.00	Apr. 1, 1983
22	8.50	Apr. 1, 1983
23	7.00	Apr. 1, 1983
24 Parts:		
0–199	6.00	Apr. 1, 1983
200–499	8.00	Apr. 1, 1983
500–799	5.00	Apr. 1, 1983
800–1699	6.50	Apr. 1, 1983
1700–End	6.00	Apr. 1, 1983
25	8.00	Apr. 1, 1983
26 Parts:		
§§ 1.0–1.169	8.00	Apr. 1, 1983
§§ 1.170–1.300	7.50	[1] Apr. 1, 1982
§§ 1.301–1.400	6.00	Apr. 1, 1983
§§ 1.401–1.500	7.00	Apr. 1, 1983
§§ 1.501–1.640	6.50	Apr. 1, 1983
§§ 1.641–1.850	7.50	[1] Apr. 1, 1982
§§ 1.851–1.1200	8.00	Apr. 1, 1983
§§ 1.1201–End	8.50	Apr. 1, 1983
2–29	7.00	Apr. 1, 1983
30–39	6.00	Apr. 1, 1983
40–299	7.50	Apr. 1, 1983
300–499	6.00	Apr. 1, 1983
500–599	8.00	[2] Apr. 1, 1980
600–End	5.00	Apr. 1, 1983
27 Parts:		
1–199	6.50	Apr. 1, 1983
200–End	6.50	Apr. 1, 1983
28	7.00	July 1, 1983
29 Parts:		
0–99	8.00	July 1, 1983
100–499	5.50	July 1, 1983
500–899	8.00	July 1, 1983
900–1899	5.50	July 1, 1983
1900–1910	8.50	July 1, 1983
1911–1919	4.50	July 1, 1983
1920–End	8.00	July 1, 1983
30 Parts:		
0–199	7.00	July 1, 1983
200–End	10.00	July 1, 1982
31 Parts:		
0–199	6.00	July 1, 1983
200–End	6.50	July 1, 1983
32 Parts:		
1–39, Vol. I	8.50	July 1, 1983

Title	Price	Revision Date
1–39, Vol. II	13.00	July 1, 1983
1–39, Vol. III	9.00	July 1, 1983
40–189	6.50	July 1, 1983
190–399	13.00	July 1, 1983
400–699	10.00	July 1, 1982
700–799	7.50	July 1, 1983
800–999	6.50	July 1, 1983
1000–End	6.00	July 1, 1983
33 Parts:		
*1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	6.00	July 1, 1983
400–End	8.50	July 1, 1982
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
*200–End	12.50	July 1, 1983
37	6.00	July 1, 1983
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	7.00	July 1, 1982
40 Parts:		
0–51	7.50	July 1, 1983
*52	14.00	July 1, 1983
53–80	8.50	July 1, 1982
81–99	7.50	July 1, 1983
100–149	6.00	July 1, 1983
150–189	6.50	July 1, 1983
190–399	7.00	July 1, 1983
400–424	6.50	July 1, 1983
425–End	7.50	July 1, 1982
41 Chapters:		
1, 1–1 to 1–10	7.00	July 1, 1983
1, 1–11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3–6	7.00	July 1, 1983
7	5.00	July 1, 1983
8	4.75	July 1, 1983
9	7.00	July 1, 1983
10–17	6.50	July 1, 1983
18, Vol. I, Parts 1–5	6.50	July 1, 1983
18, Vol. II, Parts 6–19	7.00	July 1, 1983
18, Vol. III, Parts 20–52	6.50	July 1, 1983
19–100	7.00	July 1, 1983
101	9.00	July 1, 1982
102–End	6.50	July 1, 1983
42 Parts:		
1–60	7.50	Oct. 1, 1982
61–399	7.00	Oct. 1, 1982
400–End	9.50	Oct. 1, 1982

Title	Price	Revision Date
43 Parts:		
1–999	7.00	Oct. 1, 1982
1000–3999	8.50	Oct. 1, 1982
4000–End	7.00	Oct. 1, 1982
44	7.50	Oct. 1, 1982
45 Parts:		
1–199	7.00	Oct. 1, 1982
200–499	6.00	Oct. 1, 1982
500–1199	7.50	Oct. 1, 1982
1200–End	7.50	Oct. 1, 1982
46 Parts:		
1–29	6.00	Oct. 1, 1982
30–40	5.50	Oct. 1, 1982
41–69	7.50	Oct. 1, 1982
70–89	6.00	Oct. 1, 1982
90–109	6.50	Oct. 1, 1982
110–139	5.00	Oct. 1, 1982
140–155	7.00	Oct. 1, 1982
156–165	7.50	Oct. 1, 1982
166–199	7.00	Oct. 1, 1982
200–399	8.50	Oct. 1, 1982
400–End	7.00	Oct. 1, 1982
47 Parts:		
0–19	8.50	Oct. 1, 1982
20–69	9.00	Oct. 1, 1982
70–79	8.00	Oct. 1, 1982
80–End	9.00	Oct. 1, 1982
48	1.50	[3] Sept. 19, 1983
49 Parts:		
1–99	6.50	Oct. 1, 1982
100–177	9.00	Oct. 1, 1982
178–199	8.00	Oct. 1, 1982
200–399	7.50	Oct. 1, 1982
400–999	8.00	Oct. 1, 1982
1000–1199	7.50	Nov. 1, 1982
1200–1299	7.50	Oct. 1, 1982
1300–End	7.50	Oct. 1, 1982
50 Parts:		
1–199	7.00	Oct. 1, 1982
200–End	8.00	Oct. 1, 1982
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Individual copies	2.25	1983

[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

CFR ISSUANCES 1983

Complete Listing of 1983 Editions and Projected January, 1984 Editions

This list sets out the CFR issuances for the **1983 editions** and projects the publication plans for the **January,** 1984 quarter. A projected schedule that will include the **April,** 1984 quarter will appear in the first **Federal Register** issue of **April.**

For pricing information on available 1983 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1983:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–1199
1200–End

6 [Reserved]

7 Parts:
0–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1944
1945–End

8

9 Parts:
1–199
200–End

10 Parts:
0–199
200–399
400–499
500–End

11 (Revised as of July 1, 1983)

12 Parts:
1–199
200–299
300–499
500–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–399
400–End

16 Parts:
0–149
150–999
1000–End

Titles revised as of April 1, 1983:

17 Parts:
1–239
240–End

18 Parts:
1–149
150–399
400–End

19

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22

23

24 Parts:
0–199
200–499
500–799
800–1699
1700–End

25

26 Parts:
1 (§§ 1.0–1–1.169)
1 (§§ 1.170–1.300) (Cover only)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850) (Cover only)
1 (§§ 1.851–1.1200)
1 (§§ 1.1201–End)
2–29
30–39
40–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

Titles revised as of July 1, 1983:

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29 Parts:
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100–499
500–899
900–1899
1900–1910
1911–1919
1920–End

30 Parts:
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200–699 (Revised as of Oct. 1, 1983)*
700–End (Revised as of Oct. 1, 1983)*

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200–End

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1000–End

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200–End

34 Parts:
1–299
300–399
400–End

35

36 Parts:
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200–End

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38 Parts:
0–17
18–End

39

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53–80
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100–149
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400–424
425–End

41 Parts:
Chap. 1 (1–1 to 1–10)
Chap. 1 (1–11 to App.)–2
Chap. 3–6
Chap. 7
Chap. 8
Chap. 9
Chap. 10–17
Chap. 18, Vol. I
Chap. 18, Vol. II
Chap. 18, Vol. III
Chap. 19–100
Chap. 101
Chap. 102–End

Titles revised as of October 1, 1983:

42 Parts:
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400–End*

43 Parts:
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1000–3999*
4000–End

44*

45 Parts:
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200–499*
500–1199
1200–End

46 Parts:
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70–89
90–139
140–155*
156–165*
166–199
200–399*
400–End

47 Parts:
0–19*
20–69*
70–79*
80–End*

48 (See 48 FR 41774 and 42103, Sept. 19, 1983)

49 Parts:

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100–177 (Revised as of Nov. 1, 1983)*
178–199 (Revised as of Nov. 1, 1983)*
200–399*
400–999*
1000–1199*
1200–1299*
1300–End*

50 Parts:

1–199*
200–End*

* Indicates volume is still in production and not ready for distribution.

Projected January 1, 1984 editions:

CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–1199
1200–End

6 [Reserved]

7 Parts:
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46–51
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53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1944
1945–End

8

9 Parts:
1–199
200–End

10 Parts:
0–199
200–399
400–499
500–End

11 (To be announced)

12 Parts:
1–199
200–299
300–499
500–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–399 (To be announced)
400–End

16 Parts:
0–149
150–999
1000–End

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing December 19, 1983.

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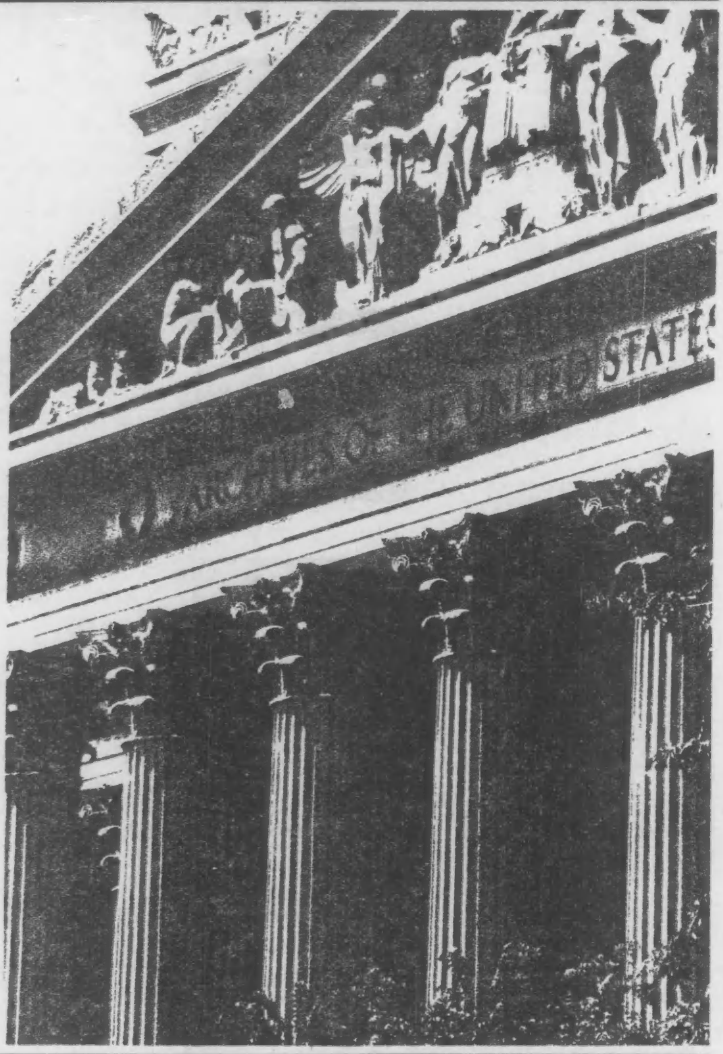

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