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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

TUCSON, AZ

WHEN: March 23 at 9:00 am

WHERE: University of Arizona Medical School, DuVal Auditorium, 1501 N. Campbell Avenue, Tucson, AZ

RESERVATIONS: Federal Information Center 1–800–359–3997 or in the Tucson area, call 602–290–1616

OAKLAND, CA

WHEN: March 30 at 9:00 am

WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA

RESERVATIONS: Federal Information Center 1–800–726–4995

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–38–AD; Amdt. 39–8832; AD 94–04–12]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 685, 690, 690A, and 690B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) Models 685, 690, 690A, and 690B airplanes. This action requires modifying the wing ribs at Wing Station (WS) 39, inspecting (one-time) WS 39 for cracks or corrosion, treating any corrosion found, and replacing any cracked wing front spar lower cap (spar cap). Several reports of cracked spar caps and cracked and deformed wing ribs at WS 39 on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of the wing structure caused by a cracked spar cap or cracked or deformed wing rib at WS 39.

DATES: Effective April 12, 1994. The incorporation by reference of Twin Commander Service Bulletin (SB) No. 211, Revision 1, dated July 7, 1992, is approved by the Director of the Federal Register as of April 12, 1994.

The incorporation by reference of the instructions to Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992, was previously approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Twin Commander Models 685, 690, 690A, and 690B airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34959). The proposed AD would require (1) modifying the wing ribs at Wing Station (WS) 39; (2) inspecting (one-time) the main spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion; and (3) replacing the spar cap if any cracks are found and treating any corrosion found. The proposed inspections would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992. Replacing the spar cap, if required, would be accomplished in accordance with Twin Commander Custom Kit 144, Revision A, dated November 12, 1992; or AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM, dated July 16, 1992, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Five commenters concur with the proposal as written.

One commenter recommends excluding Model 685 airplanes that show no signs of corrosion based on the inspection required by AD 91–08–09. The commenter feels that the proposal is unreasonably burdensome to private aviation (i.e., 14 CFR part 91 operators) and should not be mandatory. The FAA does not concur. AD 91–08–09 requires inspecting for corrosion on the main wing spar lower cap, but the inspection procedure will not detect cracks in the wing front spar lower cap (spar cap). Even if the inspection required by AD 91–08–09 reveals corrosion, there is no assurance that cracks at WS 39 do not exist. The purpose of the proposal is to provide a way to detect and correct cracks at WS 39. The FAA has determined that these cracks or failures of the WS 39 wing rib can occur on airplanes in any type of operation, and that this action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. The proposed AD is unchanged as a result of this comment.

Another commenter, the Civil Aviation Authority of Australia (CAA), recommends replacing the wing spar cap before the next 500 hours time-in-service (TIS) if corrosion is found, instead of treating any corrosion found. The CAA states that, if a corroded spar is not replaced, then the small fatigue crack formed as a result of the corrosion will grow to weaken the spar to a level below its design strength. The FAA is currently conducting a study to determine the fatigue crack growth rates from irregular corroded surfaces. Part of this study includes the consideration of a replacement time period for spar caps found corroded. When this study is complete, the FAA will consider taking further AD action to cover this issue. The proposed AD is unchanged as a result of this comment.

A third commenter states that the inspection should be repetitive. This is one of the items the FAA is considering in the current study to determine the fatigue crack growth rates from irregular corroded surfaces. When this study is complete, the FAA will consider taking further AD action to cover this issue. The proposed AD is unchanged as a result of this comment.

A fourth commenter requests a change in the compliance time from 50 hours TIS to 180 days. This commenter believes that there will be a jam of airplanes in service shops, causing a possible parts shortage or forcing airplane owners/operators to utilize less qualified shops in order to meet the deadline. The FAA does not concur. Twin Commander has assured the FAA that there are adequate parts available for all repairs that could be required. In addition, the FAA has determined that there is an adequate number of certified maintenance shops available to accomplish the actions on all airplanes

within the proposed compliance time. The proposed AD is unchanged as a result of this comment.

A fifth commenter, the Twin Commander Aircraft Corporation, requests that the preamble of the proposal change to reflect that, of the 13 airplanes reported to have cracked spar caps, 12 were examined in detail and none had cracks exceeding the specified limits. The FAA concurs, and, because the entire preamble of the proposal is not repeated in the final rule action, the FAA is so noting this fact.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 439 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 168 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour (total labor cost of $9,240 per airplane). Parts cost approximately $1,300 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,627,060 ($10,540 per airplane). As previously discussed, 89 of the 439 affected airplanes have already accomplished the required actions. This reduces the cost impact of this AD upon U.S. operators from $4,627,060 to $3,689,000.

In addition, if the required inspection reveals cracks or corrosion that exceeds a certain amount, replacing the spar cap will be required at a cost of approximately $100,000 per airplane, parts and labor included. An airplane affected by this AD could have a compliance cost as low as approximately $10,540 (labor + parts) if cracks or corrosion is not found during the inspection, and as high as approximately $110,540 (inspection and modification + spar cap replacement) if the operator replaces the spar cap.

Based on an expected average remaining operating life of 30 years per affected airplane, the annualized compliance cost would be:

• If only inspecting the spar cap and wing rib at WS 39 and modifying at WS 39 are necessary: $10,540 × 0.8145 (capital recovery factor at a 7 percent interest rate) = $858 annualized cost; or

A• If replacing the spar cap is necessary: approximately $110,540 × 0.8145 (capital recovery factor at a 7 percent interest rate) = $9,003 annualized cost.

The required AD's from Dockets No. 92–CE–26–AD (for Model 690B and No. 92–CE–58AD (for Models 685, 690, 690A, and 690B) will also affect certain airplanes included in this AD. The compliance costs of these other AD's will add to the cost discussed above. However, replacing the spar cap will only be required once, so the $100,000 replacement cost, if required, is a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 350 U.S.-registered airplanes affected by this AD that have not complied with Twin Commander SB No. 211, Revision 1, dated July 7, 1992, are owned according to the following breakdown: 60 by individuals, 2 by U.S. government agencies, 9 by states or local governments, and 279 by other entities. Twenty entities own more than one of the affected airplanes: one owns 7, one owns 5, another owns 4, and the other seventeen own 2 each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**. After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94–04–12 Twin Commander Aircraft Corporation: Amendment 39–8832; Docket No. 92–CE–38–AD.

Applicability: The following Model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with the procedures of one of the two specified in paragraph (b)(2) of this AD, certificated in any category:

Model	Serial Nos.
685	12000 through 12066.
690, 690A, and 690B...	11001 through 11566.

Note 1: The serial number of the Model 685 airplanes differs from that specified in Twin Commander Service Bulletin (SB) No. 211, Revision 1, dated July 7, 1992. This AD takes precedence over that service information.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by a cracked wing front spar lower cap or cracked or deformed wing rib at Wing Station (WS) 39, accomplish the following:

(a) Modify the wing ribs at WS 39 in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992.

(b) Eddy current inspect the wing front spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992.

(1) If any corrosion is found that is less than .031 inch in the thin flange or .063 inch in the thick section of the wing front lower spar cap, prior to further flight, treat the wing front spar lower cap area that is corroded with corrosion inhibitor such as LPS–3 or ACF–50.

(2) If any cracks are found or any corrosion is found that is equal to or exceeds .031 inch in the thin flange or .063 inch in the thick section of the wing front spar lower cap, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(i) For Models 685, 690, 690A, and 690B—Twin Commander Custom Kit 144, Revision A, dated November 12, 1992; or

(ii) For Models 690, 690A, and 690B—AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM, dated July 16, 1992.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 211, Revision No. 1, dated July 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to either Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; or Twin Commander Custom Kit No. CK–145, dated August 21, 1992, whichever is applicable. This incorporation by reference was previously approved as of April 11, 1994 by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8832) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3841 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–CE–26–AD; Amdt. 39–8831; AD 94–04–11]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 500S and 690B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) Models 500S and 690B airplanes. This action requires removing a sample of the wing front spar lower cap (spar cap) material for examination, and, depending upon the results of that examination, inspecting or replacing the spar cap. Reports of cracks caused by stress corrosion in the spar cap on several of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of the wing structure caused by cracks in the spar cap.

DATES: Effective April 11, 1994. The incorporation by reference of certain documents in the regulations is approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Twin Commander Models 500S and 690B airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34957). The action proposed to require removing a sample of the spar cap material for examination, and, depending upon the results of the examination, inspecting or replacing the spar cap. The proposed inspections would be accomplished in accordance with Twin Commander SB No. 215, dated March 3, 1992. The proposed replacements, if necessary, would be accomplished in accordance with one of the following, as applicable:

- Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992, which applies to Twin Commander Model 690B airplanes;
- Twin Commander Custom Kit No. CK–145, dated August 21, 1992, which applies to Twin Commander Model 500S airplanes; or
- AVIADESIGN, Inc. Supplemental Type Certificate (STC), dated July 16, 1992, which applies to Twin Commander Model 690B airplanes.

Of the 80 affected airplanes registered in the United States, 34 have already accomplished this inspection in accordance with Twin Commander SB No. 215, dated March 3, 1992. For five of these airplanes, or approximately 15 percent, the examination revealed a grain structure that would require spar cap replacement under the criteria of this proposed AD. These five airplane operators voluntarily replaced the spar cap in order to assure safety of their airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Eight commenters concur with the proposed rule as written.

One commenter recommends deleting the terms "fine equi-axed" and

"unusual cap grain structure" from the proposal. This commenter states that there is no standard for grain structure in aluminum alloy products and believes that characterizing the spar cap grain structure as unusual is inappropriate and may not focus on the best course of corrective action. The Commenter also states that the word fine in "fine equi-axed grain structure" is so imprecise that the structure is unable to be accurately measured. The FAA concurs that "unusual grain structure" could be inappropriate and has changed the wording in the final rule AD to "smaller than the large elongated grains, but not fine equi-axed". The FAA does not concur that the term "fine equi-axed" is imprecise because the FAA included in the proposal (Note 2) a definition of this term. In addition, the EMTEC Corporation, which is the laboratory conducting the metallurgical examinations, has established, with the FAA and Twin Commander, the acceptable grain structure size of the spar cap.

This commenter also states that the grain structure should not be the sole indicator of susceptibility to stress corrosion. The FAA concurs. The affected airplanes are also included in the applicability of the actions specified in Dockets No. 92–CE–38–AD and No. 92–CE–43–AD, which require other inspections of the spar cap. The proposed AD is unchanged as a result of this comment.

The same commenter also recommends consideration of other comprehensive corrective actions that deal with the impact of design and operating stress and sources of bi-metallic-initiated general corrosion. The FAA has determined that the current corrective action is one that will return the airplane to its original certification level of safety. The FAA will evaluate any detailed corrective action, and, if determined to provide an equivalent level of safety, will approve it as an alternative method of compliance to that portion of the required action. The proposed AD is unchanged as a result of this comment.

Another commenter, the Civil Aviation Authority of Australia (CAA), recommends that the FAA expand the range of serial numbers in the applicability and expand the spar cap replacement to include all unusual grain structures as well as fine equi-axed grain structures. The FAA has re-examined all information related to this subject and has determined that the airplanes manufactured with spars of the fine equi-axed grain structure are limited to those manufactured between May 1978 and October 1979. The results of inspections received to date including those from the CAA verify this conclusion. The proposed AD is unchanged as a result of this comment.

After examining all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the minor wording change and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 80 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 15 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $32 per airplane, and the metallurgical inspection will cost approximately $150. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $81,360. As previously discussed, 34 of the 80 affected airplanes have already accomplished the required actions. This reduces the cost impact of this AD upon U.S. operators to $56,392. The manufacturer will also incur the cost of the required metallurgical examination. The EMTEC Corporation will bill the manufacturer and send the results of the required inspection to the airplane owner/operator. This will further reduce the cost impact upon U.S. operators by $8,400 from $56,392 to $47,992.

In addition, if the required examination reveals a fine equi-axed grain structure, replacing the spar cap will be required at a cost of approximately $100,000, parts and labor included. If the required examination reveals an unusual grain structure that was not a fine equi-axed structure, inspecting the spar cap for stress corrosion will be required at a cost of approximately $2,750 (50 workhours at $55 per hour). An airplane affected by this AD could have a compliance cost as low as $1,007 if the spar cap was found acceptable during the metallurgical examination, and as high as approximately $100,857 if the operator replaces the spar cap.

Based on an expected average remaining operating life of 30 years per affected airplane, the annualized compliance cost would be:

- If only a metallurgical examination is necessary: $1,007 − $150 (cost incurred by manufacturer)=$857×0.8145 (capital recovery factor at an interest rate of 7 percent)=$70 annualized cost; or
- If replacing the spar cap is necessary: approximately $100,857×0.8145 (capital recovery factor at an interest rate of 7 percent)=$8,215 annualized cost.

The required AD's from Dockets No. 92–CE–38–AD (for Model 690B), No. 92–CE–43–AD (for Model 500S), and 92–CE–58–AD (for both Models 500S and 690B) also affect certain airplanes included in this AD. The compliance costs of these other AD's add to the cost discussed above. However, replacing the spar cap is only required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations.The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

Of the 56 U.S.-registered airplanes affected by this AD that have not complied with Twin Commander SB No. 215, dated March 3, 1992, no owner owns more than one. Of these 56 different owners, 50 are businesses, not-for-profit enterprises, or state or local governments; and six are individuals.

The FAA cannot determine the sizes of all the 50 non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**. After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

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

94-04-11 Twin Commander Aircraft Corporation: Amendment 39-8831; Docket No. 92-CE-26-AD.

Applicability: The following Model and serial number airplanes, certificated in any category:

Model	Serial Nos.
500S	3314 through 3323.
690B	11480 through 11566.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by stress corrosion cracks in the wing front spar lower cap, accomplish the following:

(a) Remove a sample (coupon) of the wing front spar lower cap in accordance with the INSTRUCTIONS: PART I section (Model 500S airplanes) or the INSTRUCTIONS: PART II section (Models 690B airplanes) of Twin Commander Service Bulletin (SB) No. 215, dated March 3, 1992, as applicable. Prior to further flight, send this coupon for a metallurgical examination to the EMTEC Corporation, 124 East Sheridan, suite 101, Oklahoma City, Oklahoma 73104, and wait for the results of the examination.

Note 1: The manufacturer will incur the cost of the required metallurgical examination. The EMTEC Corporation will bill the manufacturer and send the results of the inspection to the airplane owner/operator.

(b) If the results of the metallurgical examination required by paragraph (a) of this AD reveal a fine equi-axed grain structure, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(1) For Model 690B, Twin Commander Custom Kit No. CK-144, Revision A, dated November 12, 1992;

(2) For Model 500S, Twin Commander Custom Kit No. CK-145, dated August 21, 1992; or

(3) For Model 690B, AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

Note 2: A fine equi-axed grain structure refers to a grain structure that is approximately equal in all three axes and the grains are considerably smaller than what is typical of the wing spar extrusion. This is in contrast to the elongated, highly directional grain structure with relatively large grains typical of the wing spar extrusion.

(c) If the results of the metallurgical examination required by paragraph (a) of this AD reveal a grain structure that is smaller than the large elongated grains, but not fine equi-axed, prior to further flight, inspect the wing front spar lower cap for stress corrosion cracking in accordance with an inspection procedure approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

(1) Send the result of this inspection in writing to the FAA at the address specified in paragraph (e) of this AD, within 10 days after the inspection or 15 days after the effective date of this AD, whichever occurs later. State whether any cracks or corrosion was found, the location and length of any cracks found, and the location and depth of any corrosion found. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056).

(2) If any cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(i) For Model 690B, Twin Commander Custom Kit No. CK-144, Revision A, dated November 12, 1992;

(ii) For Model 500S, Twin Commander Custom Kit No. CK-145, dated August 21, 1992; or

(iii) For Model 690B, AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle ACO, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(f) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin, No. 215, dated March 3, 1992. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to either Twin Commander Custom Kit No. CK-144, Revision A, dated November 12, 1992; or Twin Commander Custom Kit No. CK-145, dated August 21, 1992, whichever is applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39-8831) becomes effective on April 11, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3842 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92-CE-57-AD; Amdt 39-8835; AD 94-04-15]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 500, 560A, 560E, 680, 680E, and 720 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander)

Models 500, 560A, 560E, 680, 680E, and 720 airplanes. This action requires inspecting the wing front spar lower cap (spar cap) for interference, fretting, or corrosion between the firewall flange and spar cap flange at Wing Station (WS) 96, and clearing any interference, repairing any fretting or corrosion damage, and replacing any cracked spar cap. Reports of two of the affected airplanes have cracked spar caps at WS 96 prompted this action. The actions specified by this AD are intended to prevent failure of the wing structure caused by a cracked spar cap at WS 96.

DATES: Effective April 12, 1994. The incorporation by reference of certain documents listed in the regulations is approved by the Director of the Federal Register as of April 12, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 277–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Twin Commander Models 500, 560A, 560E, 680, 680E, and 720 airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34950). The action proposed to require inspecting the spar cap for interference, fretting, or corrosion between the firewall flange and spar cap flange at WS 96, and clearing any interference, repairing any fretting or corrosion damage, and replacing any cracked spar cap. The proposed inspection and repair, if applicable, would be accomplished in accordance with Twin Commander SB No. 212, dated November 3, 1992.

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

Seven commenters concur with the proposal as written.

One commenter, the Civil Aviation Authority of Australia (CAA), states that the proposal should require an eddy current inspection of the spar cap. The CAA questions whether fretting and corrosion are the sole contributors to fatigue damage to WS 96, or if these merely aggravate what is already a fatigue-sensitive location. The CAA goes on to state that, if a crack can start from a corrosion pit as small as 0.006 inches (as happened on a Swedish airplane), then there is a good chance that even a clean airplane will crack over time. Also, the CAA states that, if a fatigue crack has started at the base of a corrosion pit, the blending of the corrosion will smear over the crack and conceal it from the dye penetrant inspection (which is called for in the SB), and that an eddy current inspection is the only method for detection of this crack. The FAA does not concur. The proposal relates to fretting that may occur because interference between a firewall stiffener and the forward flange of the lower spar cap. It would require action for fatigue cracks found as a result of this interference and fretting. Fretting does have a synergistic relationship with corrosion and fatigue, and its existence greatly accelerates fatigue crack growth. The FAA has received no reports of fatigue cracks in the affected area that were not a direct result of fretting. Also, the spar cap at WS 96 is extremely difficult to inspect using eddy current methods because of other structures in the area interfering with placement of the eddy current probe. Dye penetrant inspections are used extensively in the aviation industry and have proved very reliable in detecting cracks. The proposed AD is unchanged as a result of this comment.

Another commenter, the Twin Commander Aircraft Corporation states that owners/operators should have their airplanes inspected regardless of whether the spar cap has been replaced because interference may even exist on a new spar. The FAA concurs that interference may exist if a new spar is installed, unless it was installed in accordance with replacement procedures obtained from the manufacturer through the Manager, Seattle Aircraft Certification Office (as specified in paragraph (a)(3) of the proposed AD). The Seattle Aircraft Certification Office has not issued any of these procedures to airplane owners/operators; therefore, no airplane has the spar cap replaced in accordance with paragraph (a)(3) of the proposal and the proposal would affect all of the airplanes listed under the Applicability section. The proposed AD is unchanged as a result of this comment.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 332 airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 20 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $55 an hour. Parts to accomplish the required inspection cost approximately $20. Based on these figures, the total cost impact of the inspection specified in this AD on U.S. operators is estimated to be $371,840. One airplane owner has already accomplished the required inspection, and found no damage or cracks.

In addition, if the required inspection reveals cracks, or corrosion that exceeds certain limits, replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. An airplane affected by this AD could have a compliance cost as low as approximately $1,120 (labor + parts) if no cracks, interference, or corrosion damage is found during the inspection, and as high as approximately $101,120 (inspection + spar cap replacement) if the operator replaces the spar cap.

Based on these airplanes having an expected average remaining operating life of 10 years or 15 years, the annualized compliance cost would range between:

- If only inspecting the spar cap at WS 96 is necessary for airplanes with an average remaining operating life of 10 years: $1,120×0.14349 (10-year capital recovery factor at a 7 percent interest rate)=$168 annualized cost;
- If only inspecting the spar cap at WS 96 is necessary for airplanes with an average remaining operating life of 15 years: $1,120×0.11434 (15-year capital recovery factor at a 7 percent interest rate)=$126;
- If replacing the spar cap is necessary for airplanes with an average remaining operating life of 10 years: approximately $101,120×0.15349 (capital recovery factor at a 7 percent interest rate)=$15,520; or
- If replacing the spar cap is necessary for airplanes with an average remaining operating life of 15 years: approximately $101,120×0.11434 (capital recovery factor at a 7 percent interest rate)=$11,562.

The required AD's from Dockets No. 92–CE–43–AD (for Models 500, 560A, 560E, 680, 680E, and 720) and No. 92–CE–58–AD (for Models 685, 690, 690A,

and 690B) will also affect certain airplanes included in this AD. The compliance costs of these other required AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 331 U.S.-registered airplanes affected by the required AD that have not complied with Twin Commander SB No. 212, dated November 3, 1992, are owned according to the following breakdown: 196 by individuals, 2 by U.S. government agencies, 7 by states or local governments, and 126 by other entities. Six entities own 2 airplanes each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94–04–15 Twin Commander Aircraft Corporation: Amendment 39–8835; Docket No. 92–CE–57–AD.

Applicability: The following model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with procedures specified in paragraph (a)(3) of this AD, certificated in any category:

Model	Serial No.
500	618 through 750.
560A	231 through 450.
560E	433 through 750.
680	242 through 658.
680E	623 through 750.
720	501 through 750.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by a cracked wing front spar lower cap at Wing Station (WS) 96, accomplish the following:

(a) Inspect the wing front spar lower cap of each wing for corrosion or interference between the firewall flange and spar flange in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander Service Bulletin (SB) No. 212, dated November 3, 1992.

(1) If any interference is found between the firewall flange and spar flange, prior to further flight, clear this interference in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 212, dated November 3, 1992.

(2) If any corrosion damage is found, prior to further flight, repair any corrosion damage to the wing front spar lower cap in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 212, dated November 3, 1992.

(3) If any cracks are found, prior to the further flight, replace the wing front spar lower cap in accordance with replacement procedures obtained from the manufacturer through the Manager, Seattle Aircraft Certification Office (ACO), at the address specified in paragraph (c) of this AD.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle ACO, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

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

(d) The inspection and repair required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 212, dated November 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8835) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3840 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–4

14 CFR Part 39

[Docket No. 92–CE–43–AD; Amendment 39–8833; AD 94–04–13]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 65–06–01, which currently requires repetitively inspecting the wing front spar lower cap (spar cap) of both the left and right wings on certain Twin Commander Aircraft Corporation (Twin Commander) 500 and 600 series airplanes, and replacing any cracked spar cap. Front spar cap cracks developing on certain Twin Commander model airplanes not affected by that AD prompted this action. In addition, the manufacturer has updated the inspection procedures through improved service information. This action retains the inspection and repair requirements of AD 65–06–01, and requires inspecting in accordance with updated service information and increases the applicability to include other model airplanes. The actions specified by this AD are intended to prevent failure of the wing structure caused by cracks in the spar cap.

DATES: Effective April 12, 1994.

The incorporation by reference of Twin Commander Service Bulletin (SB) No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB 90C, Revision 1, dated June 5, 1992, is approved by the Director of the Federal Register as of April 12, 1994.

The incorporation by reference of the instructions to Twin Commander Custom Kit No. CK–145, dated August 21, 1992, was previously approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Twin Commander 500, 600, and 700 series airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34955). The action proposed to supersede AD 65–06–01 with a new AD that would (1) retain the inspection and repair requirements of the spar caps required by AD 65–06–01; (2) incorporate the updated service information into the proposed AD; and (3) increase the effectivity of the current AD to include other airplane models of the Twin Commander 500, 600, and 700 series. The proposed inspections would be accomplished in accordance with Twin Commander SB No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Nine commenters concur with the proposal as written.

Twin Commander supports the proposal and makes recommendations. Twin Commander states that the Compliance section of the proposal contains the following: "* * * or 500 hours after the wing front lower spar cap was replaced in accordance with one of the three modifications referenced in paragraph (b) of this AD * * *", and points out that paragraph (b) of this AD only specifies two modifications and that the wording in the Compliance section of the proposal should be changed accordingly. The FAA concurs and has changed the proposed AD by inserting the words "in accordance with one of the two modifications" in place of "in accordance with one of the three modifications" under the Compliance section.

Twin Commander also states that the proposed AD should include the Model 680F(P) airplanes in the applicability to coincide with SB 90C. The FAA concurs that these airplanes should be included. Adding this airplane model to the applicability goes beyond the scope of what was originally proposed, and would obligate the FAA to issue a supplemental notice of proposed rulemaking (NPRM) to allow additional time for the public to comment. The FAA has determined that the additional comment time is unnecessary for the model airplanes included in the applicability of the proposed AD, and, after the proposed rule becomes final, the FAA will issue an NPRM to add the Model 680F(P) airplanes into the applicability of that AD. The proposed rule is unchanged as a result of this comment.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the minor wording change and other minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,303 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 32 (average) workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts are not required for 1,054 airplanes, and parts cost approximately $700 per airplane for 105 airplanes and $1,700 per airplane for 144 airplanes. Based on these figures, the total cost impact of the inspections specified in this AD on U.S. operators is estimated to be $2,611,580 (cost per airplane varies by model).

AD 65–06–01 currently requires the same actions as this AD on 1,025 of 1,303 airplanes. Of the remaining 307 airplanes affected by this AD, the FAA estimates that it will take approximately 18 workhours for 156 airplanes and 100 workhours for 151 airplanes, depending upon the particular model. Parts are not required for 156 airplanes and cost approximately $1,700 for 151 airplanes. Based on these figures, the cost impact of this AD upon U.S. operators not already affected by AD 65–06–01 is approximately $1,241,640 (cost per airplane varies by model).

In addition, if the required inspection reveals cracks in the spar cap, replacing the spar cap is required at a cost of approximately $100,000, parts and labor included. An airplane affected by this AD could have a compliance cost as low as approximately $990 (18 workhours) or $7,200 (100 workhours) if cracks were not found during the inspection, and as high as approximately $100,990 (inspection using 18 workhours + spar replacement) to $107,200 (inspection using 100 workhours + spar replacement) if the operator replaces the spar cap.

The FAA estimates that the airplanes affected by the required AD are utilized an average of approximately 200 hours time-in-service per year, or an average

time-interval between the required inspections of 2.5 years.

Based on an expected average remaining operating life of 20 years per affected airplane, the annualized compliance cost would be:

- If only repetitively inspecting the spar cap is necessary at 18 workhours: $456 annualized cost (using a 7 percent interest rate);
- If only repetitively inspecting the spar is necessary at 100 workhours: $2,700 annualized cost (using a 7 percent interest rate); or
- If replacing the spar cap is necessary: approximately $9,971 annualized cost (with 18 workhours for inspection and using a 7 percent interest rate) and $10,372 annualized cost (with 100 workhours for inspection and using a 7 percent interest rate) if the spar cap is replaced during the first inspection.

The required AD's from Dockets No. 92–CE–26–AD (for Model 500S), No. 92–CE–57–AD (for Models 500, 560A, 560E, 680, 680E, and 720), and No. 92–CE–58–AD (for Models 500S, 500U, 680FL, 680W, and 681), also affect certain airplanes included in this AD. The compliance costs of these AD's add to the cost discussed above. However, replacing the spar cap is only required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports by small governmental jurisdictions.

The 307 U.S.-registered airplanes affected by this AD that are not already affected by AD 65–06–01 are owned according to the following breakdown: 80 by individuals, 3 by U.S. government agencies, 9 by states or local governments, and 215 by other entities. Four entities own more than one of the affected airplanes that are not affected by AD 65–06–01: two own 2 each, and two own 5 each. Three entities own models that will be affected by this AD, as well as AD 65–06–01.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicited comments concerning the impact of the NPRM on owners of affected airplanes, and received no comments on this matter. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 65–06–01, Amendment 39–1053, and by adding the following new airworthiness directive to read as follows:

94–04–13 Twin Commander Aircraft Corporation: Amendment 39–8833; Docket No. 92–CE–43–AD. Supersedes AD 65–06–01, Amendment 39–1053.

Applicability: All serial numbers of the following model airplanes, certificated in any category: 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL(P), 680FL, 680T, 680V, 680W, 681, and 720.

Compliance: Required initially within the next 50 hours time-in-service (TIS), unless already accomplished (compliance with superseded AD 65–06–01), or 500 hours after the wing from lower spar cap was replaced in accordance with one of the two modifications referenced in paragraph (b) of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS.

Note 1: Although not required, it is recommended that airplanes utilized for survey usage and low altitude usage (below 1,000 feet AGL) reinspect at more periodic intervals described below and specified in Twin Commander Service Publications revision notice of Service Bulletin No. 90C, Revision 1, dated June 5, 1992:

Usage	Hours TIS
Survey	200
Low Altitude	100

To prevent failure of the wing structure caused by cracks in the lower front spar cap, accomplish the following:

(a) Inspect the wing front spar lower cap at left and right Wing Station 24 in accordance with the instructions in the applicable part of Twin Commander SB No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992. The applicable part of the referenced service bulletin is outlined below:

(1) Part I: Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680F(P), and 720 airplanes.

(2) Part II: Models 680FL and 680FL(P) airplanes.

(3) Part III: Models 680FL, 680FL(P), 680T, 680V, 680W, and 681 airplanes.

(b) If cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with one of the following, as applicable:

(1) For models 500S, 500U, 680FL, 680FL(P), 680W, and 681—the instructions

in Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(2) For models 500, 500A, 500B, 520, 560, 560A, 560E, 560F, 680E, 680F, 680T, 680V, 680W, and 720—obtain replacement procedures from the manufacturer through the Manager, Seattle Aircraft Certification Office, at the address specified in paragraph (d) of this AD.

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

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of Service Bulletin No. 90C, Revision 1, dated June 5, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to Twin Commander Custom Kit No. CK–145, dated August 21, 1992. This incorporation by reference was previously approved as of April 11, 1994, by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8833) supersedes AD 65–06–01, Amendment 39–1053.

(g) This amendment (39–8833) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3836 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–CE–58–AD; Amendment 39–8834; AD 94–04–14]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 680, 681, 685, and 690 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 91–08–09, which currently requires the following on certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 681, 685, and 690 series airplanes: Repetitively inspecting the wing front spar lower cap (spar cap) for corrosion; and replacing the spar cap if corrosion exceeds certain limits. This action incorporates updated and more detailed inspection procedures, extends the repetitive inspection intervals, and provides the option of incorporating one of three modifications as terminating action for the repetitive inspections. The actions specified by the AD are intended to prevent wing structural damage that, if not detected, could progress to the point of failure.

DATES: Effective April 12, 1994. The incorporation by reference of Twin Commander Service Bulletin No. 208A, dated November 9, 1992, is approved by the Director of the Federal Register as of April 12, 1994.

The incorporation by reference of the instructions to Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; and Twin Commander Custom Kit No. CK–145, dated August 21, 1992, was previously approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Twin Commander Models 685, 690, 690A, and 690B airplanes was published in the Federal Register on June 30, 1993 (58 FR 34952). The proposed AD would supersede AD 91–08–09 with a new AD that would (1) retain the requirement of repetitively inspecting the spar cap, and replacing the spar cap if certain corrosion limits are exceeded; (2) incorporate Twin Commander SB No. 208A, dated November 9, 1992; and (3) incorporate spar cap replacement procedures specified in Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; Twin Commander Custom Kit No. CK–145, dated August 21, 1992; and AVIADESIGN, Inc. Supplemental Type Certificate (STC), dated July 16, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Seven commenters concur with the proposal as written.

Twin Commander states that the proposal should be changed to reflect that Custom Kit–145, which specifies procedures for replacing the spar cap for certain airplanes, also affects Models 680W and 681. The FAA concurs and has added these models to paragraph (b)(2) of the proposal, and has deleted paragraph (b)(4).

Another commenter, the Civil Aviation Authority of Australia (CAA), recommends replacing the wing spar cap before the next 500 hours time-in-service (TIS) if corrosion is found, instead of treating any corrosion found. The CAA states that, if a corroded spar is not replaced, then the small fatigue crack formed as a result of the corrosion will grow to weaken the spar to a level below its design strength. The FAA is currently conducting a study to determine the fatigue crack growth rates from irregular corroded surfaces. Part of this study includes the consideration of a replacement time period for spar caps found corroded. When this study is complete, the FAA will consider taking further AD action to cover this issue. The proposed AD is unchanged as a result of this comment.

A third commenter requests an extension of the time period for reinspection of a spar cap found not corroded from 36 calendar months to 60 calendar months. This commenter states that a well-maintained airplane that is always hangared and removed from a coastal environment should only have these inspections every 60 months. The FAA does not concur that this compliance time should be extended. The FAA has determined that the

majority of airplanes affected by this proposal are not maintained and operated in the conditions referenced above, and that the 36-month inspection interval is suitable for the typical affected airplane when found corrosion-free. In addition, establishing a reliable corrosion growth rate for these airplanes is extremely difficult, especially considering the diverse environment and operating conditions these airplanes are approved for. The proposed AD is unchanged as a result of this comment.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the minor change discussed above and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

Of the 562 affected airplanes registered in the United States, 10 have already accomplished the required inspection in accordance with Twin Commander SB No. 208A, dated November 9, 1992. None of these airplanes required spar cap replacement.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance would be the most desirable method because the unsafe condition described by the AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service.

The FAA estimates that 562 airplanes in the U.S. registry would be affected by this AD, that it would take between 110 and 162 workhours per airplane (varies by model; a weighted average of 146 workhours) to accomplish the required inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total initial cost impact of the inspection specified by this AD on U.S. operators is estimated to be $4,688,980 ($8,343 per airplane). As previously discussed, 10 of the 562 affected airplanes have already accomplished the required inspection. This reduces the initial cost impact of the inspection specified by this AD on U.S. operators to $4,432,560.

The inspections currently required by AD 91–08–09 carry an earlier FAA-estimated cost impact on U.S. operators of $880 (16 workhours × $55 per hour) per airplane. In actuality, those inspections range from $1,100 (20 workhours × $55 per hour) to $1,980 (36 workhours × $55 per hour) depending on the airplane model. Because of the more comprehensive inspection procedures specified in Twin Commander SB No. 208A, the initial cost impact of the inspections of this AD carries an additional cost impact of between $4,950 to $6,930 per airplane over that which is already required by AD 91–08–09. This AD provides owners of the affected airplanes some relief from some of the provisions of AD 91–08–09. For example:

- If no corrosion is found, this AD would require repetitive inspections at 36-calendar month intervals instead of 12-calendar month intervals, which is a savings of between $2,200 to $3,960 over the next 24 calendar months depending on the airplane model.
- If corrosion is less than 50 percent of the allowable service limits referenced in Twin Commander SB 208A, this AD would require reinspection at 30-calendar month intervals instead of 12-calendar month intervals, which is a savings of between $2,750 to $4,950 over the next 30 calendar months depending on the airplane model.
- Replacing the spar cap terminates this repetitive inspection requirement, which is a savings of $1,100 to $1,980 per year depending on the airplane model.

In addition, if the required inspection revealed corrosion in excess of certain established limits, then replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. If the spar cap did not reveal corrosion in excess of certain established limits, then an airplane affected by this AD could have an incremental compliance cost as low as $4,950 (proposed inspection cost at 110 workhours minus the cost of the inspection required by AD 91–08–09) or $6,930 (required inspection cost at 162 workhours minus the cost of the inspection required by AD 91–08–09). If replacing the spar cap would be necessary, an airplane affected by this AD could have an incremental compliance cost as high as approximately $104,950 (required inspection at 110 workhours minus the cost of the inspection required by AD 91–08–09 plus spar cap replacement) to $106,930 (required inspection at 162 workhours minus the cost of the inspection required by AD 91–08–09 plus spar cap replacement).

The FAA cannot predict the results of the required inspections, especially as the airplanes continue to age. Approximately 61 percent of the airplanes inspected in accordance with Twin Commander SB No. 208 (AD 91–08–09) had no significant spar cap corrosion, 24 percent had less than 50 percent of the established corrosion service limits, and 13 percent had between 50 to 100 percent of the established corrosion service limits. Less than 3 percent of the airplanes exceeded the established corrosion service limits.

Based on an expected average remaining operating life of 20, 25, or 30 years per affected airplane (depending on the model), the incremental annualized compliance cost would be:

- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 20 years: $904 to $7,239 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 25 years: $1,195 to $7,176 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 30 years: $1,290 to $7,495 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If replacing the spar cap is necessary for airplanes with an average operating life of 20 years: approximately $9,675 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection;
- If replacing the spar cap is necessary for airplanes with an average operating life of 25 years: approximately $8,719 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection; and
- If replacing the spar cap is necessary for airplanes with an average operating life of 30 years: approximately $8,145 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection.

The required AD's from Dockets No. 92–CE–26–AD (for Model 500S and 690B), No. 92–CE–38–AD (for Models 685, 690, 690A, and 690B), and No. 92–CE–43–AD (for Models 500S, 500U, 680FL, 680FL(P), 680W, and 681) will also affect certain airplanes included in this AD. The compliance costs of these other required AD's will add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 562 U.S.-registered airplanes affected by this AD are owned according to the following breakdown: 92 by individuals, 7 by U.S. government agencies, 20 by states or local governments, and 443 by other entities. Twenty seven entities each own more than one of the affected airplanes: One owns 7, four own 5 each, three own 3 each and nineteen own 2 each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES. After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to this original certification level of safety.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–08–09, Amendment 39–6965 (56 FR 14307, April 9, 1991), and by adding the following new airworthiness directive to read as follows:

94–04–14 Twin Commander Aircraft Corporation: Amendment 39–8834; Docket No. 92–CE–58–AD. Supersedes AD 91–08–09, Amendment 39–6965.

Applicability: The following model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with the procedures of one of the three modifications specified in paragraph (b) of this AD, certificated in any category:

Models	Serial No.
500U, 680FL, 680FL(P), and 680W.	1731 through 1854.
500S	1755 through 3323.
681	6001 through 6072.
685	12000 through 12066.
690, 690A, and 690B	11001 through 11566.

Compliance: Required within the next 90 calendar days after the effective date of this AD or within 12 calendar months after the last inspection required by AD 91–08–09, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent wing structural damage that, if not detected, could progress to the point of failure, accomplish the following:

Note 1: The serial number of the Model 685 airplanes differs from that specified in Twin Commander Service Bulletin (SB) No. 208A, dated November 9, 1992. This AD takes precedence over that service information.

(a) Ultrasonically inspect each area of the wing front spar lower cap for corrosion in accordance with the instructions in Twin Commander SB No. 208A, dated November 9, 1992.

(1) If no corrosion is found, reinspect within the next 36 calendar months.

(2) If corrosion is found that is less than 50 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, reinspect within the next 30 calendar months.

(3) If corrosion is found to be between 50 to 100 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, reinspect within the next 12 calendar months.

(4) If corrosion is found to be greater than 100 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, prior to further flight, replace the wing front spar lower cap in accordance with one of the replacement modifications referenced in paragraph (b) of this AD.

(b) The repetitive inspection requirement of this AD may be eliminated by replacing the wing front lower spar cap in accordance with the instructions in one of the following, as applicable:

(1) For Models 685, 690, 690A, and 690B: Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992;

(2) For Models 500S, 500U, 680W, 681, 680FL, and 680FL(P): Twin Commander Custom Kit No. CK–145, dated November 21, 1992; or

(3) For Models 690, 690A, and 690B: AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

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

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 208A, dated

November 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to either Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; or Twin Commander Custom Kit No. CK–145, dated August 21, 1992, whichever is applicable. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 11, 1994. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8834) supersedes AD 91–08–09, Amendment 39–6965.

(g) This amendment (39–8834) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3839 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–149–AD; Amendment 39–8829; AD 94–04–09]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 and DHC–8–300 series airplanes, that requires inspections to detect breakage in the engine rear mount strut assemblies, and replacement of broken struts. This amendment also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. This amendment is prompted by several reports of failure of the engine rear mount struts, due to fracture at one of the rosette welds on the shank of the strut where full weld depth was not achieved during manufacture. The actions specified by this AD are intended to prevent fracture of the engine rear mount struts, which could reduce the structural integrity of the nacelle and engine support structure.

DATES: Effective March 24, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and DHC–8–300 series airplanes was published in the **Federal Register** on October 25, 1993 (58 FR 55031). That action proposed to require repetitive detailed visual inspections to detect breakage in the engine strut assemblies, and replacement of broken struts with new and/or reworked struts. That action also proposed to require eventual replacement of the currently installed struts with new and/or reworked struts; when accomplished, this replacement would terminate the need for the repetitive inspections.

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

The commenter supports the proposed rule.

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

The FAA estimates that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $110,000, or $880 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–04–09 De Havilland, Inc.: Amendment 39–8829. Docket 93–NM–149–AD.

Applicability: Model DHC–8–102 and –103 series airplanes, serial numbers 003 through 310 inclusive; and Model DHC–8–301, –311, and –314 series airplanes, serial numbers 100 through 311 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the engine rear mount struts, and subsequent reduced structural integrity of the nacelle and engine support structure, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a detailed visual inspection to detect breakage in the engine strut assemblies, part number 8711016–001, –003, –005, or –007, in accordance with De Havilland, Inc., Service Bulletin S.B. 8–71–17, dated April 3, 1992.

(1) If any broken strut is detected, prior to further flight, replace the broken strut with a new strut, part number 87110016–009, or a reworked strut, part number 8DK1763–001; Post-Modification 8/1763; in accordance with the service bulletin.

Note 1: The Post-Modification 8/1763 struts are either new struts, part number 87110016–009, or reworked struts, part number 8DK1763–001.

(2) If no broken strut is detected, repeat the inspection thereafter at intervals not to exceed 50 flight hours.

(b) Within 24 months after the effective date of this AD, replace all of the currently installed engine rear mount struts with new struts, part number 87110016–009, and/or reworked struts, part number 8DK1763–001; Post-Modification 8/1763; in accordance with de Havilland, Inc., Service Bulletin S.B. 8–71–17, dated April 3, 1992. This replacement constitutes terminating action for the repetitive inspection requirements of this AD.

(c) As of the effective date of this AD, no person shall install an engine rear mount strut, part number 8711016–001, –003, –005, or –007, on any airplane.

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

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

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

(f) The inspections and replacements shall be done in accordance with de Havilland, Inc., Service Bulletin S.B. 8–71–17, dated April 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 24, 1994.

Issued in Renton, Washington, on Feburary 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3752 Filed 2–18–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–134–AD; Amendment 39–8828; AD 94–04–08]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F Series Airplanes, and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, that requires inspections to detect cracking in the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts, replacement of cracked bolts, and the eventual replacement of all bolts made of H–11 material with bolts made of Inconel. This amendment is prompted by reports of failures of these attach bolts due to stress corrosion. The actions specified by this AD are intended to prevent failure of the attach bolts, which could reduce the fail-safe capability of the attachment assembly.

DATES: Effective March 24, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5322; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes was published in the **Federal Register** on October 26, 1993 (58 FR 57568). That action proposed to require inspections to detect cracking in the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts, replacement of cracked bolts, and the eventual replacement of all bolts made of H–11 material with bolts made of Inconel.

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

One commenter supports the proposal.

Two commenters request that the proposed compliance time for the inspections be extended to coincide with normally scheduled maintenance intervals. These commenters suggest that if the compliance times were extended to 24 months, the confusion and expense of special scheduling could be avoided. The FAA does not concur. In developing the proposed compliance time, the FAA primarily considered analyses of the mode of failure of the subject bolts due to stress corrosion, as well as the service history of the fleet. Based on this data and the safety implications presented by loss of fail-safe capability of the attachment assembly should the bolts fail, the FAA has determined that the proposed compliance times of 12 months for the initial inspection and 18 months for the repetitive inspection interval are both

appropriate and warranted. Further, the FAA took into account the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required replacement parts. The compliance times as proposed should allow ample time for the inspections to be conducted concurrently with scheduled maintenance, thereby minimizing the costs associated with special airplane scheduling. In light of all of these factors, the FAA considers that any extension of the compliance intervals to be unacceptable.

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

There are approximately 354 Model DC–10 series airplanes and Model KC–10A airplanes of the affected design in the worldwide fleet. The FAA estimates that 206 airplanes of U.S. registry will be affected by this AD

The inspections required by this AD will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the inspections requirements of this AD on U.S. operators is estimated to be $90,640, or $440 per airplane, per inspection cycle.

The replacement actions required by this AD will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts will cost approximately $2,700 per airplane. Based on these figures, the total cost impact of the replacement actions of this AD on U.S. operators is estimated to be $646,840, or $3,140 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–04–08 McDonnell Douglas: Amendment 39–8828. Docket 93–NM–134–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes, and KC–10A (military) airplanes; having fuselage numbers 1 though 374 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts, which could reduce the fail-safe capability of the attachment assembly, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an ultrasonic inspection to detect cracking of the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts made of H–11 material, in accordance with McDonnell Douglas DC–10 Service Bulletin 54–100, Revision 1, dated September 17, 1993.

(1) If no cracking is detected, repeat the ultrasonic inspection thereafter at intervals not to exceed 18 months, until the requirements of paragraph (b) of this AD are accomplished.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii):

(i) Replace the cracked bolt with a new bolt made of H–11 material and continue to inspect in accordance with this paragraph at intervals not to exceed 18 months, until the requirements of paragraph (b) of this AD are accomplished. Or

(ii) Replace the cracked bolt with a bolt made of Inconel, and replace the associated hardware, in accordance with the service bulletin. Such replacement constitutes terminating action for required ultrasonic inspections for that bolt.

(b) Within 5 years after the effective date of this AD, replace all No.2 engine pylon lower spar forward mount and thrust link fitting attach bolts made of H–11 material, with bolts made of Inconel, and replace the associated hardware, in accordance with McDonnell Douglas DC–10 Service Bulletin 54–100, Revision 1, dated September 17, 1993. Such replacement constitutes terminating action for the inspections required by this AD.

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

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

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

(e) The inspections and replacement shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 54–100, Revision 1, dated September 17, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 24, 1994.

Issued in Renton, Washington, on February 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3754 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–ASW–55]

Modification of Class D Airspace: Hood Army Air Field and Robert Gray Army Airfield, TX, and Establishment of Class E Airspace: Killeen Municipal Airport, Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Hood Army Airfield (AAF) and Robert Gray AAF, and establishes Class E airspace at Killeen Municipal Airport, Killeen, TX. In accordance with airspace reclassification, effective September 16, 1993, the Class D airspace encompassing Killeen Municipal Airport required aircraft operators to establish two-way communications with Hood AAF Airport Traffic Control Tower (ATCT), or when Hood ATCT was closed, Robert Gray AAF ATCT. This action removes the airspace surrounding Killeen Municipal Airport from Hood AAF's Class D airspace, and establishes Class E airspace around Killeen Municipal Airport. This action is intended to maintain adequate Class D airspace and two-way radio communications at Hood AAF and Robert Gray AAF, while removing Killeen Municipal Airport, TX, from the current Class D airspace, and establishing Class E airspace around Killeen Municipal Airport, Killeen, TX.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 222–5595.

SUPPLEMENTARY INFORMATION:

History

On January 12, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Hood AAF and Robert Gray AAF and to establish Class E airspace at Killeen Municipal Airport, TX, was published in the **Federal Register** (59 FR 1679).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for the addition of some descriptive information in the narrative portion of the rule for the Class D airspace at Robert Gray AAF, Texas, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000, and Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298 July 6, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations, modifies the Class D airspace at Hood Army Airfield (AAF) and Robert Gray AAF to remove the Class D airspace surrounding Killeen Municipal Airport from Hood AAF's Class D airspace and establishes Class E airspace around Killeen Municipal Airport, Killeen, TX.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW TX D Hood Army Airfield (AAF), TX [Modify]
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)

That airspace extending upward from the surface to and including 3,500 feet within a 3.8-mile radius of the Hood AAF excluding that airspace within the Robert Gray AAF, TX, Class D surface area and excluding that airspace southeast of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Robert Gray Army Airfield (AAF), TX
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)

That airspace extending upward from the surface to and including 3,500 feet within a 4.7-mile radius of Robert Gray AAF and within a 3.8-mile radius of Hood AAF, excluding that airspace southeast of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF, and excluding that airspace within the Hood AAF, TX, Class D surface area when it is effective. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW TX E2 Killeen, TX [New]

Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)

That airspace extending upward from the surface within a 4-mile radius of Killeen Municipal Airport excluding that airspace within the Robert Gray AAF, TX, Class D surface area and excluding that airspace

northwest of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF.

* * * * *

Issued in Fort Worth, TX on February 14, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94-3888 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442, 444, 448, and 455

[Docket No. 93N-0364]

Antibiotic Drugs; Updates, Technical Changes, and Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by updating, making noncontroversial technical changes, and making corrections in accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations.

DATES: Effective February 22, 1994; written comments, notice of participation, and request for a hearing by March 24, 1994; data, information, and analyses to justify a hearing by April 25, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0335.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by updating, making noncontroversial technical changes, and making corrections in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use.

In § 442.216a(a)(1) (21 CFR 442.216a(a)(1)), separate limits for the pyridine content are being given for the *L*-arginine formulation and the sodium carbonate formulation. Separate limits are needed because the current limits allow the *L*-arginine formulation to contain up to 5.2 milligrams (mg) of pyridine per gram (g) of ceftazidime activity, while the sodium carbonate formulation may not contain more than 4.4 mg of pyridine per g of ceftazidime activity.

In § 442.216a(b)(1)(ii)(*a*), different loss on drying procedures are given for the *L*-arginine formulation and the sodium carbonate formulation. This is necessary because the procedure in the current monograph would not remove all of the water from the sodium carbonate formulation of the product (some water is "trapped" as sodium hydrogen carbonate), and the procedure will thus lead to falsely high potency values. Because the two formulations contain differing amounts of ceftazidime pentahydrate as a percent weight by weight of the powder blend, different loss on drying limits are now being given for each formulation. The loss on drying limits are now not more than 12.5 percent if it contains *L*-arginine and not more than 13.5 percent if it contains sodium carbonate. The asymmetry of the arginine peak is also revised from the current limit of 2.5 to a limit of 4.0. This limit is more realistic of the values obtained in this assay.

Revisions are being made in the descriptions of certain ophthalmic products (21 CFR part 444) and peptide products (21 CFR part 448). FDA has discovered that some of these monographs contain errors that would allow formulation without preservatives and other essential inactive ingredients to fit the monographs. FDA has not reviewed any of these products without these ingredients and does not know if they are safe and effective. The agency is, therefore, revising certain ophthalmic monographs to correct these errors.

In § 455.185a(a)(1) (21 CFR 455.185a(a)(1)), FDA is making a revision to allow vancomycin hydrochloride for oral solution to contain a suitable stabilizing agent. The agency has reviewed this formulation and found it to be safe and effective.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor technical nature. Because the amendments are not controversial, and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. This final rule, therefore, becomes effective February 22, 1994. However, interested persons may, on or before March 24, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 24, 1994, a written notice of participation and request for a hearing, and (2) on or before April 25, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 442, 444, 448, and 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 442, 444, 448, and 455 are amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 442.216a is amended by revising paragraphs (a)(1), (b)(1)(ii)(*a*), and (b)(4) to read as follows:

§ 442.216a Ceftazidime pentahydrate for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftazidime pentahydrate for injection is a dry mixture of ceftazidime pentahydrate and sodium carbonate or *L*-arginine. Its ceftazidime potency is satisfactory if each milligram of ceftazidime pentahydrate for injection contains not less than 900 micrograms and not more than 1,050 micrograms of cefazidime activity when corrected for both loss on drying and its sodium carbonate or *L*-arginine content, as appropriate for the formulation. Its ceftazidime content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of ceftazidime that it is represented to contain. It is sterile. It is nonpyrogenic. Its loss on drying is not more than 12.5 percent if it contains *L*-arginine and not more than 13.5 percent if it contains sodium carbonate. The pH of its aqueous solution is not less than 5.0 and not more than 7.5. Its pyridine content, if it contains sodium carbonate, is not more than 0.4 percent, except that for the issuance of a certificate for each batch of the sodium carbonate formulation, the pyridine content is not more than 0.12 percent. Its pyridine content, if it contains *L*-arginine, is not more than 0.3 percent, except that for the issuance of a certificate, the pyridine content of the *L*-arginine formulation is not more than 0.10 percent. The ceftazidime pentahydrate conforms to the standard prescribed by § 442.16a(a)(1).

* * * * *

(b) * * *

(1) * * *

(ii) *Calculations*—(*a*) *Ceftazidime potency (micrograms per milligram).* Calculate the micrograms of ceftazidime per milligram as follows:

$$\text{Micrograms of ceftazidime per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100\text{-}m\text{-}S\text{-}A)}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution;

m = Percent loss on drying (determined as directed in § 436.200(h) of this chapter if the formulation contains sodium carbonate and determined as directed in § 436.200(g) of this chapter if the formulation contains *L*-arginine);

S = Percent sodium carbonate content of the sample (determined as directed in § 436.357 of this chapter); and

A = Percent *L*-arginine content of the sample (determined as directed in § 455.204 of this chapter, except use ceftazidime instead of aztreonam in the working standard solution and use water instead of mobile phase). Prepare the sample solution by diluting an accurately weighed portion of the contents of a vial with water to 0.2 milligram per milliliter (estimated). The resolution between the ceftazidime peak and the arginine peak is not less than 6.0, the asymmetry factor for the arginine peak is not more than 4.0).

* * * * *

(4) *Loss on drying.* Proceed as directed in § 436.200(h) of this chapter if the formulation contains sodium carbonate and as directed in § 436.200(g) of this chapter if the formulation contains *L*-arginine.

* * * * *

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 444.320c is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.320c Gentamicin sulfate-prednisolone acetate ophthalmic suspension.

(a) * * *

(1) * * * It contains suitable and harmless chelating agents, tonicity agents, buffers, and preservatives. * * *

* * * * *

5. Section 444.342a is amended by revising the first sentence of the undesignated paragraph under paragraph (a)(1)(v) to read as follows:

§ 444.342a Neomycin sulfate-_____ ophthalmic suspension; neomycin sulfate-_____ ophthalmic solution (the blanks being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(v) * * *

It contains suitable and harmless buffers, dispersants, and preservatives. * * *

* * * * *

6. Section 444.342c is amended by revising the first sentence of the undesignated paragraph under paragraph (a)(1)(ii) to read as follows:

§ 444.342c Neomycin sulfate-gramicidin _____ ophthalmic solution; neomycin sulfate-gramicidin _____ ophthalmic suspension (the blanks being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(ii) * * *

It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

7. Section 444.342d is amended by revising the first sentence of the

undesignated paragraph under paragraph (a)(1)(iv) to read as follows:

§ 444.342d Neomycin sulfate-polymyxin B sulfate ——— ophthalmic suspension (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(iv) * * *

It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

8. Section 444.342i is amended by revising the second sentence of paragraph (a)(1)(ii) to read as follows:

§ 444.342i Neomycin sulfate-polymyxin B sulfate ophthalmic solution.

(a) * * *

(1) * * *

(ii) * * * It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

9. Section 444.342j is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.342j Neomycin sulfate-polymyxin B sulfate-dexamethasone ophthalmic suspension.

(a) * * *

(1) * * * It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

10. Section 444.380a is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.380a Tobramycin ophthalmic solution.

(a) * * *

(1) * * * It contains suitable and harmless buffers, dispersants, preservatives, and tonicity agents. * * *

* * * * *

11. Section 444.380c is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.380c Tobramycin-dexamethasone ophthalmic suspension.

(a) * * *

(1) * * * It contains suitable and harmless buffers, dispersants, preservatives, and tonicity agents. * * *

* * * * *

PART 448—PEPTIDE ANTIBIOTIC DRUGS

12. The authority citation for 21 CFR part 448 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, Cosmetic Act (21 U.S.C. 357).

13. Section 448.330 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 448.330 Polymyxin B sulfate-trimethoprim hemisulfate ophthalmic solution.

(a) * * *

(1) * * * It contains suitable and harmless buffers and preservatives. * * *

* * * * *

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

14. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

15. Section 455.185a is amended in paragraph (a)(1) by adding a new sentence after the first sentence to read as follows:

§ 455.185a Vancomycin hydrochloride for oral solution.

(a) * * *

(1) * * * It may contain a suitable stabilizing agent. * * *

* * * * *

Dated: February 9, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research

[FR Doc. 94–3856 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 455

[Docket No. 93N–0365]

Antibiotic Drugs; Vancomycin Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective March 24, 1994; written comments, notice of participation, and request for a hearing by March 24, 1994; data, information, and analyses to justify a hearing by April 25, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 455 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective March 24, 1994. However, interested persons may, on or before March 24, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1)

on or before March 24, 1994, a written notice of participation and request for a hearing, and (2) on or before April 25, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 455 is amended as follows:

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 455.86 is added to subpart A to read as follows:

§ 455.86 Vancomycin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Vancomycin is a tricyclic glycopeptide. It is a free flowing white to off-white colored powder. It is so purified and dried that:

(i) It contains not less than 925 micrograms of vancomycin per milligram, calculated on the anhydrous basis.

(ii) It contains not less than 92 percent vancomycin factor B and not more than 3 percent of any individual vancomycin related factor.

(iii) Its moisture content is not more than 20 percent.

(iv) Its heavy metals content is not more than 30 parts per million.

(v) It gives a positive identity test for vancomycin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, chromatographic purity, moisture, heavy metals, and identity.

(ii) Samples required: 12 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place an accurately weighed sample of approximately 100 milligrams in a 100-milliliter volumetric flask and dissolve in approximately 50 milliliters of distilled water and 1.0 milliliter of 0.1*N* hydrochloric acid. Swirl or sonicate to dissolve the sample and bring to volume with distilled water. Further dilute an aliquot of this solution with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 10 micrograms of vancomycin per milliliter (estimated).

(2) *Chromatographic purity.* Proceed as directed in § 436.366 of this chapter. The relative amount of vancomycin B is not less than 92 percent, and the relative amount of any related substance is not more than 3 percent.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(5) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 0.5 percent potassium bromide disc preparation as described in § 436.211(b)(1).

3. Section 455.285c is added to subpart C to read as follows:

§ 455.285c Vancomycin hydrochloride injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Vancomycin hydrochloride injection is a frozen, aqueous, isosmotic solution of vancomycin hydrochloride and a tonicity adjusting agent. Each milliliter contains vancomycin hydrochloride equivalent to 5 milligrams of vancomycin. Its vancomycin content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of vancomycin that it is represented to contain. It contains not less than 88 percent vancomycin factor B. It contains not more than 4 percent of any individual vancomycin related factor. It is sterile. It contains not more than 0.33 U.S.P. Endotoxin Unit per milligram of vancomycin hydrochloride. Its pH is not less than 3.0 and not more than 5.0. The vancomycin used conforms to the standards prescribed by § 455.86.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter. In addition, this drug shall be labeled "vancomycin hydrochloride injection."

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The vancomycin used in making the batch for vancomycin potency, chromatographic purity, moisture, heavy metals, and identity.

(B) The batch for vancomycin content, chromatographic purity, sterility, bacterial endotoxins, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The vancomycin used in making the batch: 10 packages, each containing approximately 300 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 12 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Vancomycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample solution as follows: Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container immediately after thawing and reaching room temperature. Dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 10 micrograms of vancomycin per milliliter (estimated).

(2) *Chromatographic purity.* Proceed as directed in § 436.366 of this chapter. The relative amount of vancomycin B is

not less than 88 percent and the relative amount of any related substance is not more than 4 percent.

(3) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in § 436.20(e)(1), except use sterile distilled water in lieu of diluting fluid A.

(4) *Bacterial endotoxins.* Proceed as directed in the U.S.P. bacterial endotoxins test. The specimen under test contains not more than 0.33 U.S.P. Endotoxin Unit per milligram of vancomycin hydrochloride.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(6) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(2) of this section compares qualitatively to that of the vancomycin working standard.

Dated: February 9, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–3815 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RINS–0720–AA08–0720–AA10–0720–AA13

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Coverage of Screening Mammography and Papanicolaou (PAP) Tests, Certified Marriage and Family Therapists, and Requirements for Coverage and Reimbursement of Services of Physicians in Teaching Settings

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the exclusions and limitations of the CHAMPUS regulation pertaining to preventive care and unnecessary diagnostic tests not related to a specific illness, injury, or definitive set of symptoms, to allow coverage for screening mammography and PAP tests on a preventive basis initially following the recommended guidelines of the American Cancer Society as a basis for coverage. The final rule also removes the requirement for physician supervision and referral for certified marriage and family therapists; requires all certified marriage and family therapists to accept CHAMPUS payment as payment in full; ensures that the relationship of certified marriage and family therapists is consistent with other mental health practitioners with comparable education and training; protects the CHAMPUS beneficiary from incurring added out-of-pocket costs for care rendered that is not part of the current CHAMPUS mental health benefits package; and better defines the specific requirements of existing CHAMPUS policies for coverage and reimbursement of services of teaching physicians and physicians in training.

EFFECTIVE DATE: This part is effective February 22, 1994. The effective date for changes in § 199.4, paragraphs (g)(1), (g)(2), (g)(37)(vii) and (g)(37)(viii) and (g)(39), and section 199.6, paragraph (d)(6), related to screening PAP tests and mammography on a preventive basis is November 5, 1990; the effective date for changes in § 199.2(b), "marriage and family therapist, certified," "pastoral counselors," "mental health counselor," § 199.4, paragraph (c)(3)(ix)(A), and § 199.6, paragraphs (c) (1)(iv) and (3)(iv), related to certified marriage and family therapists is May 23, 1994; and the effective date for changes in § 199.2(b), "approved teaching programs," "attending physician," "physician in training" and "teaching physician," § 199.4, paragraphs (b)(1)(i), (c)(1)(i), (c)(3)(xiii), and 199.6, paragraph (c)(1), related to services of teaching physicians and physicians in training is March 24, 1994.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Judy Carroll, Program Development Branch, OCHAMPUS, telephone (303) 361–1089.

SUPPLEMENTARY INFORMATION: On August 21, 1991 (56 FR 41498), and November 12, 1991 (56 FR 57501), the Office of Secretary of Defense published for public comment notices of proposed rulemaking to comply with sections 701 and 702 of the National Defense Authorization Act for Fiscal Year 1991. These statutory provisions are codified at 10 U.S.C. 1079 (a) (2), (8), and (13). This final rule consolidates the comments and the changes based on comments of three proposed rule amendments to implement sections 701 and 702 of the Defense Authorization Act for Fiscal Year (FY) 1991 (Pub. L. 101–510), and to revise requirements for coverage and reimbursement of services of physicians in teaching settings. The publication of the final rule amendments was delayed as a result of the Presidential moratorium on regulation changes. This final rule completes the action required to amend this part as outlined in the three previously published proposed rules. The proposed rules provided specific coverage requirements, screening frequencies, payment limitations and provider certification requirements, for mammography and PAP tests, removed the requirement for physician supervision and referral for certified marriage and family therapists and required all certified marriage and family therapists to accept CHAMPUS payment as payment in full. Additionally, in FR Doc. 91–28934, appearing in the **Federal Register** on December 10, 1991 (56 FR 64491), the Office of Secretary of Defense also published for public comment a notice of proposed rulemaking to revise the comprehensive CHAMPUS regulation, DoD 6010.8–R, pertaining to basic CHAMPUS benefits to better define the specific requirements for coverage and reimbursement of services of teaching physicians and physicians in training. We refer the reader to the proposed rules for a more detailed explanation of this change. We provided a 30-day comment period on each of the proposed amendments to the CHAMPUS regulation. The following summarizes the comments received following publication of each proposed rule amendment, and the actions taken based on these comments.

Discussion of Comments for

1. Screening Mammographies and PAP Smears

We received two (2) public comments and one (1) comment from the government agencies which by law we are required to consult with during the rulemaking process in response to the proposed rule regarding CHAMPUS coverage for screening mammography and papanicolaou (PAP) tests related to the proposed screening frequencies for mammography and PAP testing. A summary of the comments and our responses to them are listed below.

Comment: The coverage limitations for screening mammography set out in section II of the proposed rule are virtually identical to the Medicare requirement. However, we wish to point out that the American College of Radiology and other groups including the National Cancer Institute, American Cancer Society, American Medical Association, and other physician organizations recommend that women 65 years of age or older have mammograms on an annual basis. We

recommend adopting the position of national professional organizations over Medicare current coverage policy.

Response: We have found your argument persuasive and have amended the language in the Final Rule to follow the expert opinion and recommendation of national professional organizations. The amended language will allow annual screening for women 65 years of age or older.

Comment: The Department of Defense has proposed adopting current Medicare regulations for use in the CHAMPUS program. Under these regulations, screening mammography would be allowed only once every two years for "asymptomatic women over the age of 65." Mammography is the only screening device currently available that detects breast cancers before they become palpable. Diagnosed in the early stages, breast cancer is more amenable to less invasive medical therapies. This translates into money saved as a result of fewer and shorter hospitalizations, less radical and more inexpensive treatments, and a lower recurrence rate. This organization believes that all women over the age of 50 should undergo annual screening mammography and clinical breast examination as part of their overall preventive health-care plan.

Response: In order to remain in keeping with nationally recognized breast cancer screening frequencies which recommend that annual mammograms should be allowed for all women age 50 and over, we have added clarifying language to the final rule. The new language allows women between the ages of 50 and 64 years of age to have annual mammography screening.

Comment: Because of greater risk, annual screening mammography is important for women 65 and over. Additionally, the proposed rule which allowed coverage for screening PAP tests on an annual basis is inconsistent with the consensus of the scientific community, which suggests that following three consecutive annual PAP tests with negative findings, and in the absence of risk factors, screening may safely be decreased to every two (2) to (3) years.

Response: We have amended language in the final rule to allow coverage of screening PAP tests every two (2) years after three consecutive annual exams with normal findings and in the absence of risk factors.

2. Certified Marriage and Family Therapists

We received twelve (12) public comments from five (5) interested professional organizations and three (3) comments from the Government agencies which by law we are required to consult with during the rulemaking process in response to the proposed rule to remove the requirement for physician supervision and referral for certified marriage and family therapists and require all certified marriage and family therapists to accept CHAMPUS payment as payment in full. Three (3) of the professional organizations provided similar comments. A summary of the comments and our responses to them are listed below:

Comment: One commentor expressed great concern that the proposed rule contained no provision to address the need for either medical differential diagnosis by a physician or evaluation by a mental health professional of the level of clinical psychologist or clinical social worker. The commenter strongly urged that OCHAMPUS require that patients being seen by any of these various categories of nonphysician mental health practitioners be evaluated by physicians, including psychiatrists, to assure that appropriate medical care will be provided.

Response: We, too, share the concerns of this professional organization. However, based upon the provisions of the FY 1991 Defense Authorization Act, as cited above, we can no longer require physician referral and supervision. We have added language which states that patients with medical conditions must receive appropriate concurrent management by a physician. Additionally, claims for services by certified marriage and family therapists shall continue to be reviewed in accord with appropriate medical concepts.

Comment: One commenter questioned by OCHAMPUS would forward with this proposal, knowing assuredly that costs will inevitably increase. Even with the "payment in full" requirements for this proposed regulation, the expansion to independent practice and billing will be costly.

Response: As previously stated, this change was mandated by Congress. Program costs associated with this final amendment are not expected to be substantial, since this amendment will eliminate administrative requirements for CHAMPUS, the beneficiary, and the provider population.

Comment: The proposed rule would also permit mental health counselors and pastoral counselors to be certified and removed from physician supervision and referral requirements. There certainly is no legislative authority for the proposed expansion for others than marriage and family therapists, and we think this effort is misguided.

Response: Neither the proposed nor final rules permit mental health or pastoral counselors to practice without physician supervision and referral. Both rules keep the requirement for physician supervision and referral for mental health and pastoral counselors.

Comment: We believe it inappropriate that OCHAMPUS has gone ahead and promulgated federal criteria that would recognize independent practice and payment under CHAMPUS for practitioners that are not permitted such legal right under state law. We do not believe that OCHAMPUS should be usurping the traditional state role and responsibility to regulate individual professions. This permits unregulated practice without any quality assurance to protect patients.

Response: CHAMPUS requires all providers comply with state licensure and certification requirements, and to practice within the parameters of their scope of licensure. This means that if a state requires a certified marriage and family therapist to practice with physician involvement, OCHAMPUS would also require the provider to practice within the state standard.

Comment: We strongly request that you add mental health counselors as mental health providers not needing physician referral.

Response: The legislation which mandated the removal of physician supervision and referral only authorized removal of the requirement for one category of provider, that is, certified marriage and family therapists. By law, the physician supervision and referral requirement is still required for services rendered by pastoral counselors and mental health counselors under CHAMPUS.

Comment: We recommend correcting the national organization which offers clinical membership for marriage and family therapists to the American Association for Marriage and Family Therapy rather than the American Association of Marriage and Family Counselors which was listed in proposed paragraph (c)(3)(iv)(D)(*2*).

Response: We have revised the regulatory language to reflect the correct name of the national organization which offers clinical membership for marriage and family therapists.

Comment: The experience requirements delineated in § 199.6(c)(3)(iv)(A)(*2*) are outdated and cumbersome to administer given the many specific requirements detailed. We recommend that CHAMPUS change the experience requirement to reflect current American Association of Marriage and Family Therapy clinical membership criteria. Such a change

would be consistent not only with the current standards established by the nationally recognized credentialing organization for marriage and family therapy, but it would also establish criteria consistent with other independent CHAMPUS providers.

Response: We do not find this argument persuasive. A comparison of the requirements shows that the hours of training for marriage and family therapists are identical. However, the American Association of Marriage and Family Therapy standards do not include the requirement for psychotherapy experience even though psychotherapy is one of the major services certified marriage and family therapists provide. Since the CHAMPUS benefit does not include counseling services and certified marriage and family therapists will primarily be providing psychotherapy services to CHAMPUS beneficiaries, we feel a requirement for psychotherapy experience is critical.

Comment: We recommend that certified marriage and family therapists be removed from the "extramedical" provider category (§ 199.6(c)(3)(iv)(A)) and be listed under "Other allied health professionals" as § 199.6(c)(3)(iii)(H)(*3*). The American Association of Marriage and Family Therapy is concerned that the extramedical designation may lead beneficiaries and providers to believe that a certified marriage and family therapist still requires a physician's supervision and referral.

Response: CHAMPUS beneficiaries will be advised of the elimination of the physician supervision and referral requirement for certified marriage and family therapists through changes in the beneficiary's handbook and other public news releases. This should eliminate any confusion.

Comment: In paragraph (c)(3) to § 199.6(c)(3)(iv), the proposed rule refers to "paragraph (c)(3)(iv) of this section for more specific information regarding licensure." We assume that this paragraph refers to paragraph (c)(3)(iv)(D) of the proposed rule which discusses additional information applicable to each of the extramedical providers.

Response: Your assumption is correct.

Comment: For the sake of clarity, we believe that paragraph (c)(3) to § 199.6(c)(3)(iv) should explicitly state that "In jurisdictions that do not provide for licensure or certification, the provider must be certified by or eligible for full clinical membership in the appropriate national professional association that sets standards for the specific profession." Currently, the proposed rule could be mistakenly interpreted to mean that if providers live in a state that does not regulate marriage and family therapy, they cannot be CHAMPUS authorized providers.

Response: We have incorporated the above technical revision.

Comment: Paragraph (c)(3) to § 199.6(c)(3)(iv) also does not address the professional status of marriage and family therapists licensed or certified in California, Michigan, and New Jersey. Although marriage and family therapists in each of these jurisdictions meet CHAMPUS' educational and experience requirements, they are technically regulated as marriage, family and child counselors or marriage and family counselors. We fear that California, Michigan, and New Jersey's marriage and family therapists may be denied CHAMPUS provider status based on the semantics of a professional title, despite the fact that the credentials and scope of practice are the same in these states as they are for marriage and family therapists in other regulated jurisdictions.

Response: CHAMPUS denial of provider status is not based solely on professional title. Licensing is but one part of the marriage and family certification and review process. Authorization as a certified marriage and family therapist under CHAMPUS includes licensure, graduation from a regionally accredited school, a degree in an appropriate field, and post-graduate clinical training.

Comment: We assume and would like to clarify that CHAMPUS providers who currently qualify as marriage and family counselors will qualify as certified marriage and family therapists without having to redocument their credentials. We understand that they must agree to accept the CHAMPUS allowable charge as payment in full as stipulated by proposed paragraph 4 (now paragraph 5) of § 199.6(c)(3)(iv)(A)(*4*), (now paragraph (*5*)), but we do not understand the change to be a requirement for the resubmission of credential materials. We feel it would be an administrative burden to both OCHAMPUS and individual providers to require such redocumentation of professional qualifications. We recommend language be incorporated within the final rule to circumvent the possibility for such an administrative nightmare.

Response: The legislation required that all marriage and family therapists be certified. We have interpreted this to mean that only providers who meet the very minimum level of requirements should remain authorized under CHAMPUS. Additionally, the legislation did not provide grandfathering provisions for marriage and family counselors already authorized under CHAMPUS. We feel recertification will ensure CHAMPUS beneficiaries receive care provided by both certified and qualified providers.

Comment: Will certified marriage and family therapists who have signed a participation agreement with OCHAMPUS be able to terminate the agreement.

Response: Certified marriage and family therapists who have signed a participation agreement with OCHAMPUS may terminate the agreement upon notification to OCHAMPUS. The participation agreement will stipulate the number of days required for notification to terminate.

Comment: Will certified marriage and family therapists who have terminated their participation agreement be eligible to qualify as another category of provider under CHAMPUS? If this allowed, we foresee a number of problems in the adjudication of claims, particularly if they choose to switch to a category of provider which still requires physician supervision and referral and continue to treat the same patients.

Response: Upon application to OCHAMPUS, a provider must indicate under which category of provider he/she wishes to be authorized. Once a determination by OCHAMPUS is made that the applicant meets the qualifications of the provider category for which he/she is applying, switching from one group to another seldom occurs. Switching could be allowed if the provider has continued his/her education and such additional education qualifies him/her for a different provider category (i.e., nurse to M.D., clinical psychologist to psychiatrist, or M.D. to psychiatrist). Such upward or changed speciality movement generally does not create an adjudication problem. However, we agree that the new legislative provisions regarding certified marriage and family therapists may create adjudication problems, since the provisions of the law allow certified marriage and family therapists to practice without physician supervision and referral. Switching and movement within any other extramedical provider category where physician supervision and referral is required would result in CHAMPUS beneficiaries incurring costs for denied care. Care denied for lack of physician supervision and referral would not be subject to the hold harmless provisions of the new legislation since these provisions only apply to the certified

marriage and family therapists provider category. We feel it would be inappropriate to require retroactive physician supervision and referral for care that has already been rendered, or for continuing care. To prevent CHAMPUS beneficiaries from incurring costs Congress did not intend them to incur with this change, we have added language to the final rule which precludes marriage and family therapists from switching within the extramedical provider category. As of the effective date of termination, the certified marriage and family therapist will no longer be recognized as an authorized provider under CHAMPUS. Subsequent to termination, the certified marriage and family therapist may only be reinstated as an authorized CHAMPUS extramedical provider by entering into a new participation agreement as a certified marriage and family therapist.

3. Services of Physicians in Teaching Settings

We received one (1) public comment from a national physician organization and one (1) comment from one of the government agencies which by law we are required to consult with during the rulemaking process.

Comment: It is not uncommon for physicians to have a contract with an academic hospital to provide individual, personal services to hospital patients and for the contract to provide for the physicians to bill the patient or their insurer directly for those services. In these cases, the hospital does not bill patients/insurers and makes no payment to the physician for the services. To require hospitals to change such billing arrangements serves no useful purpose.

Response: We agree, and it was not our intent to require hospitals to change their billing arrangements. The CHAMPUS regulation has always had the requirement that physicians who are employed by or under contract to the hospital cannot bill for their services. This, however, is intended to apply only to those contracts which incorporate payment to the physicians. It does not include contracts which only provide physicians with normal privileges to admit patients and to render services in the hospital on a fee-for-service basis. In order to reflects this intent, we have modified the language in § 199.4 (c)(3)(xiii)(A)(4) as well as in § 199.6 (c)(1).

Comment: In addition to interns and residents, fellows in certain subspecialties are also "physicians in training." It is unclear from the document whether or not a fellow in a subspecialty would be considered a "physician in training."

Response: We consider fellows to be physicians in training, and we have added them to the definition in § 199.2.

Section 605(b) of the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) requires that each federal agency prepare and make available for public comment a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The Department of Defense certifies, pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final amendment will not have a significant impact on a substantial number of small businesses, organizations, or government jurisdictions. For purposes of the RFA, we consider small entities to include all hospitals and third-party payers.

We have determined that this final amendment is a routine amendment necessary to provide specific requirements for existing policies and to implement legislation which authorized expanded CHAMPUS benefits, and relieved administrative requirements for the CHAMPUS beneficiary and provider community. It is not, therefore, a "major rule" under Executive Order 12291. This final rule only provides specific requirements for existing policies; expands benefits; and ensures equitable administration of CHAMPUS requirements among mental health providers with comparable education and training while also protecting CHAMPUS beneficiaries from incurring added costs for mental health care not normally covered under the CHAMPUS program. It will not involve any significant burden on CHAMPUS beneficiaries or providers.

Although this change does not qualify as a "major rule" under Executive Order 12291, a cost analysis for costs associated with implementing screening mammogram and Pap tests was provided in the proposed rule amendment on screening mammogram and PAP tests. Additionally, an increase in program costs related to implementation of this final amendment for the issues related to certified marriage and family therapists and physicians in teaching settings are not expected to be substantial, since this amendment will eliminate administrative requirements for certified marriage and family therapists for CHAMPUS, the beneficiary and the provider population and only better defines the specific requirements for coverage of existing policies related to physicians in teaching settings.

This final rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1079, 1086.

2. Section 199.2(b) is amended by adding the new definitions, "approved teaching programs," "pastoral counselors," "physician in training," and "teaching physician," by removing the definition for "marriage and family counselor or pastoral counselor," by adding the definition "marriage and family therapist, certified," in alphabetical order, and by revising the definitions for "attending physician," and "mental health counselor" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Approved teaching programs. For purposes of CHAMPUS, an approved teaching program is a program of graduate medical education which has been duly approved in its respective specialty or subspecialty by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatry Education of the American Podiatry Association.

* * * * *

Attending physician. The physician who has the primary responsibility for the medical diagnosis and treatment of the patient. A consultant or an assistant surgeon, for example, would not be an attending physician. Under very extraordinary circumstances, because of the presence of complex, serious, and multiple, but unrelated, medical conditions, a patient may have more than one attending physician concurrently rendering medical treatment during a single period of time.

An attending physician also may be a teaching physician.

* * * * *

Marriage and family therapist, certified. An extramedical individual provider who meets the requirements outlined in § 199.6.

* * * * *

Mental health counselor. An extramedical individual provider who meets the requirements outlined in § 199.6

* * * * *

Pastoral counselor. An extramedical individual provider who meets the requirements outlined in § 199.6.

* * * * *

Physician in training. Interns, residents, and fellows participating in approved postgraduate training programs and physicians who are not in approved programs but who are authorized to practice only in a hospital or other institutional provider setting, e.g., individuals with temporary or restricted licenses, or unlicensed graduates of foreign medical schools.

* * * * *

Teaching physician. A teaching physician is any physician whose duties include providing medical training to physicians in training within a hospital or other institutional provider setting.

* * * * *

3. Section 199.4 is amended by revising paragraphs (b)(1)(i), (c)(1)(i), (c)(3)(ix)(A), by adding a new paragraph (c)(3)(xiii) after the Note, (g)(37)(vii), and (g)(37)(viii), and by revising paragraphs (g)(1), (g)(2), and (g)(39) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *

(1) * * *

(i) *Billing practices.* To be considered for benefits under § 199.4(b), covered services and supplies must be provided and billed for by a hospital or other authorized institutional provider. Such billings must be fully itemized and sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. Depending on the individual circumstances, teaching physician services may be considered an institutional benefit in accordance with § 199.4(b) or a professional benefit under § 199.4(c). See paragraph (c)(3)(xiii) of this section for the CHAMPUS requirements regarding teaching physicians. In the case of continuous care, claims shall be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor or, on a participating basis, directly by the facility on behalf of the beneficiary (refer to § 199.7).

* * * * *

(c) * * *

(1) * * *

(i) *Billing practices.* To be considered for benefits under paragraph (c) of this section, covered professional services must be performed personally by the physician or other authorized individual professional provider, who is other than a salaried or contractual staff member of a hospital or other authorized institution, and who ordinarily and customarily bills on a fee-for-service basis for professional services rendered. Such billings must be itemized fully and be sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. See paragraph (c)(3)(xiii) of this section for the requirements regarding the special circumstances for teaching physicians. For continuing professional care, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor, or directly by the physician or other authorized individual professional provider on behalf of a beneficiary (refer to § 199.7).

* * * * *

(3) * * *

(ix) * * *

(A) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists, clinical social workers, and certified marriage and family therapists; and pastoral and mental health counselors under a physician's supervision. No payment will be made for any service listed in paragraph (c)(3)(ix)(A) of this section rendered by an individual who does not meet the criteria of § 199.6 for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

* * * * *

(xiii) *Physicians in a teaching setting.*

(A) *Teaching physicians.*

(*1*) *General.* The services of teaching physicians may be reimbursed on an allowable charge basis only when the teaching physician has established an attending physician relationship between the teaching physician and the patient or when the teaching physician provides distinct, identifiable, personal services (e.g., services rendered as a consultant, assistant surgeon, etc.). Attending physician services may include both direct patient care services or direct supervision of care provided by a physician in training. In order to be considered an attending physician, the teaching physician must:

(*i*) Review the patient's history and the record of examinations and tests in the institution, and make frequent reviews of the patient's progress; and

(*ii*) Personally examine the patient; and

(*iii*) Confirm or revise the diagnosis and determine the course of treatment to be followed; and

(*iv*) Either perform the physician's services required by the patient or supervise the treatment so as to assure that appropriate services are provided by physicians in training and that the care meets a proper quality level; and

(*v*) Be present and ready to perform any service performed by an attending physician in a nonteaching setting when a major surgical procedure or a complex or dangerous medical procedure is performed; and

(*vi*) Be personally responsible for the patient's care, at least throughout the period of hospitalization.

(*2*) *Direct supervision by an attending physician of care provided by physicians in training.* Payment on the basis of allowable charges may be made for the professional services rendered to a beneficiary by his/her attending physician when the attending physician provides personal and identifiable direction to physicians in training who are participating in the care of the patient. It is not necessary that the attending physician be personally present for all services, but the attending physician must be on the provider's premises and available to provide immediate personal assistance and direction if needed.

(*3*) *Individual, personal services.* A teaching physician may be reimbursed on an allowable charge basis for any individual, identifiable service rendered to a CHAMPUS beneficiary, so long as the service is a covered service and is normally reimbursed separately, and so long as the patient records substantiate the service.

(*4*) *Who may bill.* The services of a teaching physician must be billed by the institutional provider when the physician is employed by the provider or a related entity or under a contract which provides for payment to the

physician by the provider or a related entity. Where the teaching physician has no relationship with the provider (except for standard physician privileges to admit patients) and generally treats patients on a fee-for-service basis in the private sector, the teaching physician may submit claims under his/her own provider number.

(B) *Physicians in training.* Physicians in training in an approved teaching program are considered to be "students" and may not be reimbursed directly by CHAMPUS for services rendered to a beneficiary when their services are provided as part of their employment (either salaried or contractual) by a hospital or other institutional provider. Services of physicians in training may be reimbursed on an allowable charge basis only if:

(*1*) The physician in training is fully licensed to practice medicine by the state in which the services are performed, and

(*2*) The services are rendered outside the scope and requirements of the approved training program to which the physician in training is assigned.

* * * * *

(g) * * *

(1) *Not medically or psychologically necessary.* Services and supplies that are not medically or psychologically necessary for the diagnosis or treatment of a covered illness (including mental disorder) or injury, for the diagnosis and treatment of pregnancy or well-baby care except as provided in the following paragraph.

(2) *Unnecessary diagnostic tests.* X-ray, laboratory, and pathological services and machine diagnostic tests not related to a specific illness or injury or a definitive set of symptoms except for cancer screening mammography and cancer screening papanicolaou (PAP) tests provided under the terms and conditions contained in the guidelines adopted by the Director, OCHAMPUS.

* * * * *

(37) * * *

(vii) Screening mammography for asymptomatic women 35 years of age and older when provided under the terms and conditions contained in the guidelines adopted by the Director, OCHAMPUS.

(viii) Cancer screening papanicolaou (PAP) test for women who are or have been sexually active, and women 18 years of age and older when provided under the terms and conditions contained in the guidelines adopted by the Director, OCHAMPUS.

* * * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition: For example, educational counseling, vocational counseling, nutritional counseling, and counseling for socioeconomic purposes, diabetic self-education programs, stress management, lifestyle modification, etc. Services provided by a certified marriage and family therapist, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized treatment setting and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost rate.

* * * * *

4. Section 199.6 is amended by revising the introductory text of paragraphs (c)(1), (c)(1)(iv) and (3)(iv), and by adding a new paragraph (d)(6), to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(1) *General.* Individual professional providers of care are those providers who bill for their services on a fee-for-service basis and who are not employed by an institutional provider or under a contract which provides for payment to the individual professional provider by an institutional provider. This category also includes those individuals who have formed professional corporations or associations qualifying as a domestic corporation under 26 CFR 301.7701–5. Such individual professional providers must be licensed or certified by the local licensing or certifying agency for the jurisdiction in which the care is provided; or in the absence of state licensure/certification, be a member of, or demonstrate eligibility for full clinical membership in, the appropriate national or professional certifying association that sets standards for the profession of which the provider is a member. Services provided must be in accordance with good medical practice and prevailing standards of quality of care and within recognized utilization norms.

* * * * *

(iv) *Physician referral and supervision.* Physician referral and supervision is required for the services of paramedical providers as listed in paragraph (c)(3)(iii)(H) of this section and for pastoral counselors and mental health counselors. Physician referral means that the physician must actually see the patient, perform an evaluation, and arrive at an initial diagnostic impression prior to referring the patient. Documentation is required of the physician's examination, diagnostic impression, and referral. Physician supervision means that the physician provides overall medical management of the case. The physician does not have to be physically located on the premises of the provider to whom the referral is made. Communication back to the referring physician is an indication of medical management.

* * * * *

(3) * * *

(iv) *Extramedical individual providers.* Extramedical individual providers are those who do counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field. The services of extramedical individual professionals are coverable following the CHAMPUS determined allowable charge methodology provided such services are otherwise authorized in this or other sections of the regulation.

(A) *Certified marriage and family therapists.* For the purposes of CHAMPUS, a certified marriage and family therapist is an individual who meets the following requirements:

(*1*) Recognized graduate professional education with the minimum of an earned master's degree from a regionally accredited educational institution in an appropriate behavioral science field, mental health discipline; and

(*2*) The following experience:

(*i*) Either 200 hours of approved supervision in the practice of marriage and family counseling, ordinarily to be completed in a 2- to 3-year period, of which at least 100 hours must be in individual supervision. This supervision will occur preferably with more than one supervisor and should include a continuous process of supervision with at least three cases; and

(*ii*) 1,000 hours of clinical experience in the practice of marriage and family counseling under approved supervision, involving at least 50 different cases; or

(*iii*) 150 hours of approved supervision in the practice of psychotherapy, ordinarily to be completed in a 2- to 3-year period, of which at least 50 hours must be individual supervision; plus at least 50 hours of approved individual supervision in the practice of marriage and family counseling, ordinarily to be completed within a period of not less than 1 nor more than 2 years; and

(*iv*) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases; plus at least 250 hours of

clinical practice in marriage and family counseling under approved supervision, involving at least 20 cases; and

(3) Is licensed or certified to practice as a marriage and family therapist by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information regarding licensure); and

(4) Agrees that a patients' organic medical problems must receive appropriate concurrent management by a physician.

(5) Agrees to accept the CHAMPUS determined allowable charge as payment in full, except for applicable deductibles and cost-shares, and hold CHAMPUS beneficiaries harmless for noncovered care (i.e., may not bill a beneficiary for noncovered care, and may not balance bill a beneficiary for amounts above the allowable charge). The certified marriage and family therapist must enter into a participation agreement with the Office of CHAMPUS within which the certified marriage and family therapist agrees to all provisions specified above.

(6) As of the effective date of termination, the certified marriage and family therapist will no longer be recognized as an authorized provider under CHAMPUS. Subsequent to termination, the certified marriage and family therapist may only be reinstated as an authorized CHAMPUS extramedical provider by entering into a new participation agreement as a certified marriage and family therapist.

(B) *Pastoral counselors.* For the purposes of CHAMPUS, a pastoral counselor is an individual who meets the following requirements:

(1) Recognized graduate professional education with the minimum of an earned master's degree from a regionally accredited educational institution in an appropriate behavioral science field, mental health discipline; and

(2) The following experience:

(i) Either 200 hours of approved supervision in the practice of pastoral counseling, ordinarily to be completed in a 2- to 3-year period, of which at least 100 hours must be in individual supervision. This supervision will occur preferably with more than one supervisor and should include a continuous process of supervision with at least three cases; and

(ii) 1,000 hours of clinical experience in the practice of pastoral counseling under approved supervision, involving at least 50 different cases; or

(iii) 150 hours of approved supervision in the practice of psychotherapy, ordinarily to be completed in a 2- to 3-year period, of which at least 50 hours must be individual supervision; plus at least 50 hours of approved individual supervision in the practice of pastoral counseling, ordinarily to be completed within a period of not less than 1 nor more than 2 years; and

(iv) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases; plus at least 250 hours of clinical practice in pastoral counseling under approved supervision, involving at least 20 cases; and

(3) Is licensed or certified to practice as a pastoral counselor by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information regarding licensure); and

(4) The services of a pastoral counselor meeting the above requirements are coverable following the CHAMPUS determined allowable charge methdology, under the following specified conditions:

(i) The CHAMPUS beneficiary must be referred for therapy by a physician; and

(ii) A physician is providing ongoing oversight and supervision of the therapy being provided; and

(iii) The pastoral counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

(5) Because of the similarity of the requirements for licensure, certification, experience, and education, a pastoral counselor may elect to be authorized under CHAMPUS as a certified marriage and family therapist, and as such, be subject to all previously defined criteria for the certified marriage and family therapist category, to include acceptance of the CHAMPUS determined allowable charge as payment in full, except for applicable deductibles and cost-shares (i.e., balance billing of a beneficiary above the allowable charge is prohibited; may not bill beneficiary for noncovered care). The pastoral counselor must also agree to enter into the same participation agreement as a certified marriage and family therapist with the Office of CHAMPUS within which the pastoral counselor agrees to all provisions including licensure, national association membership and conditions upon termination, outlined above for certified marriage and family therapist.

Note: No dual status will be recognized by the Office of CHAMPUS. Pastoral counselors must elect to become one of the categories of extramedical CHAMPUS provides specified above. Once authorized as either a pastoral counselor, or a certified marriage and family therapist, claims review and reimbursement will be in accordance with the criteria established for the elected provider category.

(C) *Mental health counselor.* For the purposes of CHAMPUS, a mental health counselor is an individual who meets the following requirements:

(1) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution; and

(2) Two years of post-masters experience which includes 3000 hours of clinical work and 100 hours of face-to-face supervision; and

(3) Is licensed or certified to practice as a mental health counselor by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information); and

(4) May only be reimbursed when:

(i) The CHAMPUS beneficiary is referred for therapy by a physician; and

(ii) A physician is providing ongoing oversight and supervision of the therapy being provided; and

(iii) The mental health counselor certifies on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

(D) The following additional information applies to each of the above categories of extramedical individual providers:

(1) These providers must also be licensed or certified to practice as a certified marriage and family therapist, pastoral counselor or mental health counselor by the jurisdiction where practicing. In jurisdictions that do not provide for licensure or certification, the provider must be certified by or eligible for full clinical membership in the appropriate national professional association that sets standards for the specific profession.

(2) Grace period for therapists or counselors in states where licensure/certification is optional. CHAMPUS is providing a grace period for those therapists or counselors who did not obtain optional licensure/certification in their jurisdiction, not realizing it was a CHAMPUS requirement for authorization. The exemption by state law for pastoral counselors may have misled this group into thinking licensure was not required. The same situation may have occurred with the

other therapist or counselor categories where licensure was either not mandated by the state or was provided under a more general category such as "professional counselors." This grace period pertains only to the licensure/certification requirement, applies only to therapists or counselors who are already approved as of October 29, 1990, and only in those areas where the licensure/certification is optional. Any therapist or counselor who is not licensed/certified in the state in which he/she is practicing by August 1, 1991, will be terminated under the provisions of § 199.9. This grace period does not change any of the other existing requirements which remain in effect. During this grace period, membership or proof of eligibility for full clinical membership in a recognized professional association is required for those therapists or counselors who are not licensed or certified by the state. The following organizations are recognized for therapists or counselors at the level indicated: Full clinical member of the American Association of Marriage and Family Therapy; membership at the fellow or diplomate level of the American Association of Pastoral Counselors; and membership in the National Academy of Certified Clinical Mental Health Counselors. Acceptable proof of eligibility for membership is a letter from the appropriate certifying organization. This opportunity for delayed certification/licensure is limited to the counselor or therapist category only as the language in all of the other provider categories has been consistent and unmodified from the time each of the other provider categories were added. The grace period does not apply in those states where licensure is mandatory.

(E) *Christian Science practitioners and Christian Science nurses.* CHAMPUS cost-shares the services of Christian Science practitioners and nurses. In order to bill as such, practitioners or nurses must be listed or be eligible for listing in the Christian Science Journal [1] at the time the service is provided.

* * * * *

(d) * * *

(6) *Mammography suppliers.* Mammography services may be cost-shared only if the supplier is certified by Medicare for participation as a mammography supplier, or is certified by the American College of Radiology as having met its mammography supplier standards.

* * * * *

Dated: February 4, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2921 Filed 2–18–94; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies of this journal can be obtained through the Christian Science Publishing Company, 1 Norway Street, Boston, MA 02115–3122 or the Christian Science Publishing Society, P.O. Box 11369, Des Moines, IA 50340.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–93–001]

Drawbridge Operation Regulations; Eureka Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Coast Railroad, the Coast Guard is amending the regulation for the North Coast Railroad Bridge crossing Eureka Slough, mile 0.3 at Eureka. The existing regulation requires 24 hour advance notice for openings. The amended regulation stipulates that the draw need not open for the passage of vessels, however the draw must be restored to full operation within six months of notification to take such action from the District Commander. This amendment will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective March 24, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Section, Eleventh Coast Guard District, at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Manager, and Lieutenant Robin Barber, Project Attorney.

Regulatory History

In 58 FR 7497, Feb. 8, 1993, the Coast Guard published a notice of proposed rulemaking to amend the regulation that the draw no longer need open for the passage of vessels. In addition, the Commander, Eleventh Coast Guard District also published the proposal in a Public Notice dated February 16, 1993. Six comments were received on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Presently, the North Coast Railroad Bridge is required to open on signal if at least 24 hours advance notice is given. The North Coast Railroad had requested that the draw no longer need open for vessels since there had been no requests for opening for at least eight years. Except for tests, Coast Guard bridge records show no bridge openings for at least thirty-six years.

Discussion of Comments and Changes

The Coast Guard received 6 comments on the Notice of Proposed Rulemaking. Four offered no objection. The California Department of Boating and Waterways (CalBoating) requested that the Coast Guard reevaluate the need for persons to be available to operate the bridge if boating activities increase. The Humboldt County Association of Governments (HCAOG) objected to the original proposal, as they felt that permanent closure was too final an action to take. Even though no vessel had requested an opening for many years, the HCAOG's Technical Advisory Committee (TAC) felt that the bridge should remain functional, and suggested possibly a 30 day window for notice of opening. The TAC advised that many business and properties upstream of the bridge had dikes which were in some disrepair, that fuel spills or hazardous material in the slough could be inapproachable should the bridge be closed on a permanent basis, and that bridge closure could impact future economic development along reaches of the Eureka Slough by eliminating waterfront access.

The Coast Guard found that dike and levee maintenance is presently done by dragline instead of dredges and that pollution response would likely be done from landside as well. The bridge would not prevent small motorboats from reaching sites upstream of the bridge to transport pollution containment booms or investigate spills. The regulation would prevent larger vessels from travelling upstream or mooring upstream. The CalBoating and HCAOG comments prompted the Coast Guard to develop a compromise proposal that the bridge need not open for vessels, but in the event of development requiring bridge openings, the bridge would be restored to service in six months upon order of the District Commander. On September 22, 1993, the HCAOG agreed to the compromise, and on January 6, 1994, the North Coast Railroad also agreed.

Regulatory Evaluation

This rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impacts of this change to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.155 is revised to read as follows:

§ 117.155 Eureka Slough.

The draw of the North Coast Railroad Bridge, mile 0.3 at Eureka, need not be opened for the passage of vessels. The owner or agency controlling the bridge shall restore the draw to full operation within six months of notification to take such action from the District Commander.

Dated: February 3, 1994.

R.D. Herr,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 94–3925 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Louisville 94–002]

RIN 2115–AA97

Safety Zone; Ohio River Miles 468.5 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. The regulation is needed to control vessel traffic in the regulated area to prevent potential environmental and safety hazards associated with commercial vessels transporting cargoes regulated under title 46 Code of Federal Regulations Subchapters D and O, while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on February 11, 1994 at 10 a.m. e.s.t. It will terminate at 6 p.m. e.s.t. on February 22, 1994 unless sooner terminated by the captain of the Port, Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: LT Dale L. Hutchinson, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is LT Dale L. Hutchinson, Project Officer, Marine Safety Office, Louisville, Kentucky, and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The Coast Guard deems it to be in the public's best interest to issue a regulation now as the situation presents an immediate hazard to navigation, life, and property.

Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best of conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night, during periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

Regulatory Evaluation

This rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–011 is added, to read as follows:

§ 165.T02–011 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 468.5 and mile 473.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on February 11, 1994 at 10 a.m. e.s.t. It will terminate at 6 p.m. e.s.t. on February 22, 1994 unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations under § 165.23 of this part, entry into the described zone by all downbound vessels towing cargoes regulated by Title 46 Code of Federal Regulations Subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited from one-half hour before sunset to one-half hour after sunrise.

Dated: February 11, 1994, 2 a.m. e.s.t.

W.J. Morani, Jr.,

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

[FR Doc. 94–3923 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–009]

RIN 2115–AA97

Safety Zone Regulations; Kill Van Kull, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; termination.

SUMMARY: The Coast Guard is canceling the temporary final rule (CGD01–93–152) that established a safety zone in the waters near Bergen Point West Reach, in the Kill Van Kull of New York and New Jersey, from 8 a.m. December 7, 1993, until 8 a.m. on March 1, 1994. This safety zone was established as part of the Kill Van Kull dredging project. On January 24, 1994, the U.S. Army Corps of Engineers certified this portion of the dredging project and notified the Coast Guard that dredging operations in this area were completed.

DATES: This rule is effective on January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rosanne Trabocchi, Project Manager, Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On December 7, 1993, the U.S. Coast Guard Captain of the Port, New York established a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull. This safety zone was in effect from December 7, 1993, until March 1, 1994. This safety zone placed restrictions in all waters of Kill Van Kull west of the Bayonne Bridge and east of Shooters Island.

On January 24, 1994, the U.S. Coast Guard Captain of the Port, New York, received written notification that the U.S. Army Corps of Engineers certified this portion of the dredging project and that the dredging operations in this area were completed. Therefore, this rule is no longer needed and is terminated. This rule cancels the safety zone in this area of the Kill Van Kull.

List of Subjects in 33 CFR Part 165

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

Regulations

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

PART 165—[AMENDED]

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

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

2. Temporary § 165.T01–152 is removed.

Dated: January 31, 1994.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–3924 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

RIN 2115–AA97

COTP Pittsburgh 94–002; Safety Zone; Ohio River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River back channel that separates Coraopolis, Pennsylvania from Neville Island, Pennsylvania. This regulation is needed to control vessel traffic in the regulated area during demolition of the main span of a bridge at Ohio River back channel mile 9.6. This regulation will restrict general navigation in the regulated area during demolition operations for the safety of vessel traffic.

EFFECTIVE DATES: This regulation is effective from 8 a.m. to 4 p.m. on February 14, 1994, and from 8 a.m. on February 28, 1994 to 4 p.m. on March 4, 1994.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Port Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, a bridge is being removed from a navigable waterway. Bridge removal

operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Once commenced, such operations should be completed as quickly as possible. Removal operations involving structural supports for this bridge have proceeded ahead of schedule, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels transitting the area and to minimize the time a bridge in a weakened condition remains over the waterway.

Background and Purpose

The Coraopolis Highway Bridge at mile 9.6 on the Ohio River back channel between Coraopolis, Pennsylvania and Neville Island, Pennsylvania is no longer an active highway bridge and must be removed. The bridge consists of several small spans that are located over land and two 300 foot main spans that cross over the waterway and meet atop a stone pier at the center of the channel. As part of the overall bridge removal operation, each main span will be demolished with seven simultaneously detonated explosive charges. The first main span demolition will occur at approximately 9:00 a.m. on February 14, 1994 for Span #3 on the left descending bank (Coraopolis side) of the back channel. Since this explosive demolition will pose obvious hazards to vessels in the area, vessel traffic will be prohibited from entering the Ohio River back channel from mile 9.3 to mile 9.9 during the day of the demolition. The second main span demolition for Span #4 on the right descending bank (Neville Island side) of the back channel is scheduled for approximately 9 a.m. on February 28, 1994. Steel members and debris from the demolition of Span #4 will fall into the sailing line of the channel, creating an unsafe condition for vessels attempting to transit. The contractor will immediately commence clearing operations in the channel, but it will require 4 days to restore the navigability of this section of the Ohio River back channel. Accordingly, no vessel traffic will be permitted in the safety zone extending from Ohio River back channel mile 9.3 to mile 9.9 during this second demolition and subsequent channel clearing operations from 8 a.m. on February 28, 1994 to 4 p.m. on March 4, 1994. For the remaining period that this safety zone is in effect, vessel traffic will be permitted to proceed without restriction with vessels transmitting the bridge site along the sailing line of the channel. In the event of unanticipated delays involving the demolitions discussed above, the Captain of the Port Pittsburgh will notify the marine community of schedule changes affecting the duration of vessel traffic restrictions within the safety zone via marine Safety Information Radio Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHz) and via on site broadcast advisors on Channel 13 (156.650 MHz).

Regulatory Evaluation

This rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of vessel traffic restrictions, the relatively small size of the area regulated, and the infrequency of commercial vessel transits along this section of Ohio River back channel.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–003 is added, to read as follows:

§ 165.T02–003 Safety Zone: Ohio River.

(a) *Location.* the Ohio River back channel (channel dividing Coraopolis, Pennsylvania from Neville Island, Pennsylvania) between mile 9.3 and mile 9.9 is established as a safety zone.

(b) *Effective dates.* This section is effective from 8 a.m. to 4 p.m. on February 14, 1994, and from 8 a.m. on February 28, 1994 to 4 p.m. on March 4, 1994.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. The Captain of the Port Pittsburgh will notify the marine community of times when vessel traffic will be permitted within the safety zone via Marine Safety Information Radio Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHz) and via on site broadcast advisories on Channel 13 (156.650 MHz).

Dated: February 8, 1994.

M.W. Brown,

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

[FR Doc. 94–3940 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–4839–5]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act, this document displays the Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

EFFECTIVE DATE: This final rule is effective on February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Doug Grano (telephone 919/541–3292).

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB

for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the Determining Conformity of General Federal Actions to State or Federal Implementation Plans rule which appeared in the **Federal Register** on November 30, 1993 (58 FR 63214). The affected regulations are codified at 40 CFR part(s) 51, Subpart W and 93, Subpart B. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 7, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table after the heading "Requirements for Preparation, Adoption, and Submittal of Implementation Plans", and by adding a new heading: "Determining Conformity of Federal Actions to State or Federal Implementation Plans" followed by a new entry to the table, to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Requirements for Preparation, Adoption, and Submittal of Implementation Plans	
* * * * *	
51.850–51.860	2060–0279
* * * * *	
Determining Conformity of Federal Actions to State or Federal Implementation Plans	
93.150–93.160	2060–0279

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[FR Doc. 94–3893 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

DEPARTMENT OF TRANSPORTATION

44 CFR Part 403

[Docket No. 49421]

RIN 2105–AC04

Lifting of Shipping Restrictions to Vietnam

AGENCY: Office of the Secretary, DOT, and Department of Commerce.

ACTION: Final rule.

SUMMARY: The Departments of Commerce and Transportation imposed a shipping restriction prohibiting any ships documented under the laws of the United States or any aircraft registered under the laws of the United States from transporting goods or traveling to Vietnam. On February 3, 1994, President Clinton announced the lifting of the ban on Vietnam. Pursuant to the President's announcement, the restriction in the regulation is being removed.

EFFECTIVE DATE: 5:05 p.m. EST, February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher (Kip) Tourtellot, Office of General Counsel for International Law, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2972. Anne Connaughton, Department of Commerce, Office of the Chief Counsel for Export Administration, 14th & Constitution Avenue, NW., room 3839, Washington, DC 20230. Telephone: (202) 482–5304.

SUPPLEMENTARY INFORMATION: 44 CFR part 403 currently imposes a shipping restriction prohibiting any ships documented under the laws of the United States or any aircraft registered under the laws of the United States from transporting goods or traveling to North Korea and Vietnam. On February 3, 1994, President Clinton signed a memorandum directing the Secretary of State, the Secretary of Treasury, and the Secretary of Commerce to lift the embargo against Vietnam.

Pursuant to the President's memorandum, the Departments of Commerce and Transportation are revising their regulations to reflect this change in policy, effective at the time of the President's announcement. 44 CFR part 403 is being revised to remove all references to Vietnam.

Pursuant to the foreign affairs exception in title 5 U.S.C. 553(a)(1), this rulemaking is exempt from the Administrative Procedure Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

DOT has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, DOT has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 44 CFR Part 403

Shipping restrictions.

PART 403—SHIPPING RESTRICTIONS; NORTH KOREA

In consideration of the foregoing, 44 CFR Part 403 is amended as follows:

1. The authority citation for part 403 of title 44 continues to read as follows:

Authority: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 FR 4939, 3 CFR 1953. Supp.; and sec. 4(a) Pub. L. 89–670, 80 Stat. 933; 49 U.S.C. 1653.

2. Section 403.1 is revised to read as follows:

§ 403.1 Prohibition of movement of American carriers to North Korea.

No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to North Korea.

3.Section 403.2 is revised to read as follows:

§ 403.2 Prohibition on transportation of goods destined for North Korea.

No person shall transport, in any ship documented under the laws of the United States, or in any aircraft registered under the laws of the United States, to North Korea, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if that person knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly for North Korea. No person shall discharge from any ship documented under the laws of the United States or from any aircraft registered under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States any material, commodity, or cargo of any kind which that person knows or has reason to believe is destined for North Korea.

Issued in Washington, DC.

Dated: February 16, 1994.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration, Department of Commerce.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs, Department of Transportation.

[FR Doc. 94–3995 Filed 2–17–94; 12:13 pm]

BILLING CODE 4910–62–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–266; FCC 93–551]

Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In October 1993, the Commission initiated a review of its pioneer's preference rules to assess the effect of competitive bidding authority recently enacted by Congress. In this First Report and Order the Commission concludes that any changes to its pioneer's preference rules will not be applied to the three proceedings in which Tentative Decisions have been issued. The action is intended to ensure the equitable treatment of pioneer's preference applicants in these proceedings.

EFFECTIVE DATE: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order adopted December 23, 1993, and released January 28, 1994. A summary of the Notice of Proposed Rule Making (Notice) initiating this proceeding may be found at 58 FR 57578 (October 26, 1993). This action will not change the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of First Report and Order

1. In the Notice the Commission initiated a review of the effect on its pioneer's preference rules of new authority to assign licenses by competitive bidding. Comment was solicited, *inter alia*, on whether repeal or amendment of the pioneer's preference rules should apply to the three proceedings in which Tentative Decisions, but not final Orders, have been issued that address preference requests.

2. In response to the Notice, American Personal Communications (APC) requested that the Commission address early and separately whether to apply to the 2 GHz broadband Personal Communications Services (PCS) proceeding, GEN Docket No. 90–314, any changes or repeal of the pioneer's preference rules. Most parties concurred with APC that it would be unfair to apply any modifications to the pioneer's preference rules to the 2 GHz broadband PCS proceeding and to two additional proceedings in which Tentative Decisions have been made. With regard to amending or repealing the rules with respect to the 2 GHz PCS preference applicants in particular, several parties expressed agreement with APC that it would be arbitrary for the Commission to treat the 2 GHz PCS preference applicants different from the 900 MHz PCS applicants solely because the Commission bifurcated its PCS proceeding and reached conclusions on narrowband issues first. See GEN Docket No. 90–314/ET Docket No. 92–100.

3. The Commission has issued Tentative Decisions in two proceedings in addition to 2 GHz PCS. With respect to the 28 GHz Local Multipoint Distribution Services (LMDS) proceeding, CC Docket No. 92–297, the Commission tentatively awarded a pioneer's preference to Suite 12 Group. Suite 12 argued that if the Commission decides to eliminate or alter significantly the pioneer's preference rules, equity demands that the tentative grants, including that for LMDS, be judged in accordance with the existing rules. With respect to the 1.6/2.4 GHz Mobile Satellite Service (MSS) proceeding, ET Docket No. 92–28, the Commission tentatively decided that no pioneer's preference award was merited. Motorola Satellite Communications, Inc. argued that there is no reason to change the preference rules as they apply to this proceeding and that authorization of competitive bidding does not undermine the basis of the Commission's decision to consider pioneer's preference requests in this proceeding because the MSS applications are not mutually exclusive.

4. Nextel Communications, Inc., Paging Network, Inc., and PageMart, Inc. (PageMart) maintained that under the notice and comment rule making procedures involved, the Commission may revise, modify, and even reverse its tentative conclusions based on the record developed in response to its solicitation for comments. BellSouth, PageMart, and Southwestern Bell Corporation also argued that it would be more equitable to charge pioneers in proceedings in which Tentative Decisions have been made if other licensees in the same service generally will be selected using competitive bidding.

5. The Commission concluded that it would be inequitable to apply any changes in the pioneer's preference rules to pending proceedings in which Tentative Decisions have been issued. The Commission found that notwithstanding that other licensees in the three proceedings at issue may have to bid at auction and pay for their licenses, preference applicants in these proceedings submitted their requests and publicly disclosed substantial detail of their system designs in reliance on the continued applicability of the pioneer's preference rules. The

Commission stated that had the rules been different, these applicants might have structured their requests differently; or conducted research, development, and experimentation differently; or elected not to disclose detailed information about their systems. The Commission concluded that notwithstanding its legal authority to treat 2 GHz broadband PCS pending applicants differently than the 900 MHz narrowband PCS applicants and also to apply changed rules to pending applicants in the 28 GHz LMDS and 1.6/2.4 GHz MSS proceedings, to do so would be inequitable. Accordingly, the Commission decided to render final decisions on pioneer's preference requests in these proceedings based on the existing pioneer's preference rules.

6. This action concluded the Commission's review of the pioneer's preference rules with respect to proceedings in which Tentative Decisions have been made. The Commission anticipates concluding its review of the pioneer's preference rules with respect to other proceedings in a separate Report and Order.

Ordering Clause

7. Accordingly, *It is ordered* that this First Report and Order IS ADOPTED. IT IS FURTHER ORDERED that the Request for Separate and Expedited Treatment of "Existing Pioneer Preference" Issues, filed by American Personal Communications, IS GRANTED to the extent indicated herein. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Pioneer's preference.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3820 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–237; RM–8312]

Radio Broadcasting Services; Jeffersonville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Michael S. Celenza, allots Channel 271A to Jeffersonville, New York, as the community's second local commercial FM service. See 58 FR 46152, September 1, 1993. Channel 271A can be allotted to Jeffersonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at coordinates North Latitude 41–46–51 and West Longitude 74–56–03. Canadian concurrence has been received since Jeffersonville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–237, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 271A at Jeffersonville.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3816 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–217; RM–8286]

Radio Broadcasting Services; Grand Gorge, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sound of Life, Inc., allots Channel 287A to Grand Gorge, New York, as the community's first local aural transmission service. See 58 FR 41680, August 5, 1993. Channel 287A can be allotted to Grand Gorge in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) northeast, at coordinates North Latitude 42–26–39 and West Longitude 74–24–54, to avoid a short-spacing to Station WYCY, Channel 287A, Hawley, Pennsylvania. Canadian concurrence has been received since Grand Gorge is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing application will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–217, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York is amended by adding Grand Gorge, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3817 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–213; RM–7214, RM–8351]

Radio Broadcasting Services; Menomonie and Balsam Lake, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Yvonne L. Baum-Olson (RM–8351), allots Channel 285C3 at Balsam Lake, Wisconsin. Channel 285C3 can be allotted to Balsam Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) east in order to avoid a short-spacing with Station KCLD–FM, Channel 284A, St. Cloud, Minnesota. The coordinates for Channel 285C3 at Balsam Lake are 45–26–05 and 92–16–02. The proposal filed by Jay Lellman (RM–7214), requesting the allotment of Channel 285A at Menomonie, Wisconsin, is dismissed. See 58 FR 40401, July 28, 1993. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–213, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended adding Channel 285C3 at Balsam Lake.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3818 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–184; RM–8277]

Radio Broadcasting Services; Norlina, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert Carver and Frank White, d/b/a Carver-White Broadcasting Company, allots Channel 232A to Norlina, North Carolina, as the community's first local aural transmission service. See 58 FR 37455, July 12, 1993. Channel 232A can be allotted to Norlina in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) north, at coordinates North Latitude 36–29–02 and West Longitude 78–11–23, to avoid short-spacings to Stations WRQR, Channel 232A, Farmville, NC, and WQDR, Channel 243C, Raleigh, NC. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–184, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Norlina, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3861 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–315; RM–8320]

Radio Broadcasting Services; Pella, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Station KFMG(FM), Pella, Iowa, was previously licensed on Channel 277C which was short spaced to Channel 278C1 at Huntsville. Station KFMG(FM) has recently been downgraded to Class C1 facilities. Since § 73.202(b) of the Rules has not been editorially amended to reflect the downgrading of Channel 277 at Pella, we will make the change in this proceeding. Since the change is editorial in nature, a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b) (A) and (B). With this action, this proceeding is terminated.

EFFECTIVE DATE: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–315, adopted January 24, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 277C and adding Channel 277C1 at Pella.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3584 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–238; RM–8305]

Radio Broadcasting Services; Templeton, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 263A to Templeton, California, as that community's first local FM service, in response to a petition for rule making filed by Radio Representatives, Inc. See 58 FR 45877, August 31, 1993. Coordinates used for Channel 263A at Templeton are 35–34–45 and 120–42–41. With this action, the proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications on Channel 263A at Templeton, California, will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 263A at Templeton, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–238, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Templeton, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3858 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–208; RM–8261, RM–8346, RM–8347, RM–8348, RM–8349]

Radio Broadcasting Services; Bonanza, Keno, Lakeview, Malin, Merrill, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Brett E. Miller, allots Channel 253A to Keno, Oregon, as the community's first local FM service. See 58 FR 40399, July 28, 1993. At the request of Goldrush Broadcasting, the Commission allots Channel 275A to Bonanza, Oregon, as its first local FM service. At the request of Big Tree Broadcasting, the Commission allots Channel 289A to Merrill, Oregon, as its first local FM service. At the request of The Jesuit Mission, the commission allots Channel 263A to Malin, Oregon, as its first local FM service. At the request of Contour Communications, the Commission allots Channel 237C2 to Lakeview, Oregon, as its second local FM service. See also Supplementary Information, *Infra.* With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Channel 253A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–07–30; 121–55–42. Channel 237C2 can be allotted to Lakeview without the imposition of a site restriction, at coordinates 42–11–24; 120–21–00. Channel 275A can be allotted to Bonanza without the imposition of a site restriction, at coordinates 42–12–00; 121–24–00. Channel 289A can be allotted to Merrill without the imposition of a site restriction, at coordinates 42–01–24; 121–36–00. Channel 263A can be allotted to Malin without the imposition of a site restriction, at coordinates 42–00–36, 121–24–24.

This is a synopsis of the Commission's Report and Order, MM Docket No. 93–208, adopted January 31 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 237C2 at Lakeview and is amended by adding Bonanza, Channel 275A, Keno, Channel 253A Malin, Channel 263A, and Merrill, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3862 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–30; RM–8171]

Radio Broadcasting Services; South Hill, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Old Belt Broadcasting Corporation, licensee of Station WSHV–FM, Channel 255A, South Hill, Virginia, substitutes Channel 255C3 for Channel 255A at South Hill and modifies Station WSHV–FM's authorization to specify operation on the higher powered channel. See 58 FR 13436, March 11, 1993. Channel 255C3 can be allotted to South Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) north to accommodate Old Belt's desired site. The coordinates for Channel 255C3 are North Latitude 36–48–11 and West Longitude 78–08–45. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–30, adopted February 2, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia is amended by removing Channel 255A and adding Channel 255C3 at South Hill.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3859 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 940240–4040; I.D. 020394B]

Taking and Importing of Marine Mammals

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

ACTION: Notice of closure and notice of a court-ordered prohibition.

SUMMARY: The Secretary of Commerce announces a prohibition on the taking of any dolphins under the general permit issued to the American Tunaboat Association (ATA) in the U.S. yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) beginning at 0001 hours local time, February 8, 1994, to ensure that the aggregate dolphin mortality quota for 1994 is not exceeded. The Assistant Administrator for Fisheries, NOAA, has determined that the 1994 calendar year aggregate maximum allowable quota mandated by the International Dolphin Conservation Act (IDCA) would have been reached if additional taking of dolphins under the permit was allowed to continue.

In addition, NMFS issues a notice of a January 27, 1994, court-ordered prohibition on the taking of any of the northeastern stock of offshore spotted dolphins under the ATA permit, implemented by NMFS on February 1, 1994, and expanded by NMFS on February 4, 1994, to include all stocks of offshore spotted dolphins. This prohibition is being incorporated as a new element in the marine mammal program of the United States.

DATES: The prohibition on the taking of any dolphins under the ATA permit was effective at 0001 hours local time, February 8, 1994, until 0001 hours local time, January 1, 1995. Comments on this notice must be received March 24, 1994. The prohibition on the setting on the northeastern stock of offshore spotted dolphin was effective February 1, 1994. The prohibition on the taking of all offshore spotted dolphin was effective February 4, 1994.

ADDRESSES: Comments should be sent to Ms. Anneka W. Bane, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802; telephone 310–980–4001; fax 310–980–4018.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Lecky, Chief, Protected Species Division, Southwest Region, NMFS, telephone 310–980–4015.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA), as amended in 1992 by the IDCA, established various overall quotas applicable to the U.S. tuna purse seine fleet fishing under the ATA general permit in the ETP. One of the primary purposes of the IDCA was to secure multilateral agreements between the United States and other purse seine fishing nations, establishing a 5-year moratorium on the use of purse seines to encircle marine mammals. Such a moratorium was to have taken effect beginning March 1, 1994, on which date the ATA permit would have expired. The IDCA set a maximum allowable mortality at 800 during the 14-month period beginning January 1, 1993, and ending March 1, 1994. The IDCA also required that, if there was no international agreement and the permit did not expire on March 1, 1994, the maximum allowable mortality each year could not exceed the number of dolphin mortalities that occurred under the permit during the previous year. Furthermore, total dolphin mortalities occurring under the permit each year must continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999.

The U.S. fleet killed 115 dolphins in calendar year 1993. In the process of determining what would constitute a "statistically significant" reduction in the maximum allowable mortality under the ATA permit for the calendar year 1994, NMFS determined that the U.S. fleet had killed 107 dolphins in the period from January 1, 1994, through February 6, 1994. Given that the maximum allowable mortality under the ATA permit could not exceed 114 dolphins for the period January 1 to December 31, 1994, and given that NMFS predicts that the number of dolphins killed incidentally in the U.S. tuna purse seine fishery in the ETP would have reached 114 within a matter of days, NMFS prohibited the taking of any dolphins under the ATA permit by notice to the vessels on February 7, 1994. This prohibition will remain in effect until 0001 hours local time January 1, 1995, when the next year's dolphin quota becomes available.

On January 27, 1994, the United States Court for the Northern District of California ordered NMFS to prohibit, effective immediately, the incidental taking under the ATA permit, of any northeastern offshore spotted dolphins in the ETP. The court order also requires NMFS to issue final regulations within 40 days of the date of the order, prohibiting the encirclement of any schools of dolphins in which northeastern offshore spotted dolphin are observed prior to release of the net skiff, and incorporating such prohibition into the comparability standards developed pursuant to section 1371(a)(2)(B) of the MMPA.

Pursuant to the January 27 court order, NMFS, on February 1, 1994, advised U.S. vessels fishing under the ATA general permit that all sets on the northeastern stock of offshore spotted dolphin were prohibited due to their recently determined status as depleted under the MMPA (58 FR 58285, Nov. 1, 1993). On February 4, 1994, these U.S. vessels were further advised that the take of all offshore spotted dolphin was prohibited effective immediately, under provisions of the court order requiring NMFS to minimize the take of northeastern offshore spotted dolphin. NMFS is developing regulations pursuant to the court order to implement these new elements of its marine mammal program. NMFS is also notifying affected foreign harvesting nations, as required by the court order, of the effective dates of the changes to the U.S. marine mammal program.

This action is not subject to review under E.O. 12866.

Dated: February 15, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 94–3835 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AF80

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations to reflect that agency heads must ensure that employees and applicants for employment at their agencies are notified of the recently enacted provisions in the Hatch Act Reform Amendments of 1993, which prohibit individuals from requesting, making, transmitting, accepting, or considering political recommendations in effecting personnel actions.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments may be mailed to Lorraine Lewis, General Counsel, Office of Personnel Management, room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot or Gail Goldberg, (202) 606–1700.

SUPPLEMENTARY INFORMATION: In the Hatch Act Reform Amendments of 1993, Public Law 103–94, Congress amended section 3303 of title 5, United States Code, to expand and strengthen the existing prohibition against political recommendations, i.e., recommendations based on party affiliation, in examinations and appointments. Section 3303 originally applied to examination for, or appointment to, positions in the competitive service. It prohibited examining and appointing officials from accepting or considering congressional recommendations of applicants, except for recommendations about their character or residence.

Section 3303, as amended, expands the scope of the prohibition by including employees as well as applicants, and covering the excepted service and career Senior Executive Service as well as the competitive service. Although section 3303 still prohibits agency officials from considering or accepting political recommendations, it also prohibits them from soliciting and requesting these recommendations. It further specifies that an agency official who receives a political recommendation must return the recommendation to the person who sent it with a notation that the recommendation violates section 3303.

The previous version of the law focused its prohibition on agency officials, and did not prohibit Senators and Congressmen from making recommendations. The amended version prohibits Senators, Congressmen, congressional employees, elected State and local officials, political party officials, and other individuals or organizations from making or transmitting political recommendations. It also prohibits employees and applicants from soliciting or requesting political recommendations, and prohibits agency officials from soliciting, requesting, considering or accepting such recommendations.

Where the previous law was limited to examinations and appointments, the amended version includes personnel actions as well. Section 3303, as amended, defines "personnel action" as any action described in 5 U.S.C. 2302(a)(2)(A) (i)–(ix), including appointments, promotions, disciplinary or corrective actions, details, transfers, reassignments, reinstatements, restorations, reemployments, performance evaluations, and decisions concerning pay, benefits, or awards.

The amended version permits agencies and agency officials to consider statements of recommendation under limited, narrowly drawn circumstances. Recommendations may be considered if they result from an agency request and consist solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the employee or applicant, or if they relate solely to the character and residence of an individual. Recommendations consisting of statements requested by authorized Government officials to determine whether an individual meets security or suitability standards, or furnished under a law or regulation authorizing consideration of the statement with respect to a specific category of positions also are permitted.

Where section 3303 previously did not provide for remedial action for violations, it now authorizes agencies to take adverse action to enforce its provisions. Moreover, the amended version specifies that violations of its prohibitions are prohibited personnel practices. Finally, the United States Postal Service is excluded from the amended version because it is subject to similar requirements in 39 U.S.C. 1002.

Section 3303, as amended, specifically authorizes OPM to promulgate regulations requiring agency heads to ensure that employees and applicants receive notice of its provisions. Therefore, OPM proposes to amend part 300 by adding a new Subpart H—Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations in Personnel Actions. Section 300.801 of the new Subpart H states that agency heads must ensure that applicants and employees are notified of the provisions of 5 U.S.C. 3303, as amended. Section 300.802 lists strategies for issuing notifications, but it also specifies that the list is not exclusive and gives agency officials the discretion to consider and implement other means of notification.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to internal personnel matters within the Federal Government.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 300 as follows:

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

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Secs. 300.801 through 300.802 issued under 5 U.S.C. 3303(e).

2. Subpart H is added to read as follows:

Subpart H—Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations

Sec.

300.801 Notification of employees and applicants

300.802 Methods of notification

Subpart H—Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations

§ 300.801 Notification of employees and applicants.

The head of an agency, as defined in 5 U.S.C. 3303(a)(1), shall ensure that employees of and applicants for employment with the agency are notified of the provisions of 5 U.S.C. 3303 concerning political recommendations in effecting personnel actions.

§ 300.802 Methods of notification.

Methods of notifying employees and applicants of these provisions include, but are not limited to:

(a) Posters displayed in prominent places throughout the agency;

(b) Pamphlets for distribution to employees and applicants;

(c) Notices printed on vacancy announcements or posted on computer bulletin boards; or

(d) Notices printed on application forms, examinations, or each employment form used in connection with appointment actions.

[FR Doc. 94–3764 Filed 2–18–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94–01]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–0764]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB15

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 93–90]

RIN 1550–AA59

Risk-Based Capital Standards; Concentration of Credit Risk and Risks of Nontraditional Activities

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, the Board, the FDIC and the OTS (collectively "the agencies") are issuing this proposed rule to implement the portions of section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that require the agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of concentration of credit risk and the risks of nontraditional activities. The intended effect of this proposed rule is to ensure that the agencies take adequate account of concentration of credit risk and the risks of nontraditional activities in assessing an institution's capital adequacy. The proposed rule amends the risk-based capital standards by explicitly identifying concentration of credit risk and certain risks arising from nontraditional activities, as well as an institution's ability to manage these risks, as important factors in assessing an institution's overall capital adequacy.

DATES: Written comments must be received on or before March 24, 1994.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: Written comments should be submitted to Docket No. 94–01, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board: Comments, which should refer to Docket No. R–0764, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Robert E. Feldman, Acting Executive Secretary, Attention: room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number (202) 898–3838). Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Written comments should be submitted to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 93–90. These submissions may be hand delivered at 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed or misidentified submissions will not be considered in this notice of proposed rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT:

OCC: For issues relating to concentration of credit risk and the risks of nontraditional activities, Roger Tufts, Senior Economic Advisor (202/874–5070), Office of the Chief National Bank Examiner. For legal issues, Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: For issues related to concentration of credit risk, David Wright, Supervisory Financial Analyst, (202/728–5854) and for issues related to the risks of nontraditional activities, William Treacy, Supervisory Financial Analyst, (202/452–3859), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Senior Attorney (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Daniel M. Gautsch, Examination Specialist (202/898–6912), Stephen G. Pfeifer, Examination Specialist (202/898–8904), Division of Supervision, or Fred S. Carns, Chief, Financial Markets Section, Division of Research and Statistics (202/898–3930). For legal issues, Pamela E. F. LeCren, Senior Counsel (202/898–3730) or Claude A. Rollin, Senior Counsel (202/898–3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: John F. Connolly, Senior Program Manager, Capital Policy (202) 906–6465; Robert Fishman, Senior Program Manager, Supervision Policy (202) 906–5672; Dorene Rosenthal, Senior Attorney, Regulations, Legislation and Opinions Division (202) 906–7268, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The risk-based capital standards tailor an institution's minimum capital requirement to broad categories of credit risk embodied in its assets and off-balance-sheet instruments. These standards require institutions to have total capital equal to at least 8 percent of their risk-weighted assets.[1] Institutions with high or inordinate levels of risk are expected to operate above minimum capital standards.

Section 305(b) of FDICIA, (12 U.S.C. 1828 note) requires the agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of interest rate risk, concentration of credit risk and the risks of nontraditional activities. This proposed rule addresses concentration of credit risk and the risks of nontraditional activities. Rulemakings regarding interest rate risk are being issued separately.

Advance notices of proposed rulemaking issued by the agencies with respect to section 305 requested comment through a series of questions on possible approaches to defining, measuring and incorporating these risks in the risk-based capital standards. Comments received in response to the notices are summarized in the following discussions of each risk.

Currently, each agency addresses capital adequacy through a variety of supervisory actions and considers the risks of credit concentrations and nontraditional activities in taking those varied supervisory actions.

B. Concentration of Credit Risk

Summary of Comments

The agencies received 107 responses to the advance notice of proposed rulemaking on concentration of credit risk, with some duplication among agencies. In response to the question of what factors should be used in defining concentrations, most commenters agreed that borrower, industry, geography, collateral and loan type are relevant factors to define concentration risk. There was less consensus on which of these factors is the most significant or how to apply these factors in determining concentrations. Some commenters suggested using a narrow definition for concentrations to make any rule the agencies might adopt easier to implement and less burdensome to the industry. Others suggested caution in defining concentrations given data limitations and differences in the way definitions are applied by institutions in managing risk.

Few commenters offered specific guidance as to an appropriate objective formula to assess capital for concentration risk. However, many commenters indicated that determinations should be performed on a case-by-case basis because of the high variability in type and riskiness of concentrations among institutions. Regarding the general levels of capital appropriate for concentrations, some commenters suggested requiring higher than minimum capital ratios for affected institutions, while others suggested reducing reported capital to reflect the additional risk. Other commenters indicated that concentration risk should be viewed in the context of all other factors affecting the capital adequacy of the institution, including the size of the allowance for loan losses, profitability, liquidity, and internal controls.

Some commenters were concerned that proposed regulations might be overly burdensome or provide incentives for institutions to engage in activities such as out-of-territory lending that, while adding to diversity, also add to an institution's overall risk. Some commenters were also concerned that new regulations might place the banking industry at a competitive disadvantage.

Proposed Approach

Most institutions, large and small, can identify and track large concentrations of credit risk by individual or related groups of borrowers. Many institutions are also able to identify concentrations by either industry, geography, country, loan type or other relevant factors. However, because of practical and theoretical problems, there is no generally accepted approach to identify and quantify the magnitude of risk associated with concentrations of credit. In particular, definitions and analyses of concentrations are not uniform within the industry and are based in part on the subjective judgments of each institution using its experience and knowledge of its specific borrowers, market area and products. For these reasons, it is not feasible at this time to quantify the risk related to concentrations of credit for use in a formula-based capital calculation. However, techniques do exist to identify broad classes of concentrations and to recognize significant exposures.

The volatile and unpredictable nature of the timing and magnitude of losses associated with concentrations suggests that the effective tracking and management of such risk is important to ensuring the safety and soundness of financial institutions. Moreover, the agencies believe that institutions with significant levels of concentrations of credit risk should hold capital above the regulatory minimums.

With these considerations in mind, the agencies propose to take account of concentration of credit risk in their risk-based capital guidelines or regulations by amending the standards to explicitly identify concentrations of credit risk and an institution's ability to manage

[1] As defined, risk-weighted assets include credit exposures contained in off-balance-sheet instruments.

them as important factors in assessing an institution's overall capital adequacy.

In addition to reviewing concentrations of credit risk pursuant to section 305, the agencies also may review an institution's management of concentrations of credit risk for adequacy and consistency with safety and soundness standards regarding internal controls, credit underwriting or other relevant operational and managerial areas to be promulgated pursuant to section 132 of FDICIA (12 U.S.C. 1831p–1).

In implementing regulations concerning concentration of credit risk, the agencies recognize the need to ensure that any treatment does not inadvertently create false incentives or unintended consequences that might decrease the safety and soundness of the banking and thrift industries or unnecessarily reduce the availability of credit to potential borrowers. For example, while portfolio diversification is a desirable goal, it may also increase an institution's overall risk if accomplished by lending in unfamiliar market areas to out-of-territory borrowers or by rapid expansion of new loan products for which the institution does not have adequate expertise. In addition, to the extent certain loan products, geographic areas or borrowers are perceived to fit into generic designations of concentrations, credit availability to certain groups of borrowers might be severely limited, despite the creditworthiness of individual borrowers, or the neutral or beneficial impact a single credit might have on the overall risk of the institution's portfolio.

Another consideration in evaluating credit concentrations is the "Qualified Thrift Lender" test that requires thrifts by statute to hold 65 percent of their assets in qualifying categories. This requirement necessarily "concentrates" a thrift's portfolio in certain types of assets. OTS does not intend to implement section 305 in such a way as to penalize thrift institutions for fulfilling this obligation.

C. Risks of Nontraditional Activities

Summary of Comments

The agencies received 69 comment letters on nontraditional activities, with some duplication among the agencies. Many commenters believed that it would be very difficult to create a definitive list of activities that should be considered nontraditional. Some commenters indicated that the risks of nontraditional activities depend on both the activity and the institution involved, and thus that each depository institution should be addressed on a case-by-case basis through the examination process. It was also observed that, while the activities themselves might be new or nontraditional, the risks of these activities can be segmented into components (e.g., credit risk, interest-rate risk, operating risk) that are normally associated with traditional banking activities.

Commenters also raised concerns that explicit capital requirements for nontraditional activities might affect the competitive balance between insured depository institutions and non-bank financial firms such as securities firms. In particular, concern was raised that restricting new activities could limit the ability of banks and thrifts to compete with non-bank competitors, or alternatively restrictions might unduly discourage depository institutions from undertaking otherwise prudent initiatives. Some commenters also indicated that capital standards imposed for an activity should be parallel to standards imposed on non-banks that compete in the same activity.

Some commenters expressed concern about the potential risks that arise from inexperience when a smaller or less-sophisticated institution first embarks on a new business venture, while others believed that the activities undertaken by the larger and more experienced institutions present greater risks.

Proposed Approach

New developments in technology and financial markets have introduced significant changes to the banking industry, and in some cases have led institutions to engage in activities not traditionally considered part of their business. Both in the risk-based capital regulations and guidelines adopted by the agencies in 1989, and in subsequent revisions and interpretations, the agencies have adopted measures to take adequate account of the risks of nontraditional activities under the risk-based capital standards. Thus, to the extent that section 305 constitutes a mandate to the agencies to make certain that risk-based capital standards are kept current with industry practices, the agencies have been acting consistently with section 305. Furthermore, in keeping with section 305, the agencies will continue their efforts to incorporate nontraditional activities into risk-based capital.

The agencies propose to take account of the risks posed by nontraditional activities by ensuring that, as members of the industry begin to engage in, or significantly expand their participation in, a nontraditional activity, the risks of that activity are promptly analyzed and the activity is given appropriate capital treatment. Moreover, the agencies recognize that an institution's ability to adequately manage the risks posed by nontraditional activities affects its risk exposure. Therefore, the agencies also propose to amend their risk-based capital standards to explicitly identify the management of nontraditional activities as an important factor to consider in assessing an institution's overall capital adequacy.

D. Biennial Review of Risk-Based Capital Standards

Section 305(a) of FDICIA requires the agencies to review their capital standards biennially to determine whether those standards are sufficient to facilitate prompt corrective action under section 38 of FDICIA, 12 U.S.C. 1831o. As part of any such review, the agencies expect that they will consider the asset coverage of the risk-based capital standards, including in particular the coverage of concentrations of credit and nontraditional activities. The agencies, though, do not intend to wait until the next biennial review should a nontraditional activity evolve rapidly in the industry; rather, such products will be promptly reviewed for proper treatment under risk-based capital. Similarly, as new developments in identifying and measuring concentration of credit risk emerge, potential refinements to risk-based capital standards will be considered.

In addition, to the extent appropriate, the agencies will issue examination guidelines on new developments in nontraditional activities or concentrations of credit to ensure that adequate account is taken of the risks of these activities.

E. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

F. Regulatory Flexibility Act Statement

Each agency has concluded after reviewing the proposed regulation that the regulation, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. Each agency

therefore hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

G. Executive Order 12866

The OCC and the OTS have determined that this proposed rule does not constitute a "significant regulatory action." This proposed rule will amend the risk-based capital guidelines to clarify that the agencies may impose additional capital requirements above the minimum capital leverage and risk-based capital requirements where an institution has significant concentration of credit risk or risks from nontraditional activities. This proposed rule is consistent with the current practice and policies of the agencies and is required by section 305 of FDICIA.

H. Proposed Regulation

In consideration of the foregoing, the OCC, the Board, the FDIC and the OTS hereby propose to amend title 12 of the Code of Federal Regulations by amending their respective parts as follows:

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 3 of title 12, chapter I, of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In part 3, § 3.10 is revised to read as follows:

§ 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank that has, or is expected to have, losses resulting in capital inadequacy;

(d) A bank with significant exposure due to interest rate risk, the risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

(e) A bank with significant exposure due to fiduciary or operational risk;

(f) A bank exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short-term liabilities;

(g) A bank exposed to a high volume of, or particularly severe, problem loans;

(h) A bank that is growing rapidly, either internally or through acquisitions; or

(i) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Reporting and record keeping requirements, Securities.

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338, 461, 481–486, 601, and 611, 1814 and 1823(j); 3105; 3310 and 3331–3351, 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c) (5), 78q, 78q–1, and 78w.

2. Appendix A to part 208 is amended by revising the fifth and sixth paragraphs under "*I. Overview*" to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk, although the framework for assigning assets and off-balance-sheet items to risk categories does incorporate elements of transfer risk, as well as limited instances of interest rate and market risk. The framework incorporates risks arising from traditional banking activities as well as risks arising from nontraditional activities. The risk-based ratio does not, however, incorporate other factors that can affect an institution's financial condition. These factors include overall interest-rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit risk; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risks presented by concentrations of credit and nontraditional activities.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of those factors, including, in particular, the level and severity of problem and classified assets. For this reason, the final supervisory judgement on a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of its risk-based capital ratio.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

§ 325.3 [Amended]

2. Section 325.3(a) is amended in the fourth sentence by adding "significant risks from concentrations of credit or nontraditional activities," immediately after "funding risks," and by adding "will take these other factors into account in analyzing the bank's capital adequacy and" immediately after the

third time "FDIC" appears in the section.

3. The fifth paragraph of the undesignated text of appendix A to part 325 is revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit risk; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risk presented by concentrations of credit and nontraditional activities. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgement on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

* * * * *

OFFICE OF THRIFT SUPERVISION

12 CFR CHAPTER V

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulation as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.3 is amended by revising paragraphs (b)(3) and (9) to read as follows:

§ 567.3 Individual minimum capital requirements.

* * * * *

(b) *Appropriate considerations for establishing individual minimum capital requirements.* * * *

* * * * *

(3) A savings association that has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration of credit risk, certain risks arising from nontraditional activities, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

* * * * *

(9) A savings association that has a record of operational losses that exceeds the average of other, similarly situated savings associations; has management deficiencies, including failure to adequately monitor and control financial and operating risks, especially the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

* * * * *

Dated: September 14, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: June 14, 1993.

William W. Wiles,

Secretary of the Board of Governors of the Federal Reserve System.

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of May, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

By the Office of Thrift Supervision.

Dated: June 7, 1993.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–3605 Filed 2–18–94; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 0714–01–P; 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Organization and Operation of Federal Credit Unions and Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend NCUA's Regulations in order to conform them to the new NCUA Fiscal and National Credit Union Share Insurance Fund (NCUSIF) Insurance year. These changes to the fiscal and insurance years were approved by the NCUA Board on November 15, 1993 and are effective January 1, 1995.

DATES: Comments must be postmarked by April 25, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Controller, Office of the Controller, at the above address or telephone: (703) 518–6570 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION: The NCUA Board on November 15, 1993, voted to change NCUA's fiscal year and NCUSIF's insurance year to coincide with the calendar year effective January 1, 1995. This change requires the NCUA to amend its regulations dealing with operating fees and insurance assessments to conform to the calendar year.

Currently under § 701.6 of NCUA's Rules and Regulations, an operating fee is assessed on federal credit unions based on a fiscal year of October 1 to September 30. This section must be changed to reflect the change to the calendar year. Further, the operating fee assessed as a result of a conversion or merger will now be based on the calendar year and those sections must be changed to delete references to the former fiscal year and reflect the new calendar year. 12 CFR 701.6(b) (2) and (3). The change will result in a transition quarter that begins on October 1, 1994 and ends on December 31, 1994 for which no operating fee would be assessed.

Currently under § 741.11 of NCUA's Rules and Regulations, an insurance premium and one percent deposit are assessed for all federally insured credit unions based on an insurance year of July 1 through June 30. 12 CFR 741.11(b)(1). This definition must be amended to reflect the change to the calendar year. Further, the due dates for the deposits and premiums must be changed from January 31 to a date as set by the NCUA Board in order to coincide with the calendar year. 12 CFR 741.11 (c), (d) and (g).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). Preliminary analysis concerning the effect the proposed rule will have on small credit unions indicates that no significant economic impact will result if the rule is promulgated in final form by the NCUA Board. The proposed rule simply repeats the preexisting requirements of federal credit unions to pay operating fees and federally insured credit unions

to pay one percent deposit and insurance premiums with the only modification being the dates when these fees and premiums must be paid. Therefore, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments have no effect on paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation dealing with insurance premiums applies to all federally insured credit unions. However, it makes no substantive changes except to change the dates for certain filings and assessments of fees. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government because federally insured credit unions are currently required to pay an insurance premium.

List of Subjects

12 CFR Part 701

Civil rights, Conflicts of interest, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, Surety bonds.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 15, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.6 is amended by revising paragraphs (a), (b) (2) and (3) to read as follows:

§ 701.6 Fees paid by Federal Credit Unions.

(a) *Basis for assessment.* Each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (January 1 to December 31) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year or as otherwise determined pursuant to paragraph (b) of this section.

(b) * * *

(1) * * *

(2) *Conversions.* A state chartered credit union that converts to Federal charter will pay an operating fee in the year following the conversion. Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the conversion takes place.

(3) *Mergers.* A continuing Federal credit union that has merged with another credit union will pay an operating fee in the following year based on the combined total assets of the merged credit union and the continuing Federal credit union as of December 31. For purposes of this requirement, a purchase and assumption transaction wherein the continuing Federal credit union purchases all or essentially all of the assets of another credit union shall be deemed a merger. Federal credit unions merging with other Federal or state credit unions will not receive a refund of the operating fee paid to the Administration in the year in which the merger took place.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.11 is also authorized by 31 U.S.C. 3717.

4. Section 741.11 is amended by revising paragraphs (b)(1), (c), (d) and (g) to read as follows:

§ 741.11 Insurance premium and one per cent deposit.

* * * * *

(b) * * *

Insurance year means the period from January 1 through December 31.

* * * * *

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each insurance year a deposit in an amount equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit shall be adjusted annually on a date to be determined by the NCUA Board.

(d) *Premium.* Each insured credit union shall pay to the NCUSIF, on a date to be determined by the NCUA Board, an insurance premium for that insurance year in an amount equaling one twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

* * * * *

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on a date to be determined by the NCUA Board in the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

* * * * *

[FR Doc. 94–3933 Filed 2–18–94; 8:45 am]

BILLING CODE 7535–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108 and 120

Development Companies and Business Loans; Passive Business

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would allow certain passive businesses to be eligible for SBA financial assistance under both the SBA's development company and 7(a) business loan programs if the real estate (or personal property) it holds would be used by an eligible small business concern in which any owner of at least 20 percent of the passive business owns at least 20 percent of the small business concern. The proposed rule would eliminate many requirements and restrictions which presently limit the use of real estate holding entities in SBA's business loan and development company programs.

DATES: Comments must be submitted on or before April 25, 1994.

ADDRESSES: Comments may be mailed to John R. Cox, Acting Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, 202/205–6490.

SUPPLEMENTARY INFORMATION: Section 120.101–2(e) of SBA's regulations (13 CFR 120.101–2(e) (1993)) provides that a real estate holding entity (known as an alter ego) may be eligible as an applicant for financial assistance under the SBA business loan program if it is organized and operated for profit as a corporation, partnership or individual proprietorship. It must be in the business of owning and leasing property to an operating small business concern for the latter's exclusive use. There must be an identity of ownership in the borrower and the small business concern. The regulation also contains a complicated description of certain familial relationships which qualify as identical for purposes of ownership interest. The regulation also requires as collateral for the assistance that: (1) The applicant pledge the lease between it and the operating concern, (2) the operating concern must be a guarantor or coborrower on the loan, and (3) the owners of the operating concern must guarantee the loan.

Section 108.8(d) of the regulations governing SBA's development company program (13 CFR 108.8(d) (1993)) allows a real estate holding entity (known as an alter ego) to be eligible for a loan made pursuant to that program if, among other requirements, it is a business organized for profit, the ownership interests in the holding entity and the small business concern to which it leases the property are identical except for the complicated exceptions with respect to selected family owners, the collateral for the assistance includes an assignment of the lease between the holding entity and the small business, and the small business guarantees the loan or is a co-borrower. In addition, there is a provision which covers the possibility that the operating concern could sublease part of the property to a third party.

These detailed requirements and restrictions are confusing and burdensome for the public. Numerous interpretations and guidelines have failed to eliminate inconsistent treatment by SBA of applicant holding entities from program to program. The public has become frustrated by some of the subtle distinctions between the two programs with respect to these real estate holding entities, and the SBA servicing of loans which have been made to them has added to the general confusion.

SBA recognizes that valid business reasons (such as estate planning or tax purposes) may exist for an operating small business concern to spin off into an affiliate the real estate on which the operating concern operates its business, and SBA wants to provide assistance in such situations where possible. The Agency, at the same time, wants to ensure that it will not finance purely passive investments in real or personal property. The holding entity regulations were initially promulgated fifteen years ago to accomplish this intent, but the changes, revisions and amendments to the regulations have caused confusion, inconsistency and frustration by the public and SBA personnel.

Therefore, the Agency is proposing to simplify the present regulations by eliminating many of the above referenced limitations and restrictions. This proposed regulation, if enacted in final form, would eliminate the inconsistency which is inherent under the present rules, and it would greatly assist potential small business applicants which seek SBA financial assistance through their real estate holding affiliates. The Agency will no longer refer to the real estate holding entity as an alter ego, but will consider it to be the passive business.

It must be reiterated that SBA does not intend under this proposal to finance a passive business or investment property which requires no active involvement by the business owners. A passive business would be an acceptable and eligible applicant under these proposed regulations because it is a holding entity affiliated with an otherwise eligible small business concern.

Under this proposal, a passive business applicant would be eligible if the real estate (or personal property) it holds would be used by an eligible small business concern and at least one 20 percent owner of the passive business also owns at least 20 percent of the small business concern. Under this proposal, a trust could qualify as an eligible passive business if the grantor or trustee of the trust owns at least 20 percent of the small business concern, or if a beneficiary of at least 20 percent of the trust assets has at least a 20 percent ownership in the small business concern. This ownership requirement would identify the passive business with the operating business for SBA regulatory purposes. The proposed regulation does not require that there be more than one 20 percent owner of both entities or that the principals control either entity. As long as one person is a 20 percent owner in both entities that would be sufficient to make an entity the eligibility passive business affiliate of the small business concern since that person would be considered to be a principal in both entities. Alternatively, if members of the same family (father, mother, son, daughter, wife, husband, brother or sister) meet the 20 percent ownership requirement in both the passive business and the small business concern they would be considered to be the same principal for SBA purposes.

Both the passive business and the small business concern would be required to be obligated on the vote evidencing the assistance, and any person who has a 20 percent ownership interest in both entities would provide a personal guarantee to support the SBA financial assistance. Proprietors, partners, officers, directors and owners of 20 percent or more in either entity would also be subject to the collateral provisions set forth in § 120.103–2(c) of the SBA regulations.

Under this proposed rule, SBA would eliminate the present requirement in the business loan program that the passive business must only be a proprietorship, partnership or corporation in order to accommodate SBA's policy that a trust can be an eligible passive business if it otherwise comports with the requirements of this regulation. It would eliminate the present convoluted and complicated provisions which detail the listed family members who can hold ownership interests in the passive business and small business concern in varying percentages of ownership. It would also eliminate the present requirement which mandates that non-family owners have complete identity of interests. The purpose of these proposed changes is to simplify the rules and to ensure that SBA financial assistance remains available for a legitimate passive business affiliate of an eligible small business concern when the affiliate holds real estate or personal property leased to the small business concern and utilized for business purposes. SBA has proceeded in its business assistance programs on the assumption that a principal owns at least 20 percent of a business and, under § 120.103–2(c) of its regulations, SBA generally requires a proprietor, partner, officer, director, or 20 percent owner to execute a personal guarantee as collateral for the assistance. This requirement would apply to such enumerated persons in either entity. Prudent standards of banking practice will continue to dictate the rules in providing SBA financial assistance to eligible passive businesses. In addition,

SBA would evaluate on a case by case basis whether the small business concern must make use of all the real property subject to the lease immediately after execution or whether it could sublease part of the property for an interim period of time. SBA does not want to interpose itself into the details of the arrangements, so long as the Agency is assured, pursuant to the statutory provisions, that the financial assistance will be repaid.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated in final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans and No. 59.013, State and Local Development Loans)

List of Subjects

13 CFR Part 108

Loan programs—business, Small businesses.

13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby proposes to amend parts 108 and 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for part 108 would continue to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.8 would be amended by revising paragraph (d) to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(d) *Eligibility of passive business.* A concern is ineligible if it is a passive business primarily engaged in investing in property, *Provided, however,* That a passive business is eligible if it owns and leases or it proposes to own and lease real or personal property to an otherwise eligible small business concern so long as:

(1) The passive business and the small business concern share a common principal, as defined in this paragraph (d);

(2) The passive business engages in no activity other than acquiring or owning property which it leases to the small business concern for its exclusive use within a reasonable period of time, and the proceeds of any section 502 or 503 assistance are used only for this purpose;

(3) The passive business and the small business concern are both obligated on the note evidencing the SBA assistance;

(4) The collateral for the financial assistance includes a lien on the property and an assignment of the lease (including options exercisable by the small business concern) between the passive business and the small business concern, and such lease has a remaining term at least equal to the term of the section 502 or 503 loan;

(5) Each person who is a principal as defined in this paragraph (d) must provide a personal guarantee, and § 120.103–2(c) of this title (relating to collateral) is applicable to all persons enumerated therein who are associated with either entity; and

(6) For purposes of this paragraph (d), a person is a "principal" if he or she is the legal or beneficial owner of at least 20 percent of both the passive business and the small business concern to which the passive business intends to lease real or personal property. If the passive business exists in the form of a trust, the trust's grantor or trustee would be a "principal" if he or she owns at least 20 percent of the small business concern, and a beneficiary of at least 20 percent of the trust's assets would be a "principal" if he or she owns at least 20 percent of the small business concern. If members of the same family (father, mother, son, daughter, wife, husband, brother or sister) meet the 20 percent ownership requirement in both the passive business and the small business concern they would be considered to be the same "principal" for SBA purposes.

* * * * *

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.101–2 would be amended by revising the introductory text and paragraph (e) to read as follows:

§ 120.101–2 Type of business.

Most small concerns are eligible for Financial Assistance. The following types of businesses, however, are not eligible for SBA assistance except where otherwise stated in this section.

* * * * *

(e) *Lending or investment; eligibility of passive business.* Concerns which are primarily engaged in the business of lending or investing. However, an applicant business passively engaged in investing in property is eligible for SBA financing or refinancing if it owns and leases or it proposes to own and lease real or personal property to an otherwise eligible small business concern, so long as:

(1) The passive business and the small business concern share a common principal, as defined in this paragraph (e);

(2) The passive business engages in no activity other than acquiring or owning property which it leases to the small business concern for its exclusive use within a reasonable period of time, and the proceeds of any SBA guaranteed loan shall be used only for this purpose or for working capital by the small business concern;

(3) The passive business and the small business concern are both obligated on the note evidencing the SBA guaranteed loan;

(4) The collateral for the financial assistance includes a lien on the property and an assignment of the lease (including options exercisable by the small business concern) between the passive business and the small business concern, and such lease has a remaining term at least equal to the term of the SBA guaranteed loan;

(5) Each person who is a principal as defined in this paragraph (e) must provide a personal guarantee, and § 120.103–2(c) (relating to collateral) is applicable to all persons enumerated

therein who are associated with either entity; and

(6) For purposes of this paragraph (e), a person is a "principal" if he or she is the legal or beneficial owner of at least 20 percent of both the passive business and the small business concern to which the passive business intends to lease real or personal property. If the passive business exists in the form of a trust, the trust's grantor or trustee would be a "principal" if he or she owns at least 20 percent of the small business concern, and a beneficiary of at least 20 percent of the trust's assets would be a "principal" if he or she also owns at least 20 percent of the small business concern. If members of the same family (father, mother, son, daughter, wife, husband, brother or sister) meet the 20 percent ownership requirement in both the passive business and the small business concern they would be considered to be the same "principal" for SBA purposes.

* * * * *

Dated: November 16, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–3670 Filed 2–18–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–93–110]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change regulations governing the operation of the State Road 402, Max Brewer bridge, at mile 878.9, at Titusville, Florida, by permitting the draw to remain closed during different periods. This proposal is being made to synchronize the existing closed periods with the periods of peak vehicular traffic. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking.

Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–93–110] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walt Paskowsky at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial.

If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT J.M. Losego, Project Counsel.

Background and Purpose

This bridge presently opens on signal except that from 6:15 a.m. to 7:15 a.m. and 3 p.m. to 4:30 p.m., Monday through Friday, except federal holidays, the draw need not open. NASA, whose employees commute to and from the John F. Kennedy Space Center across the bridge, requested a 30 minute increase in the morning closed period extending from 6 a.m. to 7:30 a.m. This change was requested to ensure continuous uninterrupted flow of highway traffic during the heaviest daily commuter traffic periods. The bridgeowner, Brevard County, concurred with this proposal.

Discussion of Proposed Amendment

A Coast Guard analysis of highway traffic showed the bridge is used almost exclusively by commuter traffic (90% flow in one direction) for about an hour each morning and afternoon. The drawbridge is opened frequently due to its substandard clearance (9 feet closed), especially during the fall and spring vessel migration periods.

Holding conditions for vessels near the bridge are considered adequate to allow vessels to safely wait for a bridge opening during the commuter closed periods. A review of the traffic data indicates there has been a change in the timing and density of commuter traffic which requires an earlier morning closure period. In addition, the data shows there has been a reduction in the volume of afternoon commuter traffic which would allow a change in the closure periods without requiring an increase in the length of time vessels are required to wait for an opening.

Regulatory Evaluation

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the proposed rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the proposed rule exempts tugs with tows, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (k) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(k) State Road 402, Max Brewer bridge, mile 878.9, at Titusville. The draw shall open on signal; except that, from 6 a.m. to 7:15 a.m. and 3:15 p.m. to 4:30 p.m. Monday through Friday, except federal holidays, the draw need not open.

* * * * *

Dated: January 26, 1994.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–3927 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–4837–1]

National Emission Standards for Hazardous Air Pollutants; Permits for Early Reductions Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule for Early Reductions Permits published in the **Federal Register** of December 29, 1993 (58 FR 68804). Several persons who intend to submit comments concerning the proposed rule for Early Reductions Permits requested additional time to prepare their responses, beyond the 30 days originally provided. In consideration of these requests, EPA is reopening the comment period in order to give all interested persons the opportunity to comment fully.

DATES: *Comments.* The comment period is reopened. Comments must be received on or before March 3, 1994.

ADDRESSES: *Docket.* Docket No. A–93–08, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION: Comments on the proposed rule were to be received on or before January 28, 1994 (a 30 day comment period). The comment period is reopened until March 3, 1994. This extension of the comment period is consistent with Executive Order 12866, which states that "each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." Reopening the comment period until March 3, 1994 will provide the public slightly more than the suggested 60 days.

Dated: February 4, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–3894 Filed 02–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BPD–732–P]

RIN 0938–AF76

Medicare Program; Health Maintenance Organization and Competitive Medical Plan National Coverage Decisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would affect health maintenance organizations (HMOs) and competitive medical plans (CMPs) that contract with HCFA to furnish health care services to Medicare beneficiaries and to receive payment on a risk basis. These HMOs and CMPs would no longer be required to absorb the expense of furnishing a new or additional benefit if all the following conditions apply:

The benefit was established by a national coverage decision (NCD);

The cost of furnishing the service would be significant and was not taken into account in calculating the per capita rate to be paid by HCFA during the current calendar year;

The NCD was not published until on or after the date of the announcement of the current calendar year's per capita rate of payment.

This rule is necessary to implement section 4204(c) of the Omnibus Budget Reconciliation Act of 1990, commonly referred to as "OBRA '90," which is effective for calendar years beginning on or after January 1, 1991.

The purpose of the amendment is to encourage HMOs and CMPs to contract on a risk basis by ensuring that the actual scope of services covered under the contract would not change significantly during the year.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 25, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health

and Human Services, Attention: BPD–732–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–732–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Joanne Sinsheimer, (410) 966–4620.

SUPPLEMENTARY INFORMATION:

I. Background

A. National Coverage Decisions

The intention of the Congress, at the time the Medicare law was enacted in 1965, was that Medicare would provide health insurance to protect the elderly (and later, the disabled) from the substantial costs of acute health care services, principally hospital care. The law was designed generally to cover services ordinarily furnished by hospitals, skilled nursing facilities (SNFs), and physicians licensed to practice medicine. The Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision by those administering the program. Thus, it vested in the Secretary the authority to make those decisions (section 1862(a)(1)(A) of the Act). Section 1862(a)(1)(A) of the Act authorizes Medicare payment for items or services that are determined to be reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. While the Congress provided for the coverage of services such as inpatient hospital care and physicians' services, coverage for these services is prohibited unless they are "reasonable" and "necessary."

We have interpreted section 1862(a)(1)(A) of the Act to exclude from Medicare coverage those medical and health care services that are not demonstrated to be safe and effective. Medicare contractors (that is, fiscal intermediaries, carriers, and Utilization and Quality Control Peer Review Organizations (PROs)) are charged with the responsibility of ensuring that payments are made only for services that are covered under Medicare Part A or Part B. Therefore, in adjudicating a Medicare claim or conducting utilization and quality review, they must determine whether a service that has been furnished to a Medicare beneficiary is included in the scope of Medicare benefits and, if it is, whether it is "reasonable" and "necessary" for the particular medical condition of this particular patient.

The term "national coverage decision" (NCD) refers to a coverage decision that we make and issue as national policy under section 1862(a)(1)(A) of the Act. We have issued over 200 NCDs on specific services. We publish NCDs in the Medicare Coverage Issues Manual (HCFA-Pub. 6), and in other HCFA program manuals or as notices or HCFA Rulings in the **Federal Register.** Under section 1871(a)(2) of the Act, NCDs are exempt from the general requirement that no rule, requirement, or other statement of policy that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive benefits under title XVIII will take effect unless it is promulgated by the Secretary through regulations.

B. HMOs and CMPs

HMOs and CMPs enter into contracts with HCFA to furnish Medicare covered services to Medicare beneficiaries who enroll in them in accordance with section 1876 of the Act. The contracts provide for payment to the HMOs and CMPs on either a risk or a reasonable cost basis. The provisions in this proposed rule apply only to HMOs and CMPs that contract on a risk basis.

Risk HMOs and CMPs are paid a predetermined, per capita rate for each enrolled Medicare beneficiary. Under section 1876(a)(1)(A) of the Act, we annually determine and announce by September 7 for the following calendar year, a per capita rate of payment for each class of Medicare beneficiaries enrolled in a risk HMO or CMP. The per capita rate is set at 95 percent of the adjusted average per capita cost (AAPCC). (The AAPCC is an actuarial estimate that we make in advance of an HMO's or CMP's contract period and that represents an estimate of what the average per capita cost would be to the Medicare program for each class of Medicare enrollees if the enrollees had received covered services in the same geographic area or a similar area, from sources other than the HMO or CMP.)

We define the classes on the basis of county of residence (State of residence, for end-stage renal disease beneficiaries), age, sex, disability, institutional status, and welfare status. Within each class, we establish two rates, one for beneficiaries entitled to Medicare Part A and Part B, and one for those entitled only to Medicare Part B.

C. Statutory Provisions

Under section 1876(c)(2)(A) of the Act, an HMO or CMP is required to furnish to Medicare enrollees the Medicare covered services to which they are entitled, but only to the extent that those services are available to beneficiaries who reside in the geographic area served by the HMO or CMP but are not enrolled in the organization. The only exceptions to this general rule are: (1) That risk contracting HMOs and CMPs are not required to provide hospice care services, or to assume financial responsibility for inpatient care furnished to an enrollee who, on the effective date of enrollment, was an inpatient in a hospital paid under the prospective payment system; and (2) risk contractors are not required to enroll Medicare beneficiaries who have end-stage renal disease (whether aged, disabled, or entitled to Medicare solely because of having end-stage renal disease).

In summary, before enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), under sections 1876(c)(2)(A), 1876(a)(6), 1876(a)(1)(D), and 1876(a)(3) of the Act, respectively—

- Risk HMOs and CMPs were responsible for furnishing NCD services of significant cost even though that cost had not been taken into account in determining the per capita rate that HCFA paid the HMO or CMP during that year;
- Payment for services furnished to Medicare enrollees of a risk HMO or CMP could be made only to the HMO or CMP, and only in the form of advance monthly per capita payments; and
- Those per capita payments were made instead of the amounts that would have been made on a fee-for-service basis.

II. Changes Made by OBRA '90

Section 4204(c)(1) of OBRA '90 added section 1876(c)(2)(B) of the Act, applicable to contract periods beginning on or after January 1, 1991. Under section 1876(c)(2)(B), if HCFA projects that the cost of furnishing the NCD

service will be significant, and the cost of the service was not taken into account in calculating the most recently announced per capita payment rates, then, unless otherwise required by law—

• The risk HMO or CMP is not required to furnish the new or expanded benefit established by the NCD until the first contract year that begins after the next payment rate announcement (that takes into account the cost of the NCD service); and

• If the risk HMO or CMP does furnish the new or expanded benefit during the current contract period, the prohibition of section 1876(a)(3) does not apply, and HCFA's intermediary or carrier would pay the risk HMO or CMP for the NCD service (under the usual Medicare payment rules and methods) in addition to the monthly capitation payment. (Usual Medicare payment methods require that payment for services furnished by a participating provider such as a hospital be made only to the provider.)

Section 4204(c) of OBRA '90 also amended section 1876(a)(6) of the Act (the general prohibition against paying any entity other than the risk HMO or CMP for services furnished to a Medicare enrollee) by providing an exception for NCD services in section 1876(c)(2)(B)(ii) of the Act. Under that exception, if a Medicare enrollee chooses to obtain an NCD service from a source other than the risk HMO or CMP, HCFA may make payment under the usual Medicare payment methods and rules to the beneficiary, or to the qualified provider, physician, or supplier, as appropriate.

III. Provisions of the Proposed Rule

To implement the provisions of section 4204(c) of OBRA '90, we propose to make the following revisions to 42 CFR part 417 ("Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans"). We also plan to make various technical changes.

A. Definitions

In § 417.401 we would add definitions of "National coverage decision" and "significant cost."

National coverage decision (NCD) means—a statement of national policy regarding the Medicare coverage status of a service that we make under section 1862(a)(1) of the Act and publish in the **Federal Register** as a notice or HCFA Ruling, issue as a manual instruction, or announce by other formal notice. The term does not include coverage changes mandated by statute.

Significant cost, as it relates to a particular NCD, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1991 and 1992, is $100,000; and

(ii) For 1993 and subsequent calendar years, is the preceding year's dollar threshold, adjusted to reflect the increase or decrease in the United States per capita cost (USPCC) for the preceding year.

(2) The cost of all of the services furnished nationwide as a result of the particular NCD represents at least 0.1 percent of the USPCC multiplied by the total number of Medicare beneficiaries nationwide for the applicable calendar year.

(We would actuarially determine the significant cost of an NCD and include that information in the formal notice of the decison). In section IV, below, we discuss our reasoning for proposing these thresholds for significant cost.

B. Range of Services Furnished by HMOs and CMPs

In § 417.414 Qualifying condition: Range of services, we would redesignate paragraph (b)(4), concerning selection of practitioners, as paragraph (b)(3) of § 417.416 (which deals with furnishing of services and is thus a more appropriate location than "Range of services"), and add to § 417.414 a new paragraph (b)(4) to specify that a risk HMO or CMP is not required to furnish an NCD service until the contract year beginning after the next per capita rate announcement if all of the following conditions apply:

• HCFA has determined and announced that the NCD service meets the definition of "significant cost."

• The cost of that service was not included in the determination of the per capita rate of payment that HCFA pays the HMO or CMP.

• The NCD that established coverage of the service was issued on or after the date of the announcement of the per capita rate of payment for that contract year.

Starting with the beginning of the next contract year, the HMO or CMP would be responsible for furnishing or paying for the NCD service.

We considered that these proposed revisions could have an adverse effect on the ability of the risk HMO or CMP to manage the enrollee's health care, but believe the changes are required by the wording of the statute.

C. Deductible and Coinsurance Amounts

We would amend § 417.452, which deals with Medicare enrollees' liability for Medicare deductible and coinsurance amounts—

• To clarify that the HMO or CMP may reduce these charges under the "additional benefits" provision in § 417.440(b)(4)(i); and

• To provide exemption from deductibles for "significant cost" NCD services that the risk HMO or CMP is not required to furnish, regardless of whether the service is furnished by the HMO or CMP or obtained by the enrollee from another source.

We considered also waiving coinsurance for these services because we believe that beneficiaries enroll in an HMO or CMP, in part, to protect themselves from significant unanticipated costs. (In HMOs and CMPs, the actuarial equivalent of deductible and coinsurance amounts is spread among all enrollees and enrollees know in advance what the charge will be for particular services.) We believe that imposition of such costs for enrollees who need a significant cost NCD service could discourage beneficiaries from enrolling or remaining enrolled in an HMO or CMP.

We would prefer to encourage beneficiaries to enroll and remain enrolled in Medicare risk contracting HMOs and CMPs, by relieving beneficiaries' liability for coinsurance amount. However, we believe the law requires that beneficiaries be liable for coinsurance amounts because, unlike deductibles, these amounts are attributable to particular services received. We are especially interested in comments on this issue, including other legal interpretations of beneficiary liability for coinsurance amounts.

D. Payment for NCD Services

We would remove current § 417.586 because it provides an option (electing to have Medicare intermediaries process and pay hospital and nursing facility bills for services furnished to Medicare enrollees of a risk HMO or CMP) that was repealed by section 4012(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

We would add a new § 417.586 (Special rules: Payment for significant cost national coverage decision (NCD) services). Under this new section, for significant cost NCD services whose cost was not included in calculating the per capita payment rate for a risk HMO or CMP, payment would be made under the usual Medicare payment rules and methods. Usual Medicare payment

methods require that payments for services furnished by a participating provider, for example, a hospital, be made only to that provider. The carrier may make payment for Part B services of physicians and other suppliers such as other practitioners and entities that are not providers, under usual carrier procedures, directly to any of the following:

- The beneficiary who obtained the service from a qualified source other than the risk HMO or CMP.
- The qualified provider, physician, or supplier that furnished the service.
- The risk HMO or CMP that chose to furnish the service even though not required to do so.

We would specify, in § 417.586(c), that HCFA does not make an additional payment for a significant cost NCD service furnished by the HMO or CMP (even though it is excepted during the current calendar year) if the HMO or CMP furnishes the NCD service as an optional or required supplemental service under § 417.440(b)(2), or as an additional benefit under § 417.592. The reason for the exclusion is that the costs of both of these types of services are already provided for under the contract, and the statute specifies that the NCD "shall not apply" to the contract. Optional or required supplemental services are paid for by the enrollees. The HMO or CMP may provide "additional benefits" as one way to compensate the beneficiary if the per capita payments it receives from HCFA are higher than the HMO's or CMP's adjusted community rate (ACR), which is what the HMO or CMP would charge its non-Medicare enrollees for a package of benefits limited to Medicare-covered services. We note that, if the NCD services are already provided under the contract as additional benefits or supplemental services, the beneficiary would not be required to pay any additional Medicare coinsurance due to the NCD.

E. Other Clarifying Changes

1. Throughout the affected sections, we would use the more precise term "HMO" or "CMP" in preference to the generic term "organization".

2. In § 417.440, we would amend paragraph (a) to update a cross-reference, and paragraph (b)(1) to break down a too-long sentence.

IV. Significant Cost

For 1991 and 1992, we propose that the cost of an NCD service be considered "significant" if the average cost of furnishing that service exceeds $100,000 or represents a change of at least 0.1 percent in the United States per capita cost (USPCC) determined for the nation as a whole. The USPCC is defined in § 417.582 as the average per capita cost, including intermediary or carrier administrative costs, incurred by Medicare, as determined on an accrual basis, for services furnished to Medicare beneficiaries nationwide during the most recent period for which HCFA has complete data. AAPCCs derived from the USPCC are the basis for Medicare payments to HMOs and CMPs. We also propose that beginning with calendar year 1993 the preceding year's threshold be adjusted to reflect any increase or decrease in the USPCC. The purpose of the annual adjustment is to keep pace with inflation. The average annual increase or decrease in the USPCC represents the change in the average per capita cost of furnishing services to Medicare beneficiaries.

We would actuarially determine the average cost of an individual NCD service and include it at the time the NCD is issued in manuals, published in the **Federal Register**, or announced by other formal notice.

The $100,000 threshold is proposed because it approximates the 1991 Medicare Part A cost of a liver transplant, a recent and important national coverage decision that was included in the adjusted average per capita cost (AAPCC) for 1991. The AAPCC is defined in § 417.401 as an actuarial estimate made by HCFA in advance of an organization's contract period that represents what the average per capita cost to the Medicare program would be for each class (that is, Medicare beneficiary designated by age, sex, disability, institutional, and welfare status) of the organization's Medicare enrollees if they had received covered services other than through the organization in the same geographic area or in a similar area. We are especially interested in receiving public comments concerning the thresholds we are proposing.

A 0.1 percent annual change in the 1993 USPCC would represent an annual increase of approximately $4.30 or about $156 million in additional annual outlays for the Medicare program as a whole. We believe these figures represent the minimum threshold of significant financial outlay for the average risk contracting HMO or CMP that has a mean enrollment of nearly 15,800 Medicare beneficiaries and an average monthly payment from Medicare of approximately $339 per Medicare beneficiary or $5.37 million. We also believe it would protect small organizations from unanticipated financial outlays sufficiently to induce their continued participation in the Medicare program under section 1876 of the Act.

The section that follows describes the NCDs announced in calendar years 1991 and 1992. During that period, HCFA announced the addition of six new services and the removal of one service. By combining Medicare payment data for physician services with facility costs data, we were able to estimate the relative costs associated with providing these services. The coverage of liver transplantation for adults was estimated to cost over $100,000 per procedure, which meets the threshold to be considered "of significant cost" under this proposed rule. Adult liver transplantation is covered for specific conditions when performed in a facility approved by HCFA as meeting certain institutional coverage criteria.

The remaining services were estimated to have average costs that are well below the $100,000 threshold. These services are described below.

Extracorporeal Immunoadsorption (ECI)

This procedure, which uses Protein A columns, is covered only for the treatment of patients with Idiopathic Thrombocytopenia Purpura (ITP) failing other treatments.

Implantation of Automatic Defibrillators

Patient selection criteria were changed to remove requirements that patients had to have inducible tachyrhythmia before implantation or that this technology be used as a treatment of last resort. Although additional patients may be covered, we believe that the savings in diagnostic costs offset additional costs.

Percutaneous Transluminal Angioplasty (PTA)

This procedure is used in the treatment of obstructive lesions of arteriovenous dialysis fistulas.

Laparoscopic Cholecystectomy

This surgical procedure is covered for the removal of the gall bladder.

Apheresis (Therapeutic Pheresis)

This autologous medical procedure is covered for specific conditions. Medicare coverage criteria have been updated to include coverage for procedures performed in a hospital setting (inpatient or outpatient) or in a nonhospital setting if the patient is under the care of a physician and a physician is also present to direct and supervise the nonphysician services.

Extracranial-intracranial (EC–IC) Arterial Bypass

In 1991 this surgical procedure was removed from the list of Medicare covered procedures.

The only "significant cost" NCD service among those listed above is the liver transplant for adults. That NCD was published in the **Federal Register** as a final notice on April 12, 1991, at 56 FR 15006. The decision to cover liver transplants for adults was based on our determination that liver transplants are medically reasonable and necessary services if furnished to adult patients with certain conditions and if furnished by participating facilities that meet specific criteria including patient selection criteria. Under certain circumstances, coverage of these liver transplants could be effective as early as March 8, 1990, which was the publication date of the proposed notice in the **Federal Register**. However, Medicare payment for liver transplants for beneficiaries enrolled in risk HMOs and CMPs was not included in the per capita rates of payment until January 1991. Consequently, risk HMOs and CMPs were forced to absorb any liver transplant costs (approximately $100,000 per transplant) from March 8, 1990, through December 31, 1990.

Items and services necessary to diagnose a condition for which the recommended therapy is a noncovered service, and most services furnished as followup care to the noncovered service, are not considered part of that service and are not included in the payment for that service. Medicare already covers certain diagnostic services, which may lead to a recommendation that a beneficiary receive therapy that is not covered. In addition, Medicare covers certain medically necessary services that relate to follow-up care to a noncovered service. For example, for patients who received liver transplants before March 8, 1990, outpatient diagnostic services preceding the transplant procedure were covered, as was medically necessary follow-up care after discharge from the hospital for the noncovered transplant procedure.

The hospitalization for the transplant procedure would not have been covered, nor would other services received directly related to the noncovered procedure, such as the surgeon's fee for the transplant surgery itself. We consider services that would not have been covered as part of the NCD occurrence. An occurrence includes the actual provision of a discrete item or service that is the subject of an NCD.

Any item or service that is already covered, such as diagnostic services followed by a noncovered therapy, as discussed above, would not be considered as part of the NCD service and thus would not be eligible for payment outside the HMO's or CMP's monthly rate. An item or service that would not have been covered if furnished as part of a noncovered procedure, such as the surgeon's fee for a noncovered liver transplant, would qualify for payment outside the HMO's or CMP's monthly rate, even though it is not itself the subject of the NCD.

Section 1861(s)(2)(J) of the Act provides for coverage of prescription drugs used in immunosuppressive therapy for 1 year following a transplant, only if the organ transplant procedure is a covered service. Therefore, if future NCDs provide for coverage of transplantation of organs other than the presently covered kidney, liver, and heart, and are announced after publication of AAPCC rates for the contract period, immunosuppressive therapy following those organ transplants would also qualify for payment outside the HMO's or CMP's monthly rates.

V. Collection of Information Requirements

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "**DATES**" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Regulatory Impact Statement

A. Introduction

This proposed rule would affect those HMOs and CMPs (90 as of January 1993) that contract with HCFA to furnish health care services to Medicare enrollees that are paid on a risk basis. Four demonstration projects are also subject to the risk contract rules. As of January 1993, there were 21,908 Medicare enrollees in the four demonstration projects. As a result of the OBRA '90 amendments discussed under section II of this preamble, for NCD services that the risk HMO or CMP is not required to furnish (because the cost of furnishing the service is significant and was not taken into account in determining the per capita rate that HCFA pays the HMO or CMP), additional payments may be made as explained in section III.D. of the preamble.

It is clear that these additional payments constitute additional program expenditures. However, estimation of the amount is difficult because we cannot accurately predict—

- How many of the services added or expanded through NCDs in any year will be of "significant cost"; and
- How many of the Medicare enrollees of risk HMOs and CMPs (approximately 1.5 million as of January 1993) will need a "significant cost" NCD service.

We do know that only six NCD services were added by HCFA during 1991 and 1992, and that only one of those six services (liver transplants for adults) would have met a "significant cost" criterion (average cost in excess of $100,000). We do not anticipate a significant increase in the number of liver transplants performed on Medicare beneficiaries because livers for transplantation purposes are not readily available. We believe this surgery will continue to be performed relatively infrequently.

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

B. Regulatory Flexibility Analysis

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs and CMPs that have entered into risk contracts with HCFA are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As noted earlier in this preamble, we believe that, by ensuring that the cost of furnishing required Medicare services

would not increase substantially during a contract period, the new rules might encourage HMOs and CMPs to contract on a risk basis. We anticipate an increase in the number of risk-contracting organizations, but recognize that this proposed rule would not constitute a significant economic impact on a substantial number of HMOs and CMPs. These rules would not affect the operations of small rural hospitals.

We are not preparing analyses under either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 417

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

42 CFR part 417 would be amended as set forth below:

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

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. In § 417.401, the introductory text is republished, and the following definitions are added in alphabetical order:

§ 417.401 Definitions.

As used in this subpart, and in subparts K through R of this part, unless the context indicates otherwise—

* * * * *

National coverage decision (NCD) means a national policy statement regarding the coverage status of a specified service, that HCFA makes under section 1862(a)(1) of the Act, publishes in the **Federal Register** as a notice or HCFA Ruling, or announces by other formal notice. (The term does not include coverage changes mandated by statute.)

Significant cost, as it relates to a particular NCD, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1991 and 1992, is $100,000; and

(ii) For 1993 and subsequent calendar years, is the preceding year's dollar threshold, adjusted to reflect the increase or decrease in the United States per capita cost (USPCC) for the preceding year.

(2) The cost of all of the services furnished nationwide as a result of the particular NCD represents at least 0.1 percent of the USPCC multiplied by the total number of Medicare beneficiaries nationwide for the applicable calendar year.

* * * * *

3. In § 417.414, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 417.414 Qualifying condition: Range of services furnished by an HMO or CMP.

(a) *Condition.* The HMO or CMP must demonstrate that it is capable of delivering to Medicare enrollees the range of services required in accordance with this section.

(b) *Standard: Range of services*—(1) *Basic requirement.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, an HMO or CMP must furnish to its Medicare enrollees (directly or through arrangements with others) all Medicare services to which those enrollees are entitled, to the extent that those services are available to Medicare beneficiaries who reside in the HMO's or CMP's geographic area but are not enrolled in the HMO or CMP.

(2) *Availability.* The services are considered available if either of the following criteria is met:

(i) The sources are located within the geographic area of the HMO or CMP.

(ii) It is common practice to refer patients to sources outside that geographic area.

(3) *Exception and requirement for hospice care.* An HMO or CMP is not required to furnish hospice care as described under part 418 of this chapter. However, HMOs and CMPs must inform their Medicare enrollees concerning the availability of hospice care if either of the following criteria is met:

(i) A hospice that participates in Medicare is located within the geographic area of the HMO or CMP.

(ii) It is common practice to refer patients to hospices outside that geographic area.

(4) *Exception for national coverage decision (NCD) services: Risk HMOs and CMPs.* A risk HMO or CMP is not required to furnish or pay for an NCD service until the contract year beginning after the next per capita rate announcement if all of the following conditions are met:

(i) HCFA has determined and announced that the NCD service meets the definition of "significant cost" in § 417.401.

(ii) The cost of that service was not included in the determination of the per capita rate of payment that HCFA pays the HMO or CMP.

(iii) The NCD that established coverage of the service was issued on or after the date of the announcement of the per capita rate of payment for that contract year.

(5) *Examples.* The following examples apply to NCD services of significant cost and show how the NCD announcement date (which determines whether the cost of that service is taken into account in calculating the per capita rate of payment) in turn determines when the HMO or CMP becomes responsible for furnishing or paying for the NCD service.

Example A: An NCD is announced on September 1, 1993, effective on the date of announcement. Because this NCD was announced before September 7, 1993, the announcement date of the per capita rate of payment for calendar year 1994, a risk HMO or CMP is responsible for furnishing or paying for the NCD service beginning with calendar year 1994.

Example B: An NCD is announced on December 1, 1993, effective on date of announcement. Because this NCD was announced after September 7, 1993, the announcement date of the per capita rate of payment for calendar year 1994, the risk HMO or CMP is not responsible for furnishing or paying for the NCD service until the beginning of calendar year 1995.

* * * * *

4. In § 417.416, a new paragraph (b)(3) is added to read as follows:

§ 417.416 Qualifying condition: Furnishing of services.

* * * * *

(b) * * *

(3) If more than one type of practitioner is qualified to furnish a particular service, the organization may select the type of practitioner to be used.

* * * * *

5. In § 417.440, the section heading and paragraphs (a) and (b)(1) are revised to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

(a) *Basic rules.* (1) Subject to the conditions and limitations set forth in this part, a Medicare enrollee of an HMO or CMP is entitled to receive

health care services directly from, or through arrangements made by, the HMO or CMP, as specified in this section and § § 417.442 and 417.444.

(2) A Medicare enrollee is also entitled to receive timely and reasonable payment directly (or have payment made on his or her behalf) for services he or she obtained from a provider or supplier outside the HMO or CMP if those services meet either of the following conditions:

(i) They are emergency services or urgently needed unforeseen services as defined in § 417.401.

(ii) They are services denied by the HMO or CMP and found (upon appeal under subpart Q of this part) to be services the enrollee was entitled to have furnished by the HMO or CMP.

(b) *Scope of services.* (1) *Part A and Part B services.* Except as specified in paragraphs (c) through (e) of this section, a Medicare enrollee is entitled to receive from the HMO or CMP all the Medicare-covered services that are available to individuals residing in the HMO's or CMP's geographic area, as follows:

(i) Medicare Part A and Part B services if the enrollee is entitled to benefits under both programs.

(ii) Medicare Part B services if the enrollee is entitled only under that program.

* * * * *

6. In § 417.452, paragraph (a) is revised to read as follows:

§ 417.452 Liability of Medicare enrollees.

(a) *Deductibles and coinsurance*—(1) *General rules.*

(i) A Medicare enrollee of an HMO or CMP is responsible for HMO or CMP charges that represent applicable Medicare deductible and coinsurance amounts.

(ii) The amounts that the HMO or CMP charges its Medicare enrollees under paragraph (a)(1)(i) of this section may not exceed, on the average, the actuarial value of the deductibles and coinsurance for which the Medicare enrollees would be responsible if they were not enrolled in an HMO or CMP.

(2) *Special rules: Medicare enrollees of risk HMOs and CMPs.* (i) If a risk HMO or CMP reduces the deductible and coinsurance charges in accordance with the "additional benefits" option provided in § 417.440(b)(4)(i), the enrollee pays less than would otherwise be required under paragraph (a)(1) of this section.

(ii) A Medicare enrollee of a risk HMO or CMP is not responsible for deductibles applicable to national coverage decision (NCD) services that the HMO or CMP is not required to furnish because they are excepted under § 417.414(b)(4). The exemption applies regardless of whether the HMO or CMP furnishes the services or the enrollee obtains them from other sources.

(3) *Type of charge and source of payment.* (i) The deductible and coinsurance charges imposed by an HMO or CMP may be in the form of premiums, membership fees, or per-unit or similar charges.

(ii) The deductible and coinsurance charges may be paid by the enrollee or on his or her behalf by another individual, organization, or entity.

* * * * *

7. Section 417.586 is revised to read as follows:

§ 417.586 Special rules: Payment for significant cost national coverage decision (NCD) services.

(a) *Applicability.* This section applies to NCD services that a risk HMO or CMP is not required to furnish because they are excepted under § 417.414(b)(4).

(b) *Method of payment.* If a Medicare enrollee of a risk HMO or CMP receives an NCD service specified in paragraph (a) of this section, payment for that service—

(1) Is in addition to the per capita payments to the HMO or CMP; and

(2) Is made by the fiscal intermediary or carrier under the usual Medicare rules and methods set forth in part 405; part 410, subpart E; part 412, 413, or 415, as appropriate; and subject to the requirements of part 424 of this chapter.

(c) *Exceptions.* HCFA does not make additional payments under paragraph (b) of this section if the HMO or CMP—

(1) Is obligated to furnish the NCD service as an "additional benefit" under § 417.592; or

(2) Furnishes the NCD service as an optional or required supplemental service paid for by the Medicare enrollee under § 417.440 (b)(2) or (b)(3).

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

Dated: July 28, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 3, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3609 Filed 2–18–94; 8:45 am]

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42 CFR Part 417

[OCC–018–P]

RIN 0938–AF16

Medicare Program; Limits on Payment to Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), and Health Care Prepayment Plans (HCPPs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the provision (never implemented) that would have made the adjusted average per capita cost (AAPCC) the absolute limit on payment for services furnished to Medicare enrollees by an HMO or CMP with a cost contract.

This change is necessary to conform our rules to the interpretation of the statute as set forth in court decisions relating to payment of reasonable costs.

This rule would also provide for using the AAPCC as a presumptive limit, subject to exceptions, for HMOs and CMPs with cost contracts, and for health care prepayment plans (HCPPs) that furnish inpatient hospital care as well as part B services;

Eliminate the effective incentives exception that is currently available to HCPPs;

Require HCPPs that do not furnish inpatient hospital services to document that their costs do not exceed what Medicare's cost would have been if the Medicare beneficiaries who received the services had not enrolled in the HCPP; and revise the rules for reporting costs.

DATES: Comment date: We will consider comments received no later than 5 p.m. on April 25, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–018–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code

OCC–18–F. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Jennifer Messersmith, (202) 401–2325; Alfred D'Alberto, (410) 966–7610 (For full reporting of costs).

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Medicare program (title XVIII of the Social Security Act (the Act)), HCFA helps pay for health services furnished to eligible beneficiaries. Under "part A" (Hospital Insurance), HCFA pays hospitals and other providers of services for inpatient hospital services, and some skilled nursing facility services, home health care, and hospice care. Under "part B" (Supplementary Medical Insurance), HCFA helps pay for physicians' services, as well as hospital outpatient and certain other medical services.

In general, HCFA pays for Medicare part A and part B services under a fee-for-service system that includes a variety of payment methods such as—

- Fee schedules for physician and laboratory services and durable medical equipment;
- Diagnosis-related groups for most hospital services under the prospective payment system (PPS);
- Reasonable costs for skilled nursing care, home health services and the services of certain hospitals not subject to the PPS; and
- Reasonable charges for some supplier services.

For part A services, HCFA usually pays the provider and, for part B services, the supplier who has accepted assignment or, if assignment has not been made, the beneficiary. Payment is on the basis of claims submitted by the provider, supplier, or beneficiary after the service has been furnished.

Title XVIII of the Act also permits beneficiaries to enroll in, and receive their Medicare benefits through, prepaid health care organizations. These include health maintenance organizations (HMOs), and competitive medical plans (CMPs), with contracts under section 1876 of the Act, and health care prepayment plans (HCPPs) with agreements under section 1833 of the Act. HMOs and CMPs are required to furnish the full range of Medicare benefits, and do not bill on a fee-for-service basis for covered services furnished to their Medicare enrollees. Rather, HCFA pays the organization in advance a monthly amount for each enrolled beneficiary. If the HMO or CMP contracts to be paid on a reasonable cost basis, there is a cost reconciliation at the end of the year. HCFA also pays HCPPs on a reasonable cost basis, following procedures similar to those used for HMOs and CMPs, but only for part B services. If an HCPP arranges for part A services for its enrollees, the Medicare intermediary pays the provider for these services on a fee-for-service basis.

As of March 1993, about 2.4 million of the 33 million Medicare beneficiaries had chosen to enroll in an HMO, CMP, or HCPP.

This proposed rule would impose presumptive limits on reasonable costs—

- For HMOs and CMPs that choose to contract with HCFA on a reasonable cost basis; and
- For HCPPs that furnish (to Medicare enrollees) services in general acute-care hospitals.

These presumptive limits replace absolute limits that were promulgated in 1985 but were never put into effect for reasons given in HCFA Ruling No. 89–2, and explained below under section II.B.2. This rule would establish bases for exceptions to the presumptive limit and would also establish limits on reasonable costs for HCPPs that do not furnish inpatient hospital services.

II. Background

A. HMOs, CMPs, and HCPPs

1. HMOs and CMPs

Under section 1876 of the Act we are authorized to contract with HMOs and CMPs to pay them either on a risk basis or on a cost basis for services they furnish to Medicare enrollees. HMOs and CMPs must provide all part A and part B services to Medicare enrollees entitled to both part A and part B, but HCPPs may limit the services they provide. Risk HMOs and CMPs receive monthly capitation payments equivalent to 95 percent of the adjusted average per capita cost (AAPCC).

The AAPCC is an estimate of the average per capita cost, under the fee-for-service system, for Medicare-covered services furnished to Medicare beneficiaries who are not enrolled in HMOs, CMPs, or HCPPs. HCFA's Office of the Actuary prepares an AAPCC for both aged and disabled beneficiaries for each county in the United States and adjusts the AAPCC rates demographically by age, sex, Medicaid status, and institutional status. For example, a 65–69 year old female, who is not eligible for Medicaid and not in an institution, might have a monthly AAPCC rate of $300 in a given county. An 80–84 year old female, institutionalized in the same county, might have an AAPCC rate of $680. These rate differences reflect the lower average Medicare costs for the younger, non-institutionalized beneficiary. There are 30 demographic groups for the aged Medicare population and 30 for the disabled Medicare population.

Cost HMOs and CMPs receive monthly interim payments based on the annual operating budget they submit before the beginning of their contract year. At the end of the contract year, they must submit a cost report to document their actual costs, as a basis for a final settlement.

As of March 1993, there were 93 risk HMOs and CMPs with 1,603,178 Medicare enrollees and 22 cost HMOs and CMPs with 140,415 enrollees.

2. HCPPs

HCPPs are prepaid health care organizations that have agreements with HCFA to be paid in accordance with section 1833(a)(1)(A) of the Act. Under such an agreement, HCFA pays the HCPP only for part B services. Payment is based on "reasonable costs" and those costs are generally determined following the methods used for cost HMOs and CMPs, as described under section II.A.1. of this preamble. Some HCPPs provide the full range of part B services, while others offer a much more limited scope.

HCPPs are not required to provide part A services and cannot be paid for those services under the HCPP agreement. Some HCPPs are organized to furnish comprehensive health care services to their Medicare enrollees and to their commercial enrollees. Those HCPPs, which could elect to contract as HMOs or CMPs, furnish or arrange for

all or most part A services. The providers of those part A services submit their claims to, and are paid by, Medicare intermediaries.

In March 1993, there were 57 HCPPs with 640,633 Medicare enrollees.

B. History of Cost Limits

1. Statutory basis for setting cost limits

Section 1861(v)(1)(A) of the Act authorizes us to establish limits on reasonable costs for entities that are paid on a reasonable cost basis. The limits must be based on estimates of the costs necessary in the efficient delivery of health care services. Our basic goal in establishing limits on costs for HMOs, CMPs, and HCPPs is to ensure that the Medicare program pays no more for care furnished to beneficiaries enrolled in these organizations than it would pay for services for beneficiaries not enrolled in an HMO, CMP, or HCPP. We consider that to pay more than we would have paid under the fee-for-service system would be inefficient and, thus, an inappropriate use of Medicare funds.

2. Provisions of the Regulations

Before 1986, the regulations provided that, for HMOs and CMPs paying physicians on a salaried basis, costs were reasonable if they did not exceed the costs for comparable services in the HMO's or CMP's geographic area. Those costs, however, were not subject to the reasonable charge levels of the Medicare fee-for-service payment system, and HMOs and CMPs were not required to document the comparability of their costs to the costs allowed under that system.

Costs incurred for payment to groups of physicians (organized either on a group practice or an individual practice basis) and for payment for other part B services could not exceed the Medicare reasonable charge levels. However, with respect to physicians' services, most HMOs and CMPs were exempted from this limit, under the "effective incentives" policy. Under this policy, the exemption was available if the members of the group of physicians accepted effective incentives, such as risk-sharing, designed to discourage unnecessary or unduly costly utilization of health services. In connection with these rules, the AAPCC was used as a guideline, but not as a limit, in assessing the reasonableness of the total costs incurred by HMOs and CMPs.

The rules for HCPPs were similar and are still in effect. For HCPPs that pay physicians on a basis other than fee-for-service, such as capitation, costs are not measured against the reasonable charge or other fee-for-service rate. Rather, costs are measured against what a "prudent buyer" would pay for comparable services in the geographic area. Payments based on fee-for-service are generally subject to Medicare reasonable charge levels. However, if the payments are to a medical group whose members accept "effective incentives" to control utilization, the payments are subject to the "prudent buyer" standard rather than reasonable charge levels.

On January 10, 1985, at 50 FR 1314, we published a final rule that established a new part 417 containing the rules applicable to prepaid health care. Section 417.532 provided that, beginning in 1986, 100 percent of the weighted average of the AAPCCs of each class of a cost HMO's or CMP's Medicare enrollees would be applied as an absolute limit on the total amount payable to that HMO or CMP. There would be no exceptions and no possibility of payments in excess of that limit. The provisions relating to effective incentives were removed from the rules for HMOs and CMPs as no longer necessary, but retained for HCPPs, to which the new absolute limit would not apply. Although the new absolute limit never went into effect, the effective incentives policy was not restored for HMOs and CMPs, and the inoperative rule (§ 417.532(a)(3)) was not removed from the CFR.

In October 1989, HCFA issued HCFA Ruling (HCFAR) No. 89–2, which stated that: "Since the time that § 417.532 of the regulations was promulgated, the courts have construed the authority to set cost limits under section 1861(v)(1)(A) [of the Act] to support generalized cost limits applied on a presumptive basis, but not absolute cost limits applied on a final or conclusive basis * * *." The courts have interpreted section 1861(v)(1)(A) of the Act as requiring that a Medicare provider be afforded an opportunity under the regulations to show that in its particular case, costs in excess of the applicable cost limits were reasonable and therefore reimbursable. Thus, the court decisions support application of presumptive limits, that is, limits with an exception process that affords the cost-contracting entity the opportunity to qualify for additional payments if it can show that its excess costs are justified as "reasonable."

As a result of the policies discussed above, we have not accumulated data that would show whether the furnishing of health care services by cost HMOs and CMPs, and HCPPs is cost-effective as compared to the furnishing of those services under the Medicare fee-for-service system.

III. Provisions of the Proposed Rule

A. Provisions Applicable to HMOs and CMPs, and to HCPPs That Furnish Inpatient Hospital Services

1. Background

Since HCPP agreements pertain only to part B services, HCFA makes payment directly to the providers for part A services furnished to HCPP enrollees. However, some HCPPs "furnish inpatient services" in the sense that they make the arrangements for enrollees to receive those services, and pay applicable Medicare coinsurance and deductibles in return for a premium from the enrollee. Like HMOs, HCPPs that furnish both part A and part B services would generally have an incentive to use more cost-effective part B services when possible, rather than more expensive part A services.

However, if we imposed a cost limit only on the services we reimburse through the HCPP agreement (that is, part B services), it would create an incentive for the HCPP to shift costs by authorizing more expensive part A services (which will be reimbursed directly to the provider), rather than part B services that would be subject to the limit. Accordingly, to avoid potentially inappropriate increases in part A utilization, we propose to apply the aggregate part A and part B presumptive limit to all costs incurred for Medicare beneficiaries enrolled in HCPPs that furnish inpatient hospital services. If the aggregate costs exceed the limit, the HCPP would be considered to have an overclaim for its part B services. (The limit would apply to HCPPs that furnish inpatient care in hospitals commonly referred to as "general acute-care" or "short-stay" hospitals, as distinguished from psychiatric or rehabilitation hospitals or other chronic or long-term hospitals.)

2. Presumptive Limit

The presumptive limit on costs would be 100 percent of the weighted average of the AAPCCs of each class of Medicare enrollees. Since the AAPCC is based on the costs of all Medicare services received by beneficiaries, as a presumptive limit it must be applied to the total cost of all Medicare-covered services received by the Medicare enrollees, including all part A and part B services, whether furnished by the prepaid health care organization or obtained from other sources. In other words, all costs attributable to Medicare enrollees, whether paid by the organization or paid by Medicare's

intermediaries and carriers, would be totaled and compared to the presumptive limit.

We note that we plan to consider adjustment to, or a replacement for, the AAPCC as the basis for payment to risk HMOs and CMPs. If we make any such changes, we might also need to modify using the AAPCC as the basis for the presumptive limit. This would involve additional rulemaking activity.

3. Exception Process

If costs exceed the presumptive limit, there would be an exceptions process that would permit payments in excess of the limit, for either of the following reasons:

a. Special needs. The Medicare enrollees have special needs that require a volume and intensity of services that exceeds the average for Medicare beneficiaries of the same age and sex living in the same service area.

- For exceptions based on special needs, we are proposing the methodology discussed under section IV of this preamble.
- If, after application of that methodology, the organization wished further review, it could present additional documentation for HCFA's consideration. The organization could seek such further review if HCFA found that the organization did not meet HCFA's standards for special needs or the HMO or CMP believed that not enough money was being allowed for its special needs enrollees.

b. Extraordinary circumstances. There were extraordinary circumstances beyond the control of the organization. The circumstances include, but are not limited to, strikes, fire, earthquake, flood or similar unusual occurrences with substantial cost effects.

For exceptions based on extraordinary circumstances, the HMO or CMP would be required to submit to HCFA information documenting the particular extraordinary circumstances that it believes constitute justification for additional payments and the amount of additional payments justified by the extraordinary circumstances.

4. Decision Not to Restore the Effective Incentives Exception

We would not restore the effective incentives exception that was deleted from the regulations when we promulgated the absolute limitation on payment to cost HMOs and CMPs in 1985.

The existence of "effective incentives" was used by HCFA as a proxy for efficiency. We are now using the presumptive limit as a proxy for efficiency, and we believe this is a more appropriate standard.

5. Exemption Based on Number of Medicare Enrollees

Under the proposed rule, HCFA could exempt organizations with fewer than 500 Medicare enrollees from the cost limits for up to 2 consecutive years. HCFA could specify additional criteria that these organizations must meet in order to qualify for this exemption.

6. Effect of Having a Final Overclaim for 2 Consecutive Years

HCFA could terminate contracts with organizations that have a final overclaim for at least 2 consecutive years. Final overclaim means that, after application of the exception process, the organization still has excess claims that it cannot justify as "reasonable." The rationale for termination is that organizations with final overclaims are inefficient as compared to the fee-for-service system, and it is not prudent for HCFA to continue to contract with inefficient organizations.

B. Provisions Applicable to HCPPs That do not Furnish Inpatient Hospital Services

1. Criteria for Reasonableness

The costs incurred by the HCPP for physicians' services and other part B supplier services would be considered reasonable if they did not exceed, in the aggregate, the amount that HCFA would pay, in the aggregate, for those services if they were furnished to beneficiaries not enrolled in the HCPP or any other prepaid health care plan. HCPP costs would be compared to costs under the usual fee-for-service payment methods, based on fee schedules, reasonable charge limits, or reasonable cost limits, whichever is appropriate for the particular services. The aggregate amount would include an amount equivalent to the costs of claims processing.

2. Documentation of Services

- Participating HCPPs would be required to include in their cost reports documentation of each service furnished to their Medicare enrollees, using the Medicare billing codes.
- Organizations seeking an agreement for participation as an HCPP would be required to demonstrate that they have in place a system that enables them to comply with the documentation requirement.
- Failure to comply with the documentation requirement would be a basis for termination or nonrenewal of the agreement.

We would amend § 417.800(b), to include the documentation requirement.

3. Removal of "Effective Incentives" Provision

We would remove the effective incentives provisions that appear in § 417.802(2)(ii)(B) and (b)(3)(ii) of the current HCFA rules. We believe that all HCPPs should be subject to the requirement that payment for services furnished to their Medicare enrollees not exceed the estimate of what HCFA would have paid for those services under the fee-for-service system. We believe that a more effective way to ensure that outcome is to use the presumptive limit for HCPPs that furnish inpatient hospital services, and to use reasonable charges to define reasonable costs for other HCPPs.

IV. Methodology for Calculating Payments in Excess of the Presumptive Limit (Additional Payments)

Note: We believe that HMOs, CMPs, and HCPPs will be particularly interested in this methodology, and we are receptive to suggestions for alternative methodologies. Any proposed alternatives must specifically address how that methodology would ensure that HCFA pays no more for care to beneficiaries enrolled in these organizations than it would pay for their care if the beneficiaries were not so enrolled.

The methodology discussed below applies only to HMOs and CMPs, and to HCPPs that furnish inpatient hospital services. It pertains only to determining whether we can make additional payments based on special needs of Medicare enrollees. We use the term "sicker than average enrollment" to mean enrollees who require a volume and intensity of services that exceeds the average for Medicare beneficiaries of the same age and sex, living in the same geographic area.

A. Background

1. The Act

Section 1861(v)(1)(A) of the Act authorizes us to establish limits on costs for entities paid on a reasonable cost basis so that the Medicare payment does not exceed the "estimates of the costs necessary in the efficient delivery of needed health services". Section 1861(v)(1)(A) also gives us flexibility for setting those limits.

2. The Courts

The courts have indicated that absolute limits on costs are not acceptable, but, to date, appear to approve of presumptive limits. A presumptive limit means that the organization may obtain additional payments, that is, payments above that limit, if it can document that such payments are justified, using reasonable

criteria to estimate payable amounts in excess of the limits.

3. Proposal

We are proposing to establish 100 percent of the weighted average of the AAPCC as the presumptive limit for HMOs and CMPs, and for HCPPs that furnish inpatient hospital services. We consider the presumptive limit to be a proxy for whether or not the HMO, CMP, or HCPP is delivering needed health services efficiently. In other words, we consider an organization with total costs below the presumptive limit to be operating more efficiently than Medicare operates under the fee-for-service system. Conversely, we consider organization with costs above the presumptive limit to be operating less efficiently.

B. Methodology

The methodology discussed below is based on the fact that, generally in health care financing, a small number of high-cost cases, called "outliers," account for a large percentage of outlays. For example, in 1989, in the Medicare program, about 90 percent of persons served accounted for only 37 percent of the outlays, while the remaining 10 percent of persons served required 63 percent of the outlays.

In order to estimate what percentage, if any, of an organization's costs is attributable to inefficiency, we would compare the average annual per capita cost for the organization's non-outliers with the average annual per capita cost for non-outliers under the fee-for-service system. If the organization's average for non-outliers were less than the fee-for-service average, we would consider the organization to be operating more efficiently than Medicare operates under the fee-for-service system. We would make the assumption that, since the organization operates efficiently for its non-outliers (who constitute the majority of its enrollment) its costs in excess of the presumptive limit are attributable to a sicker than average enrollment. We would pay any excess costs that are otherwise allowable.

However, if the organization's average for non-outliers exceeded the fee-for-service average, we would consider it to be operating less efficiently than Medicare operates under the fee-for-service system. If, for example, the organization's average exceeded the fee-for-service average by 3 percent, we would consider that the organization's services cost 3 percent more than Medicare would have paid for those services under the fee-for-service system. We would assess a presumptive overpayment of 3 percent on the organization's total costs for services to Medicare enrollees, that is, costs for both outliers and non-outliers.

C. Application and Example

The methodology consists of 3 stages:

Stage 1. Determine whether the organization's total costs exceed the presumptive limit.

Example of Stage 1: (a) Determine the presumptive limit on the organization's costs for Medicare enrollees, which is 100 percent of the weighted average of the AAPCC's of each class of Medicare beneficiaries.

Presumptive limit: $4,230,000.

b. Determine the organization's total costs for its Medicare enrollees, that is, part A and part B costs, both in-plan and out-of-plan, and administrative costs.

Audited Cost Report Costs[1] ...	$1,500,000
In-plan hospital & SNF costs ..	2,700,000
Out-of-plan costs, parts A & B	800,000
Total Costs	5,000,000

[1] Costs on the cost report currently include costs for in-plan part B services (except hospital outpatient department services), costs for part A services other than hospital and SNF, and administrative costs.

c. Determine whether the organization's total costs exceed the presumptive limit.

Total costs	$5,000,000
Presumptive limit	(4,230,000)
Presumptive overpayment ...	770,000

- If the costs were equal to, or less than, the presumptive limit, HCFA would pay the total allowable costs for the organization's Medicare enrollees.
- Since there is a presumptive overpayment, the process would continue to Stage 2. (HCFA would give the organization written notice and opportunity to respond in accordance with § 417.532(a)(6) of the proposed rules.)

To carry out Stage 2, we need the annual outlier cost threshold, which HCFA establishes on a national or regional basis, to distinguish "outlier costs" from "non-outlier costs." For example, if the threshold is $39,000, the costs for all beneficiaries whose costs exceed $39,000 would be outlier costs, and the costs for all beneficiaries whose annual costs are equal to, or less than, $39,000 would be considered "non-outlier costs." HCFA's determination of the outlier threshold is discussed under section VI of this preamble. The organization would determine its costs for outliers using HCFA's payment methods such as fee schedules, reasonable charge limits, and reasonable cost limits, as appropriate.

Stage 2. Determine whether the average annual per capita non-outlier cost for the organization's Medicare enrollees exceeds the average non-outlier costs for the fee-for-service beneficiaries in the organization's service area.

a. If the average for the organization's enrollees is equal to, or less than, the average for the fee-for-service beneficiaries, there is no final overpayment. As noted above, the presumption is that the organization is also efficient in furnishing services to outlier enrollees.

b. If the average cost for the organization's non-outlier enrollees exceeds the average cost for the fee-for-service beneficiaries, the process continues to stage 3.

Stage 3. Determine how much of the organization's presumptive overpayment is attributable to sicker than average enrollment, and how much to inefficiency.

Examples of stages 2 and 3.

Stage 2:

	Fee-for-service beneficiaries	Plan enrollees
Total costs	$100,000,000	$5,000,000
Outlier costs	(25,000,000)	(1,500,000)
Non-outlier costs	75,000,000	3,500,000
Number of non-outliers	30,000	1,375
Average annual cost for non-outliers, weighted by the AAPCC factors: age, sex, institutional status, Medicaid status, and geographic area.	2,500	2,545

The average non-outlier cost for the organization's Medicare enrollees exceeds the average non-outlier costs for fee-for-service beneficiaries by $45.

Stage 3: Divide the excess average cost by the average claimed costs to determine the inefficiency factor:

$$\frac{\$45}{\$2545} = 1.77 \text{ percent inefficiency factor}$$

The inefficiency factor represents HCFA's estimate of the percentage by which the organization's costs exceeded HCFA's estimate of the costs for all the organization's Medicare enrollees if HCFA had paid for their care under the fee-for-service system. Determine the final overclaim amount by applying the 1.77 percent "inefficiency factor" to the total costs attributable to the organization's Medicare enrollees, as follows:

Total Costs	$5,000,000
Inefficiency Factor	× .0177
Final Overclaim	$88,500

If the organization chooses to submit additional documentation in support of higher additional payments after application of this methodology, the final overclaim amount may be adjusted.

In this example of a presumptive overpayment of $770,000, the final overclaim or disallowance is $88,500. The organization would receive $681,500 ($770,000 minus $88,500) in additional payments because of the exceptions process. In other words, HCFA would estimate that $681,500 of the presumptive overpayment is attributable to a sicker than average enrollment and $88,500 is attributable to inefficiency. HCFA would pay the amount attributable to a sicker than average enrollment.

V. Options Considered

A. Options Considered for the Presumptive Limit

Our primary goal in setting limits for coordinated care organizations is to ensure that we do not pay more for Medicare beneficiaries enrolled in these organizations than we would pay if the beneficiaries were not so enrolled. The AAPCC is an estimate of the average per capita cost for Medicare beneficiaries who receive their Medicare-covered services in the fee-for-service sector, that is, Medicare beneficiaries who are not enrolled in HMOs, CMPs, or HCPPs. Because it is a per capita estimate based on 100% of the costs for these beneficiaries in a geographic area, we consider it to be an excellent basis for estimating the aggregate amount that HCFA would have paid for HMO, CMP, and HCPP enrollees if they had not been so enrolled.

HCFA has used the AAPCC in connection with cost limits or other controls for prepaid health care organizations as follows:

1. Before 1985, under a demonstration, as the basis for payment to risk HMOs.
2. Beginning in 1985, as the basis for payment to risk HMOs and CMPs.
3. As the basis for calculating payments for an earlier model of risk HMO that was repealed when the current HMO and CMP risk program was enacted.
4. Before 1986, as a guideline for cost HMOs.
5. As the basis for a proposed absolute cost limit for cost HMOs and CMPs promulgated to be effective in 1986, but never implemented.

In HCFA Ruling 89–2, we indicated that the courts "have construed the authority to set cost limits under section 1861(v)(1)(A) [of the Act] to support generalized cost limits applied on a presumptive basis."

We considered two options. First, we considered using 100 percent of the AAPCC as a guideline, as we had done before promulgation of the 1985 regulation establishing the AAPCC as an absolute limit. Second, we considered using 100% of the AAPCC as a presumptive limit.

Application of a guideline simply triggers a closer scrutiny of the claimed costs. Use of a presumptive limit with an exceptions process provides a clearer standard for determining the amount of payment. We expect that a presumptive limit will provide incentives for more efficient operation, because overpayments will be determined unless the organization can document that additional payments are appropriate either (1) because of a sicker than average enrollment or (2) because of extraordinary circumstances. For this reason, we believe the use of a presumptive limit better serves the intent, articulated in section 1861(v)(1)(A) of the Act, of using Medicare monies only to pay for the efficient delivery of needed health services.

B. Options Considered for Methodology for Calculating Exceptions for a Sicker Than Average Enrollment

We considered four options for a methodology to use in estimating what portion, if any, of an organization's presumptive overpayment was attributable to inefficiency. Two of the options addressed only part B costs, and administrative costs. The other two approaches addressed the full range of costs for Medicare enrollees.

First, we considered setting absolute limits for the organization's administrative and part B costs based on fee-for-service payments. The final overpayment or disallowance would have been the amount by which (1) the organization's aggregate payments for part B services exceeded Medicare's aggregate payments for the same services and (2) the organization's relative administrative costs exceeded Medicare's relative administrative costs. This approach did not address our concerns about the inappropriate utilization of part A services and would not have recognized the efficiencies that can be achieved by using outpatient services rather than inpatient services, as most prepaid health care organizations do.

Second, we considered calculating averages of volume and price for part B services, comparing the organization's average price and volume with the Medicare fee-for-service average. The final overpayment or disallowance would have been based on whether the organization exceeded Medicare averages for price, or volume, or both. The disallowance for overpayments on the price side would have been the amount by which the organization's average price exceeded Medicare's fee-for-service average. The disallowance for overpayments on the volume side would have been in the form of reductions to allowable administrative costs, using the rationale that we should not pay 100% of administrative costs to an organization that is not managing care, as evidenced by its higher volume.

Both of these options would have required organizations to document all services on an individual basis. However, they focused only on part B and administrative costs. They did not take into consideration the entire range of services. We believe that HMOs and CMPs and HCPPs that furnish inpatient hospital services should be held accountable for all of the Medicare-covered services received by their Medicare enrollees, whether furnished by the plan or obtained from other sources. For this reason, we considered the two following options, both of which use an outlier-based approach. The first option looked only at the organization's outlier costs in relation to outlier costs in the comparable fee-for-service area. We realized that we could not limit our review to outlier costs because outliers are, by definition, not representative of the relevant costs by which HCFA may judge whether a prepaid health care organization is efficient or inefficient in comparison with the fee-for-service sector overall.

The second option was the one described in this preamble. We concluded it was the best approach for three reasons.

- When compared to the other outlier approach, it was more in consonance with the statutory directive to make estimates of the costs for the efficient provision of needed health services.
- A calculation based on outliers imposes manageable administrative requirements on the organization because outliers comprise a small percentage of enrollees and because most coordinated care organizations must track costs for outliers in order to receive payments from their reinsurers.
- Unlike the first two options, this approach examines all of the Medicare services and costs and thus holds the

organization accountable for all the Medicare-covered services received by its enrollees.

C. Options Considered for HCPPs That do not Furnish Inpatient Hospital Services

Our primary goal in setting limits for prepaid health care organizations is to ensure that we do not pay more for Medicare beneficiaries enrolled in these organizations than we would pay if the beneficiaries were not so enrolled. We consider Medicare fee-for-service payment amounts for individual services to be the most appropriate proxy for the amount that Medicare would have paid for a group of HCPP enrollees if those beneficiaries were not so enrolled. As discussed above, we also consider the AAPCC, which is derived from Medicare fee-for-service payment amounts, to be an appropriate estimate of total Medicare fee-for-service costs for a group of Medicare beneficiaries. In addressing changes to the regulations governing allowable payments to these HCPPs, we considered three options.

First, we considered making only technical changes to the current regulations by updating them to reflect the movement in fee-for-service Medicare away from reasonable charge-based payment to fee schedules for physician and lab services and durable medical equipment. Under this option, we would have retained the effective incentives provisions. This approach was not consistent with our primary goal.

Second, we considered using the part B AAPCC plus an appropriate amount for administrative costs. We discarded this option because it might constitute an incentive for these HCPPs to allow or encourage their Medicare enrollees to seek part A services for medical conditions for which part B services would be equally or even more appropriate, but might bring the HCPPs' incurred costs above the part B AAPCC.

Third, we considered using aggregate Medicare payment levels for individual part B services to define "reasonable cost" for these HCPPs. We selected this approach because we believe it is consistent with our primary goal. We also considered whether it would be feasible to specify an appropriate volume of services. We concluded that, at this time, we do not have sufficient data to determine appropriate volume for part B services for HCPP enrollees, so a volume formula is not included in this proposed rule.

VI. Outlier Threshold

In setting the amount of the outlier threshold, we are concerned that it include an adequate number of high cost beneficiaries, without including such a substantial proportion of costs that its utility as a measure of efficient behavior is limited. Because in general in health care financing a small number of individuals account for a large percentage of outlays, finding an appropriate balance between the percentage of total costs represented by the outlier threshold and the percentage of beneficiaries represented is difficult. There is a range of reasonable choices.

Using 1989 data summarized in the table below, we examined the relationship between the cumulative percentage of persons served and the cumulative percentage of program payments to determine a reasonable outlier threshold. At the low end for a potential outlier threshold, we believe a figure that accounts for about 2 percent of beneficiaries and about 25 percent of outlays is reasonable. At the high end, we believe a figure that accounts for about 0.3 percent of beneficiaries and about 7 percent of total outlays is reasonable. The approximate mid-point between these two ends is the 1 percent of beneficiaries who account for about 16 percent of total payments.

We are proposing to set the outlier threshold at the lowest annual per capita amount that we project to account for the 1 percent of Medicare beneficiaries with the highest annual per capita outlays. In 1989, that amount was about $39,000.

For 1993, the annual per capita amount that we project to account for the 1 percent of Medicare beneficiaries with the highest annual per capita outlays is $55,000. Outlays on behalf of this group of Medicare beneficiaries would account for about 16 percent of total outlays.

1989 DATA

Part A and Part B payments per person served	Cumulative percent person served	Cumulative percent program payments
$5,000	82.4	21.6
10,000	90.4	37.9
20,000	96.2	61.7
30,000	98.2	76.2
39,000	99.0	84.0
40,000	99.1	84.9
50,000	99.5	90.0
60,000	99.7	93.0
70,000	99.8	94.7
100,000	99.9	97.6

Using a set percentage of beneficiaries, for example, 1 percent as we are proposing here, instead of a set dollar figure eliminates the need to determine an inflation factor. The amount of the outlier threshold would increase by the change in the annual per capita amount that we project to account for the 1 percent of Medicare beneficiaries with the highest annual per capita outlays.

VII. Other Proposed Changes

A. Full Reporting

1. Background

Most HMOs and CMPs paid on a cost basis have elected under section 1876(h)(2) of the Act (as implemented by § 417.532(c) of the regulations) to allow HCFA to process all bills for hospital and skilled nursing facility services furnished to their Medicare enrollees. Under this election, HCFA simply performs a service (bill processing and payment) for the HMO or CMP. The HMO or CMP authorizes the services and retains responsibility for coordination of those services with other services it furnishes to its Medicare enrollees.

Section 417.576(b)(2)(i) implements the requirement of section 1876(h)(4)(A) of the Act that the HMO or CMP report its "per capita incurred cost". However, cost HMOs and CMPs have not been reporting the part A costs paid by the Medicare intermediaries. For those services, they currently report only the deductibles and coinsurance. When the regulations that would have imposed an absolute limit were developed, the cost report was revised to include the part A costs paid by Medicare intermediaries. However, because the absolute limit policy was never implemented, the revised cost report instructions were not implemented either.

We propose to amend § 417.576 to make clear that the incurred per capita costs in the cost report must include the costs of hospital and skilled nursing facility services paid by Medicare intermediaries at the election of the HMO or CMP.

B. Technical Amendments

1. In § 417.1, we would add a definition of "furnished", to make clear that in part 417, the term means made available by the HMO, CMP, or HCPP either directly or under arrangements it makes with other entities.

2. In § 417.800, we would revise paragraph (c)(2)(ii) to conform to the statutory provision and long-standing practice, under which the following are deducted from the reasonable cost incurred by the HCPP:

- An amount equal to 20 percent of that cost, representing the Medicare coinsurance.
- The actuarial equivalent of the Medicare part B deductible.

3. We also propose to remove, as outdated, the following sections and

paragraphs that were applicable to contract periods that began before January 1, 1986, and to realign the designation schemes as necessary:

- (b) Paragraph (b) of § 417.546 (Physicians' services and other part B supplier services furnished under arrangements) and the Editorial note at the end of the section.
- Paragraph (d)(2) of § 417.560 (Apportionment: part B physician and supplier services).
- All of § 417.562 (Weighing of direct services furnished by physicians and other practitioners).

VIII. Other Required Information

A. Paperwork Reduction Act

Section 417.532(b) (with respect to HMOs and CMPs) and § 417.800(c) (with respect to HCPPs) require those organizations to submit the information necessary for HCFA to determine whether payment in excess of the presumptive limit is appropriate, because of the health condition of the organization's Medicare enrollees, or because of extraordinary occurrences. The time needed to prepare the information would depend on the particular circumstances but would not, we believe, exceed 8 hours per organization. Section 417.576 requires HMOs and CMPs to submit certified cost reports as a basis for final settlement. We estimate that preparation of the full cost report will require 100 hours.

If you comment on the information collection requirements, please send a copy of those comments directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron Eydt, Desk Officer for HCFA.

B. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

IX. Regulatory Impact Statement and Flexibility Analysis

This proposed rule would establish a presumptive limit on payment to HMOs, CMPs, and HCPPs. We anticipate the following savings in Medicare expenditures for the next 5 fiscal years as a result of this proposed policy:

Medicare Program Savings

[In millions of dollars]

Fiscal year:	
1994	14
1995	15
1996	17
1997	19
1998	21

This rule would also require HMOs and CMPs to include in their cost reports the costs of inpatient hospital services and SNF care furnished to their Medicare enrollees, for which payment is made by Medicare intermediaries directly to the providers.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs, CMPs, and HCPPs are considered to be small entities. Individuals are not considered small entities under the RFA.

Since this proposed rule represents a significant change in the application of cost limits for cost of HMOs, CMPs, and HCPPs, and would also require HMOs and CMPs to make minor changes in the reporting of their per capita costs, we are providing the following voluntary regulatory flexibility analysis.

1. Effect of the Presumptive Limit on Cost HMOs and CMPs and on HCPPs That Provide Inpatient Hospital Services

We believe that the costs of services furnished by these prepaid health care organizations should not exceed the costs for services furnished to an actuarially similar group of Medicare beneficiaries whose services are paid for under the Medicare fee-for-service payment systems. Excess cost can often be avoided by reducing unnecessary utilization and by electing effective but less expensive treatment modalities.

There are approximately 55 plans (22 HMOs and CMPs, and an estimated 33 HCPPs) that would be subject to the proposed presumptive limit. Program data from 1989, the most recent year for which we have audited cost report data, indicate that, in 1989, 38 percent of these organizations would have exceeded a presumptive limit of 100 percent of the AAPCC, half of them by 0 to 10 percent. These organizations had, at that time, little incentive to monitor costs. This proposed rule makes two changes that should encourage them to pay more attention to costs incurred on behalf of Medicare enrollees:

- The imposition of the presumptive limit on all these organizations; and
- The elimination of the effective incentives policy that had remained in effect for HCPPs.

We believe that many of these organizations would respond promptly to these incentives and reduce expenditures. Consequently, we anticipate that, in the first year of implementation of these proposed rules, only 25 percent of the HMOs, CMPs, and HCPPs would exceed the presumptive limit, that is, for only 25 percent would all the costs incurred on behalf of their Medicare enrollees exceed 100 percent of the AAPCC. In subsequent years, we expect that this percentage would decline, as more of these organizations modify their practices in response to the incentives.

There are two basic methods for reducing costs. First, the organizations can implement utilization controls, particularly for inpatient hospital care. Currently these organizations are not reporting inpatient hospital and SNF costs and hence have no reason to opt for lower-cost alternatives. However, the proposed full reporting requirement would change this. HMOs and CMPs would be required to report all services furnished to Medicare beneficiaries. (See section B.3. of this voluntary regulatory flexibility analysis.)

Second, the organizations can review claims more aggressively to identify and remove duplicate claims that result in payment both from the organizations and the Medicare carrier to a physician or other supplier for the same service. Although organizations are currently required to identify duplicate claims, they have no incentive to do a thorough job. Although we do not have data on what percentage of total costs is represented by duplicate payments, we believe that the elimination of those payments could, in many cases, bring costs below the presumptive limit.

The proposed presumptive limit rules would provide exceptions of two kinds. In the first place, HCFA could exempt small organizations (those with fewer than 500 Medicare enrollees) from the presumptive cost limit for up to two consecutive years. The rationale is that a small enrollment is less likely (than a large enrollment) to be representative of the general Medicare population in the area served by the organization. The small enrollment could be more healthy or less healthy, and if less healthy, could lead to costs in excess of the limit.

In the second place, organizations that exceed the presumptive limit have the opportunity to document that their Medicare enrollees have health care needs that exceed those of the average mix of Medicare beneficiaries who reside in their service areas but, since

they are not enrollees, have their services paid for under the Medicare fee-for-service payment systems. An HMO, CMP, or HCPP that exceeded the presumptive limit would have the option of providing to HCFA data to document that its costs in excess of the limit are justified because of the greater health care needs of its Medicare enrollees. The full reporting requirement would assist HMOs and CMPs in this endeavor.

The organizations could also document unusual circumstances beyond their control (such as fire, flood, earthquake, strike) that had significant impact on their costs.

Upon documentation and verification by HCFA, the organization would receive payment for costs in excess of the limit if it could show that the excess costs were "reasonable."

Some organizations may feel disadvantaged because they are located in areas where there is a relatively low AAPCC. However, in all geographic areas, the basis for the AAPCC is precise data on Medicare costs for Medicare beneficiaries who are not enrolled in HMOs, CMPs, or HCPPs. In areas where the AAPCC is relatively low because the delivery of services under the fee-for-services systems is very efficient, prepaid health care organizations are still expected to be at least as efficient as the fee-for-service payment system. Only if the group of Medicare enrollees is less healthy than the Medicare average in the area could costs in excess of the presumptive limit be justified. In other words, a managed care system, as represented by prepaid health care organizations, is expected to be at least as efficient as the fee-for-service system.

This proposed rule could have a positive effect on the revenues of organizations that meet the criteria for payments in excess of the presumptive limit; organizations that do not meet those criteria may face reduced revenues. We estimate that the loss of revenue for HMOs, CMPs, and HCPPs that exceed the presumptive limit would be approximately 5 percent on the average. However, we believe that many of these organizations will change their practices in ways that will reduce their costs to correspond to the reduction in revenues. This would achieve the purpose of the proposed rule, which is to protect the Medicare program against excessive payments by giving the affected organizations an incentive to hold their costs to reasonable levels.

HCPPs that furnish hospital services are subject to the presumptive limit, which applies to all services, part B as well as part A. For these HCPPs, therefore, the removal of the "effective incentives" exception (under which these HCPPs were exempt from reasonable charge limits for physicians' services) does not have any additional impact.

2. Effect of Cost-Reporting Changes on HMOs, CMPs, and HCPPs

The change in reporting per capita costs (referred to as full reporting) would affect all 26 cost HMOs and CMPs. HCPPs that furnish inpatient hospital care would also have to monitor part A costs. As explained earlier in this regulatory flexibility analysis, inpatient hospital and SNF costs are not being reported. This may constitute an incentive to use more costly inpatient (part A) services, when outpatient (part B) services may be as, or even more appropriate. Under this proposed rule, HMOs and CMPs and the specified HCPPs would be required to report or monitor these costs. Although full reporting may cause a slight decrease in Medicare payments to HMOs and CMPs, accounting for these costs should be the first step in establishing utilization controls and determining the most appropriate use of resources for the least cost.

The time needed for compliance with this requirement would depend on what systems the plan already has in place, how much modification, if any, they require, and, for an HCPP, the number of particular part B services the HCPP furnishes to its Medicare enrollees.

3. Effect of Increased Reporting Requirements on HCPPs that do not Furnish Inpatient Hospital Services

For HCPPs that do not furnish inpatient hospital services, the elimination of the effective incentives policy requires major changes. As noted above, under this policy, HCPPs were in some cases exempt from reasonable charge limits and therefore were not required to document what they paid for individual services. Under the proposed rule, these HCPPs would be required to document what they paid for services using the Medicare coding systems and to determine the Medicare payment level for all services. This would require changed procedures for these HCPPs, most of which are currently exempt from such documentation either because they provide services on other than a fee-for-service basis, or because they contract with physician groups that use effective incentives and thus are subject to the prudent buyer standard of current § 417.802(b) of the rules. Since the information is readily available from the Medicare contractor, we estimate that not more than 40 hours would be required to include it in the annual cost report. However, for a staff or group plan that does not pay its physicians on a fee-for-service basis, the conversion may be more time-consuming.

4. Effect on Physicians

Physicians would be affected by the presumptive limit, if an HMO, CMP, or HCPP—

- Terminates its contract with HCFA; or
- In order to keep costs within the presumptive limit—
- Reduces its payments to physicians;
- Controls utilization so that the fewer services are furnished; or
- Reduces the number of physicians on staff or under contract.

5. Effect on Medicare Enrollees

Medicare enrollees could be affected if the organization in which they are enrolled decides, because its costs exceed the presumptive limit, not to contract with Medicare. However, many HMOs and CMPs entered into contracts or retained contracts when the AAPCC was to be applied as an absolute limit, so it does not seem likely this proposed regulation alone would lead them to drop their cost contracts.

6. Effect on Medicare Intermediaries and Carriers

If an organization exceeds the presumptive limit and seeks payment under the special circumstances exception, intermediaries and carriers might be required to provide information necessary to verify a plan's documentation of special circumstances. However, this would not significantly affect intermediary or carrier workload and would not require renegotiation of their contracts. If organizations terminate their cost contracts, carriers (and intermediaries for home health claims) would have to process claims for those Medicare enrollees who do not enroll in another prepaid health care organization.

7. Conclusion

The chief objective of the presumptive limit is to ensure that HMOs, CMPs, and HCPPs are paid no more for services than would have been paid under the Medicare fee-for-service payment systems. We believe that this proposed rule would move the Medicare program toward this objective by encouraging HMOs, CMPs, and HCPPs to operate more efficiently without impeding reasonable and necessary service to Medicare enrollees.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of

a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

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

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare, and Reporting and record keeping requirements.

42 CFR part 417 would be amended as set forth below:

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

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. In § 417.1, the following definition is added in alphabetical order:

§ 417.1 Definitions.

* * * * *

Furnished, when used in connection with prepaid health care services, means services that are made available to an enrollee either directly by, or under arrangements made by, the HMO, CMP, or HCPP.

* * * * *

3. In § 417.494, revise paragraph (b)(1) introductory text, revise paragraph (b)(1)(iv), and add a new paragraph (b)(1)(v), to read as follows:

§ 417.494 Modification or termination of contract.

* * * * *

(b) *Termination by HCFA.* (1) HCFA may terminate a Medicare contract with an HMO or CMP for any of the following reasons: * * *

(iv) HCFA determines that the HMO or CMP no longer meets the requirements of section 1876 of the Act for entering into a Medicare contract.

(v) The HMO or CMP has had, for two consecutive years, a final overclaim as determined under § 417.532.

* * * * *

4. Throughout subpart O, except in § 417.532(a)(2), all forms of the verb "reimburse" are changed to the corresponding forms of the verb "pay", "reimbursement" is changed to "payment", and "reimbursable" is changed to "payable".

5. In § 417.532, paragraphs (a) through (d) and paragraph (e) introductory text are revised to read as follows:

§ 417.532 General considerations.

(a) *Conditions and criteria for payment*—(1) *Basic criteria.* The costs incurred by an HMO or CMP to furnish services covered by Medicare are payable if they are—

(i) Proper and necessary;

(ii) Reasonable in amount; and

(iii) Except as provided in § 417.550, appropriately apportioned among the Medicare enrollees, other enrollees, and nonenrolled patients of the HMO or CMP.

(2) *Cost reimbursement principles.* In determining fair and equitable payment to the HMO or CMP, HCFA generally applies the cost reimbursement principles set forth in § 413.5 of this chapter.

(b) *Presumptive limit*—(1) *Applicability.* The provisions of this paragraph apply to cost HMOs and CMPs and to HCPPs that furnish any inpatient services in general, acute care, short stay hospitals (as distinguished from psychiatric, chronic, or rehabilitation hospitals that are long-stay hospitals). In this paragraph, references to HMOs and CMPs must be read as applicable also to HCPPs that furnish inpatient services in acute care hospitals.

(2) *Criteria for reasonableness.* In judging whether costs are reasonable, HCFA applies, as a presumptive limit on the total amount payable on behalf of Medicare enrollees, the weighted average of the AAPCCs for those enrollees.

(3) *Terminology.* As used in this paragraph—(i) *Overclaim* means a claim for costs in excess of the presumptive limit; and

(ii) *Final overclaim* means that portion of an overclaim that the HMO or CMP cannot document as "reasonable" under paragraph (b)(4) of this section.

(4) *Exceptions to presumptive limit.* HCFA may accept and pay claims for costs that exceed the presumptive limit if the HMO or CMP documents that those excess costs are reasonable because of either of the following circumstances:

(i) The Medicare enrollees of the HMO or CMP have special needs and require a volume and intensity of services that exceed the average for Medicare beneficiaries of the same age and sex living in the same geographical area.

(ii) There were extraordinary occurrences beyond the control of the HMO or CMP including, but not limited to, strikes, fire, earthquake, flood, or similar unusual happenings that had substantial cost effects.

(5) *Conditions for additional payments.* If an HMO or CMP seeks additional payments as an exception to the presumptive limit, it must comply with HCFA instructions for the exception process described in paragraphs (a)(6) through (a)(10) of this section.

(6) *Response to first notice*—(i) *Timing of response.* Within 60 days after receipt of a first notice indicating that its costs exceed the presumptive limit, the HMO or CMP must submit the required information to HCFA.

(ii) *Required information.* The required information is any information that HCFA identifies as necessary for it to evaluate whether the HMO or CMP qualifies for an exception to the presumptive limit. It may include, but is not limited to, data on costs of services furnished to individual enrollees, documenting the volume and intensity of services required by the Medicare enrollees.

(iii) *Consequences of failure to provide required information.* If the HMO or CMP fails to submit the information requested by HCFA, the HMO or CMP forgoes the option of seeking additional payments, and is subject to the final adjustment procedures of § 417.576(c).

(7) *Determination and notice of determination.* If the HMO or CMP submits the information requested by HCFA, HCFA considers that information, determines whether the HMO or CMP meets the conditions for additional payments, and gives the HMO or CMP notice of that determination.

(8) *Response to notice of adverse determination.* (i) If HCFA's determination under paragraph (a)(7) of this section does not provide for additional payments, or provides for them in amounts that the HMO or CMP considers to be less than the special needs of its Medicare enrollees justify, the HMO or CMP may submit additional materials to support its position that its costs in excess of the presumptive limit are the result of one of the circumstances specified in paragraph (b)(4) of this section, or that the special

needs specified in that paragraph justify larger additional payments.

(ii) The HMO or CMP must submit the additional materials within 60 days of receipt of the notice of adverse determination.

(9) *Verification.* All information submitted by HMOs and CMPs seeking additional payments is subject to verification by HCFA or its authorized representatives. HCFA may seek verification from sources such as Medicare intermediaries or carriers and State and local agencies. For example, the local chapter of the American Red Cross might be able to confirm the impact of a natural disaster.

(10) *Determination and notice of final overclaim.* HCFA determines whether there is a final overclaim and gives the HMO or CMP written notice of that determination as follows:

(i) After the notice of presumptive overclaim, if the HMO or CMP does not timely submit required information under paragraph (b)(6) of this section.

(ii) After a notice of adverse determination under paragraph (b)(7) of this section, if the HMO or CMP does not submit additional justification under paragraph (b)(8) of this section.

(iii) After consideration of any additional material submitted by the HMO or CMP under paragraph (b)(8) of this section.

(11) *Adjustment for final overclaim.* (i) If the HMO or CMP has a contract with HCFA under subpart L of this part, the rules of § 417.576(c) apply.

(ii) If the HMO or CMP no longer has any contract under subpart L of this part, it must, unless other arrangements are mutually agreed upon, reimburse within 30 days after receipt of the notice, any amounts due HCFA under the final overclaim determination.

(12) *Exemptions based on size.* HCFA may exempt an HMO or CMP from the presumptive limit requirements for up to 2 consecutive years if the HMO or CMP has 500 or fewer Medicare enrollees at the beginning of its contract period. HCFA may establish additional criteria that these HMOs or CMPs must meet in order to qualify for this exception.

(13) *Termination of contact.* As provided in § 417.494(b)(1)(v), HCFA may terminate its Medicare contact with an HMO or CMP that has a final overclaim for 2 consecutive years, on the grounds that the HMO or CMP is inefficient and that it is not prudent for HCFA to contract with inefficient entities.

(c) *Method and amount of payment to the HMO or CMP.* (1) HCFA makes interim per capita payments each month for each Medicare enrollee, equivalent to the interim per capita cost rate determined in accordance with § 417.570.

(2) HCFA adjusts the interim per capita rate as necessary during the contract period and makes final adjustments at the end of the contract period.

(3) In determining the amount due the HMO or CMP, HCFA deducts from the reasonable cost that the HMO or CMP actually incurs for covered services furnished to its Medicare enrollees, an amount equal to the actuarial value of the applicable Medicare part A and part B deductible and coinsurance amounts that would have applied to the covered services for which payment is being made if these enrollees had not enrolled in this or another HMO or CMP.

(d) *Payment for hospital and SNF services*—(1) *Election by the HMO or CMP.* An HMO or CMP must elect, for each provider that furnishes hospital or SNF services to the HMO's or CMP's Medicare enrollees, either direct payment or payment by HCFA.

(2) *Timing, notice, and effect of election.* (i) The HMO or CMP must make the election and notify HCFA in writing before the beginning of its contract period.

(ii) The election is binding for the full contract period.

(e) *Reimbursement by organization.* If the HMO or CMP elects to pay providers directly, as provided in paragraph (d) of this section, it must—

* * * * *

6. In § 417.576, paragraph (b)(2)(i) is revised to read as follows:

§ 417.576 Final settlement.

* * * * *

(b) * * *

(2) * * *

(i) The per capita costs incurred in furnishing covered services to its Medicare enrollees, determined in accordance with § 417.532 through 417.568, and including—

(A) The costs incurred by entities related to the HMO or CMP by common ownership or control; and

(B) The costs of hospital and skilled nursing facility services paid by HCFA's intermediaries under the option provided in § 417.532(d).

* * * * *

7. In § 417.800, the section heading is revised, the definition of *reporting period* is added, and paragraphs (b), (c), and (d) are revised to read as follows:

§ 417.800 Payment to HCPPs: Definitions and basic rules.

(a) *Definitions.*

* * * * *

Reporting period means a period specified by HCFA, for which the HCPP must report its cost and utilization data.

(b) *Qualifying conditions.* An organization wishing to participate as an HCPP must—

(1) Enter into a written agreement with HCFA as specified in § 417.801;

(2) Furnish physicians' services through its employees or under a formal arrangement with a medical group, individual practice association, or individual physicians;

(3) Furnish covered part B services to its Medicare enrollees through institutions, entities, and persons that have qualified under the applicable requirements of title XVIII of the Social Security Act; and

(4) If it does not furnish inpatient hospital services as specified in paragraph (c)(1) of this section, demonstrate to HCFA's satisfaction that it has in place systems that will enable it to use the Medicare billing codes to document on its cost reports the cost of each part B service furnished to its Medicare enrollees.

(c) *Payment of reasonable costs*—(1) *Applicability.* This paragraph applies to HCPPs that do not furnish inpatient services in general acute-care, short-term hospitals. For HCPPs that furnish inpatient services in those hospitals, the rules of § 417.532(b) apply.

(2) *Payment for part B services: Basic rules*—(i) *Cost basis payment.* Except as provided in paragraph (d) of this section, HCFA pays an HCPP on the basis of the reasonable cost it incurs, as specified in subpart O of this part, for the covered part B services furnished to its Medicare enrollees.

(ii) *Deductions.* In determining the amount due an HCPP for covered part B services furnished to its Medicare enrollees, HCFA deducts, from the reasonable cost actually incurred by the HCPP—

(A) An amount equal to 20 percent of the incurred cost, representing the Medicare coinsurance; and

(B) The actuarial value of the part B deductible.

(3) *Criteria for reasonableness.* The costs incurred by the HCPP in furnishing physicians' services and other part B supplier services may be considered reasonable if they—

(i) Are comparable to costs incurred for similar services furnished by similar physicians and other suppliers in the same or a similar location; and

(ii) Do not exceed what HCFA would pay, in the aggregate (as determined under subpart E of part 405 or part 415 of this chapter, as appropriate), for the same services under the fee-for service system.

(4) An HCPP must use the Medicare billing codes to document, on its cost reports, the cost of each part B service furnished to its Medicare enrollees.

(5) *Verification by HCFA.* All information furnished by the HCPP is subject to verification by HCFA or its authorized representatives. Methods of verification may include but are not limited to on-site visits and audits.

(d) *Payment for services furnished by providers.* For part A or part B services furnished to the HCPP's Medicare enrollees by a provider, HCFA pays the provider through the provider's Medicare intermediary.

* * * * *

8. In § 417.801, paragraphs (a), (b)(4) and (b)(5) are revised and paragraph (b)(7) is added; and revise paragraphs (d)(1)(ii) and (d)(1)(iii) and add a paragraph (d)(1)(iv), to read as follows:

§ 417.801 Agreements between HCFA and health care prepayment plans.

(a) *Basic requirement.* In order to participate and receive payment under the Medicare program as an HCPP, an organization must enter into a written agreement with HCFA.

(b) * * *

(4) Not impose any limitations on the acceptance of Medicare enrollees or beneficiaries for care and treatment that it does not impose on all other individuals;

(5) Consider any additional requirements that HCFA finds necessary or desirable for efficient and effective program administration; and

* * * * *

(7) Document the cost of part B services as required by § 417.800(c)(4).

* * * * * *

(d) * * *

(1) * * *

(ii) The HCPP is not in substantial compliance with the provisions of the agreement, applicable HCFA regulations, or applicable provisions of the Medicare law;

(iii) The HCPP undergoes a change of ownership as specified in subpart M of this part; or

(iv) An HCPP that furnishes inpatient hospital care has had a final overclaim, as determined under § 417.532(b), for 2 consecutive years.

* * * * *

9. Section 417.802 is revised to read as follows:

§ 417.802 Other applicable regulations.

(a) *General rule.* The payment rules set forth in §§ 417.530 through 417.550 for cost HMOs and CMPs also apply to HCPPs except as specified in paragraph (b) of this section.

(b) *Exceptions*—(1) § 417.532(d). HCPPs do not have the option of paying providers that furnish inpatient hospital services, SNF services, or part B services to the HCPP's Medicare enrollees. HCFA pays the providers, as indicated in § 417.800(d).

(2) *§ 417.536(1).* Return on equity capital of proprietary providers owned by the HCPP is not an allowable cost.

(3) *§ 417.536(m).* These limitations on payment do not apply to HCPPs. The limitations that do apply are set forth in this subpart.

(4) *§ 417.548.* The rules governing payment for provider services furnished through arrangements do not apply because HCPPs do not pay providers.

(5) *§ 417.550(b)(2).* Payment of reasonable cost for independent certification of cost reports does not apply because HCPPs are not required to have their cost reports independently certified.

§ 417.546 [Amended]

10. In § 417.546, the following changes are made:

a. Paragraph (b) and the Editorial Note are removed.

b. In paragraph (a), the "(a)" designation is removed, and the "(1)" and "(2)" designations are changed to "(a)" and "(b)", respectively.

§ 417.560 [Amended]

11. In § 417.560, the following changes are made:

a. Paragraph (d)(2) is removed.

b. In paragraph (d)(1), the designation "(1)" and the clause "Except as provided in paragraph (d)(2) of this section" are removed, and the word "the", preceding "Medicare share" is revised to "The".

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

Dated: July 28, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 3, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3610 Filed 2–18–94; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 421

[BPO–111–P]

RIN 0938–AG06

Medicare Program; Intermediary and Carrier Functions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would bring certain sections of the regulations concerning Medicare fiscal intermediaries and carriers into conformity with the appropriate sections of Title XVIII of the Social Security Act. The rule would distinguish between those functions which applicable statutory authorities require to be included in agreements with fiscal intermediaries and those functions that, while not required to be performed by organizations that have entered into intermediary agreements with the Secretary pursuant to section 1816 of the Social Security Act, may be included in such agreements at our discretion.

We would require that the intermediary agreements include, as functions, requirements that intermediaries determine proper payment amounts and pay bills. All other functions would be optional. We propose that all functions for carriers are optional. These changes would provide us with the flexibility to transfer functions from one intermediary or carrier to another or to otherwise limit the functions an intermediary or carrier performs when we determine to do so would result in more effective and efficient program administration.

In addition, we propose a number of technical or clarifying revisions concerning carrier payment on a fee schedule basis and the distinction between nonrenewal and termination of intermediary agreements and carrier contracts.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 25, 1994.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–111–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) transmissions. In commenting, please refer to file code BPO–111–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (410) 966–7411).

FOR FURTHER INFORMATION CONTACT: Alan Bromberg, (410) 966–7441

SUPPLEMENTARY INFORMATION:

I. Background

Intermediary Agreements and Carrier Contracts—Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with us (on the Secretary's behalf). These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). With certain exceptions, intermediaries perform bill processing and benefit payment functions for part A of the program (Hospital Insurance) and carriers perform claims processing and benefit payment functions for part B of the program (Supplementary Medical Insurance).

Our regulations at 42 CFR 421.100, Intermediary functions, require that the agreement between us and a fiscal intermediary specify the functions the intermediary is to perform. In addition to any items specified by us unique to that intermediary, the regulations require that all intermediaries perform activities relating to Medicare coverage, fiscal management, provider audits, utilization patterns, resolution of cost report disputes, and reconsideration of determinations. In addition, the regulations require that all intermediaries furnish information and reports, undertake dual intermediary responsibilities for service to provider-based Home Health Agencies (HHAs) and provider-based hospices, and comply with all applicable laws and regulations and with any other terms and conditions included in their agreements.

Similarly, our regulations at 42 CFR 421.200, Carrier functions, require that the contract between HCFA and a part B carrier specify the functions the carrier is to perform. In addition to any items specified by us unique to that carrier, the regulations require that all part B carriers perform activities relating to Medicare coverage, payment on a cost basis, payment on a charge basis, fiscal management, provider audits, utilization patterns and hearings to part B beneficiaries. In addition, the regulations require that all carriers furnish information and reports, maintain and make available records, and comply with any other terms and conditions included in their contracts.

For both intermediaries and carriers, our regulations at 42 CFR 421.5, General provisions, state that HCFA has the authority not to renew a part A agreement or a part B Contract when it expires. Our regulations at 42 CFR 421.126, Termination of agreements, provide the Secretary with the authority to terminate fiscal intermediary agreements in certain circumstances, while the regulations at 42 CFR 421.205, Termination by the Secretary, give the Secretary similar authority to terminate carrier contracts.

II. Proposed Changes to the Regulations

As noted earlier, our regulations at § 421.100 for intermediaries and § 421.200 for carriers specify a list of functions that must, at a minimum, be included in all intermediary agreements and carrier contracts. These requirements far exceed those of the statute. Section 1816(a) of the Social Security Act requires only that an intermediary agreement provide for determination of the amount of payments to be made to providers and for the making of such payments. Section 1816(a) permits, but does not require, an intermediary agreement to include provisions for the intermediary to provide consultative services to providers to enable them to establish and maintain fiscal records or to otherwise qualify as providers and, for those providers to which it makes payments, to serve as a channel of communications between us and the providers, to make audits of the records of the providers, and to perform such other functions as are necessary.

We believe that section 1816(a) mandates only that an intermediary agreement include the functions currently required by § 421.100 paragraph (a) (Coverage) and paragraph (b) (Fiscal management) of the regulations. We believe that the other functions (§ 421.100 paragraphs (c) through (i)) that the regulations currently require to be included in all intermediary agreements are not required by statute and the mandatory inclusion of them in all agreements limits our ability to efficiently and effectively administer the Medicare program.

Paragraph (a) of section 1842 of the Act, which pertains to carrier contracts, requires that the contracts must provide for some or all of the functions listed in that paragraph, but does not specify any functions which must be included in a carrier contract. As in the case of intermediary agreements, our experience has been that mandatory inclusion of a long list of functions in all contracts restricts our ability to administer the carrier contracts with optimum efficiency and effectiveness. We believe that the requirements of the regulations for both intermediaries and carriers should be brought into conformity with the statutory requirements. Moreover, we believe that such action would substantially enhance the efficient and effective administration of the Medicare program by giving both HCFA and the contractor community more flexibility in their approaches to the performance of intermediary and carrier functions.

We further believe that intermediaries and carriers would benefit from the ability to enter voluntarily into regional arrangements for the performance of some functions. Intermediaries and carriers have shown interest in entering into agreements with other contractors in their regions to shift the performance of a given function to a single intermediary or carrier that is able to perform the function with the greatest efficiency or at the least cost, while another function might in turn be shifted to a second contractor. For example, one intermediary in a region might perform medical review for the entire region, while another would assume the audit function. Under the existing requirement that all intermediaries and carriers perform all functions, such arrangements are not permitted, except through subcontracts, which must be awarded through the competitive procurement process and which leave the final responsibility for the performance of the function with the original contractor. The proposed change in the regulations would provide the intermediaries and carriers with the ability to enter into arrangements to transfer formally the entire responsibility for performance of a function to other intermediaries and carriers, subject to our approval.

The change would also simplify the process of our paying the intermediary or carrier actually performing the function. Under a subcontracting arrangement, we pay the contractor that subcontracts out the function and that entity, in turn, pays the subcontractor

which is actually doing the work. Under the proposed change, we would make direct payment to the intermediary or carrier performing the function.

Our conclusion is that the existing regulations, which state that intermediary agreements and carrier contracts must include all of the functions cited, are not only inconsistent with applicable statutory authority, but also are too restrictive. They deny us the flexibility to improve the administration of the Medicare program by removing some of the functions from an intermediary's agreement or a carrier's contract and transferring them to another intermediary or carrier where either we or the contractors themselves determine that such action would be more efficient than having every intermediary and carrier perform all functions specified in the regulations.

We are proposing to redesignate § 421.100, Intermediary functions, as § 421.101, Optional intermediary functions. In a new § 421.100, Required intermediary functions, we would specify that all agreements must include the functions of coverage (current content of § 421.100(a)) and fiscal management (current § 421.100(b)). We believe these functions are required to be included in all agreements by section 1816(a) of the Act. In the redesignated § 421.101, Optional intermediary functions, we would indicate that the intermediary agreement may include the functions currently contained in § 421.100(c) through 421.100(i). That is, the cumulative effect of the change would be to separate the two required functions that must be in all intermediary agreements from the remaining functions that may or may not be included.

In § 421.200, Carrier functions, we would change the word "must" to "may" in the first sentence, making all the functions listed for inclusion in carrier contracts optional. This change would reflect section 1842(a) of the Act, which does not list specific functions that must be included.

Our use of the term "optional" does not mean that some functions might not be performed in some jurisdictions. All functions will continue to be performed in all intermediary and carrier jurisdictions. "Optional" in this case means only that HCFA will have the option of determining whether a given function should be performed in a specific jurisdiction by the intermediary or carrier which normally serves that jurisdiction and therefore included in that intermediary's agreement or carrier's contract, or should be performed by some other intermediary or carrier.

In § 421.200, we propose to add payment on a fee schedule basis as a new function which may be performed by carriers. While the original carrier functions included payment on a cost basis and on a charge basis, recent statutory changes and corresponding changes in the regulations have shifted some classes of physician and Medicare suppliers to payment according to fee schedules. However, § 421.200 has never been updated to recognize these changes. Accordingly, the addition of payment on a fee schedule basis as a function which may be included in carrier contracts will bring this section of the regulations into conformity with current statutory provisions for Medicare part B payment.

In addition, 42 CFR 421.5(d) states that, notwithstanding any of the provisions of part 421, HCFA has the authority not to renew an agreement or contract when its term expires. Section 421.126(b) allows the Secretary to terminate intermediary agreements under certain circumstances, while § 421.205 gives the Secretary the authority to terminate carrier contracts at any time for cause. The distinction between the termination and nonrenewal of an agreement or contract is important because the right of an intermediary or carrier to a hearing applicable to terminations does not apply to nonrenewals. Consequently, we are proposing to revise §§ 421.5, 421.126, and 421.205 to make certain that the distinction between nonrenewals and terminations is clear. The proposed changes are not substantive. They are meant to reflect existing statutory and regulatory requirements, as well as HCFA's longstanding policy and practice, as expressed in the standard intermediary agreements and carrier contracts.

The objective of these proposed changes is to make the regulations fully consistent with the relevant statutory authority and to provide, as necessary, clarification of the distinction between contract nonrenewals and terminations. In addition, the change to the regulations concerning mandatory and optional functions will provide us with the flexibility to shift non-mandatory functions among intermediaries and carriers so that the Medicare program may be administered in the most efficient and effective manner possible. We anticipate using the authority granted us by this change sparingly. Any transfer or consolidation of functions will be determined on a case-by-case basis, and, prior to taking action in any specific case, we will closely study the situation to determine whether the benefits to the effective administration of the Medicare program warrant the action. It is not our intent at this time to shift functions from intermediaries and carriers to any entities except other intermediaries and carriers.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to them in the preamble to the final rule.

IV. Collection of Information Requirement

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, intermediaries and carriers are not considered to be small entities that will be affected as a result of these regulations. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would potentially affect the 47 Medicare part A intermediaries and 33 part B carriers with agreements or contracts with HCFA to make payments to Medicare providers and beneficiaries for covered services and to perform certain other functions currently described in § 421.100 for intermediaries and § 421.200 for carriers. Under this

proposed rule, we would have authority to redefine intermediary agreement and carrier contract requirements and remove functions from some contractors and transfer them to other contractors. We would also be able to consolidate some tasks under one contractor in regions where several contractors are all performing the same functions simultaneously.

The proposed rule would also add payment on a fee schedule basis as a function which may be included in carrier contracts and distinguishes between contract nonrenewals and terminations. This proposed rule would make the regulations more consistent with the relevant statutory authority and promote the more effective and efficient administration of the Medicare program. Service to beneficiaries and Medicare providers would not be disrupted in the affected regions.

Implementing this proposed rule would not create any additional expenses but should enable the Medicare program to realize savings in administrative costs. At present, we are unable to estimate the potential dollar amount of these savings.

We evaluated the potential impact of these regulations changes on intermediaries and carriers for purposes of determining whether a regulatory flexibility analysis is required. We believe that the effects or the changes will be minimal. Almost all of the present contractors have been performing the functions for a number of years and have developed efficiencies that would argue against our needlessly altering their functions. Therefore, it is not our intention to use the flexibility of this regulation to make wholesale changes.

Consequently, we have determined, and the Secretary certifies, that this proposed rule would not result in a significant impact on a substantial number of small entities. Similarly, the Secretary certifies that it would not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

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

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 would be amended as set forth below.

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834 (a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395m (a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

2. Section 421.5(d) is revised to read as follows:

§ 421.5 General provisions.

* * * * *

(d) *Nonrenewal of agreement or contract.* Notwithstanding any of the provisions of this part, HCFA has the authority to nonrenew an agreement or contract when its term expires. An intermediary or carrier has the authority to nonrenew an agreement or contract when its term expires. The notice and hearing requirements for the termination of an agreement or contract set forth in §§ 421.126, 421.128, and 421.205 do not apply to such nonrenewal of an agreement or contract. An intermediary or carrier also has the authority to nonrenew an agreement or contract when its term expires.

* * * * *

3. Section 421.100 is redesignated as § 421.101 and revised to read as follows:

§ 421.101 Optional intermediary functions.

An agreement between HCFA and an intermediary may specify the optional functions to be performed by the intermediary, which may include, but are not necessarily limited to, the following:

(a) *Provider audits.* The intermediary must audit the records of providers of services as necessary to assure proper payments.

(b) *Utilization patterns.* The intermediary must assist providers to—

(1) Develop procedures relating to utilization practices;

(2) Make studies of the effectiveness of those procedures and recommend methods to improve them;

(3) Evaluate the results of utilization review activity; and

(4) Assist in the application of safeguards against unnecessary utilization of services.

(c) *Resolution of cost report disputes.* The intermediary must establish and maintain procedures approved by HCFA to consider and resolve any disputes that may result from provider dissatisfaction with an intermediary's determinations concerning provider cost reports.

(d) *Reconsideration of determinations.* The intermediary must establish and maintain procedures approved by HCFA for the reconsideration of its determinations to deny payments to an individual or to the provider that furnished services to the individual. The PRO performs reconsideration of cases in which it made a determination subject to reconsideration.

(e) *Information and reports.* The intermediary must furnish to HCFA any information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

(f) *Other terms and conditions.* The intermediary must comply with all applicable laws and regulations and with any other terms and conditions included in its agreement.

(g) *Dual intermediary responsibilities.* With respect to the responsibility for service to provider-based HHAs and provider-based hospices, where the HHA or hospice and its parent provider will be served by different intermediaries under § 421.117 of this part, the designated regional intermediary will process bills, make coverage determinations and make payments to the HHAs and hospices. The intermediary serving the parent provider will perform all fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

4. A new § 421.100 is added to subpart B to read as follows:

§ 421.100 Required intermediary functions.

An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary, which must include the following required functions and may include optional functions listed in § 421.101 of this part and any others agreed to by HCFA. The required functions are:

(a) Coverage. (1) The intermediary ensures that it makes payments only for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with PRO determinations when they are services for which the PRO has assumed review responsibility under its contract with HCFA.

(2) The intermediary takes appropriate action to reject or adjust the claim if—

(i) The intermediary or the PRO determines that the services furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting; or

(ii) The intermediary determines that the claim does not properly reflect the kind and amount of services furnished.

(b) Fiscal management.

The intermediary must receive, disburse, and account for funds in making Medicare payments.

5. Section 421.126 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

§ 421.126 Termination or nonrenewal or agreements.

* * * * *

(c) *Nonrenewal by the intermediary or Secretary.* (1) An intermediary may nonrenew an agreement with the Secretary by giving the Secretary written notice of the intermediary's intention to nonrenew the agreement at least 90 days before the end of the current period of the agreement.

(2) The Secretary may nonrenew an agreement with an intermediary by giving the intermediary written notice of the Secretary's intention to nonrenew the agreement at least 90 days before the end of the current period of the agreement.

(3) In the event that either the Secretary or intermediary gives notice of intention to nonrenew an agreement, the Secretary may extend the agreement for such time and under such conditions as may be specified in the agreement.

(4) The providers served by an intermediary whose contract is not being renewed have the opportunity to nominate another intermediary, in accordance with § 421.104.

(5) The provisions for notice and the opportunity for a hearing in connection with the termination of an intermediary agreement, set forth in paragraph (b)(2) of this section and § 421.128, do not apply to any nonrenewal of an intermediary agreement.

6. Section 421.200 is amended by redesignating paragraphs (d) through (j) as (e) through (k), respectively. The introductory text is revised and a new paragraph (d) is added to read as follows:

§ 421.200 Carrier functions.

A contract between HCFA and a carrier, other than a regional DMEPOS carrier, specifies the functions to be performed by the carrier, which may include, but are not necessarily limited to the following:

* * * * *

(d) *Payment on a fee schedule basis.* If payment is on a fee schedule basis, the carrier must assure that payments are made in accordance with the applicable provisions of parts 414 and 415 of this chapter.

* * * * *

7. Section 421.205 is revised to read as follows:

§ 421.205 Termination or nonrenewal of contracts.

(a) *Termination by the carrier.* A carrier may terminate its contract at any time upon written notice to the Secretary of its intention to terminate. Upon notice to terminate, the contract continues for 180 days after such notice unless the Secretary decides to terminate at an earlier date.

(b) *Termination by the Secretary.* (1) The Secretary may terminate a contract with a carrier at any time if he or she determines that the carrier has failed substantially to carry out any material terms of the contract or has performed its functions in a manner inconsistent with the effective and efficient administration of the Medicare Part B program.

(2) Upon notification of the Secretary's intent to terminate the contract, the carrier may request a hearing within 20 days after the date of the notice of intent to terminate.

(3) The hearing procedures will be those specified in § 421.128(c).

(c) *Nonrenewal by the Secretary or carrier.* (1) A carrier may nonrenew a contract with the Secretary by giving the Secretary written notice of its intention to nonrenew the contract at least 90 days before the end of the current period of the contract.

(2) The Secretary may nonrenew a contract with a carrier by giving the carrier written notice of the Secretary's intention to nonrenew the contract at least 90 days before the end of the current period of the contract.

(3) In the event that either the Secretary or the carrier gives notice of intention to nonrenew a contract for an additional period, the Secretary may extend the contract for such time and under such conditions as may be specified in the contract.

(4) The provisions for notice and the opportunity for a hearing in connection with the termination of a carrier contract, set forth in paragraph (b) of this section and § 421.128, do not apply to the nonrenewal of a carrier contract.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicare Assistance Program; 13.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare-Supplemental Medical Insurance)

Dated: August 5, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 10, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3608 Filed 02–18–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC10

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Threatened Status for the Flat-Tailed Horned Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, gives notice that a public hearing will be held on the proposed threatened status for the flat-tailed horned lizard (*Phrynosoma mcallii*). At the hearing, the Service will allow all interested parties to submit oral or written comments on the proposal. The public comment period is extended to provide the public with more time to comment.

DATES: A public hearing will be held from 6 to 8 p.m. on Tuesday, March 22, 1994, in Imperial, California. The public comment period, which closed on January 28, 1994, will be reopened from February 22, 1994 until April 22, 1994. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The hearing will be held on Tuesday, March 22, 1994, at Imperial Valley College, 380 Ira Aten Road, Health Sciences Building Assembly Room 2131, Imperial, California.

Written comments and materials may be submitted at the hearing or sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small iguanid lizard restricted to flats and valleys of the western Sonoran desert. Its maximum length, excluding the tail, is about 8 centimeters (3 inches) (Stebbins 1985). The range of the flat-tailed horned lizard includes portions of Riverside, Imperial and extreme eastern San Diego Counties, California; northeastern Baja California, Mexico; Yuma County, Arizona; and northwestern Sonora, Mexico. An estimated 34 percent of historically occupied flat-tailed horned lizard habitat has been lost. About 95 percent of remaining optimal habitat in California is threatened by one or more factors. Various human activities threaten 36 percent of the remaining habitat in Arizona. The flat-tailed horned lizard and its habitat are also being adversely affected in Mexico, but to a lesser degree. The Service published the proposed rule detailing these factors in the **Federal Register** on November 29, 1993 (58 FR 62629).

The Service has scheduled a public hearing on Tuesday, March 22, 1994, in response to formal requests from the public. Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. However, the length of written comments or materials presented at the hearing or mailed to the Service are not limited. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes on April 22, 1994.

Author

The primary author of this notice is Larry Salata, U.S. Fish and Wildlife Service, Carlsbad Field, Office, 2730 Loker Avenue West, Carlsbad, California, 92008.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: February 14, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–3837 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[I.D. 021494E]

American Lobster Fishery

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice that the New England Fishery Management Council has submitted Amendment 5 to the Fishery Management Plan for American Lobster (FMP) for Secretarial review and is requesting comments from the public.

DATES: Written comments will be accepted through April 15, 1994.

ADDRESSES: Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, 1 Blackburn Dr., Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Lobster FMP." Copies of the Amendment and Draft Supplemental Environmental Impact Statement are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that it is available for public review and comment. The Secretary will consider the public comments in determining whether to approve, disapprove, or partially disapprove the FMP amendment.

Amendment 5 would implement: (1) A freeze of the minimum size limit for lobsters at the current carapace size of 3¼ inches; (2) a five year moratorium on new Federal vessel permits; (3) new permit requirements for vessel operators and dealers; (4) several categories of Federal vessel permits and limits on lobster landings according to a vessel's permit category; (5) the development a stock rebuilding program for all segments of the lobster fishery; (6) mandatory reporting for permitted vessels and dealers; (7) changes to the width of the escape vent size from 6 inches to 5¾ inches; and (8) framework measures to adjust the effort control and other measures in the proposed amendment and provisions in the plan. This amendment also includes a revised definition of overfishing for lobster and a determination, based on this definition, that the resource is overfished. The intent of this amendment is to reduce the fishing mortality rate and rebuild the American lobster resource.

This proposed amendment also included a provision that would allow moratorium qualification for vessels with state endorsed permits in states that did not notify vessel owners of the control date for lobster. This provision has been disapproved based on National Standard 4 and the determination that it would discriminate against individuals from different states.

A notice of proposed rulemaking will be published within 15 days after the submission of the amendment.

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

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3811 Filed 2–15–94; 4:46 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–116–2]

Availability of Determination of Nonregulated Status of Calgene, Inc., Genetically Engineered Cotton Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of determination.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is announcing the issuance of a determination that certain trademarked cotton lines, designated BXN™ cotton, do not present a plant pest risk and are therefore no longer regulated articles under its regulations. APHIS' determination has been made in response to a petition received from Calgene, Inc., of Davis, CA, on July 15, 1993, seeking a determination from APHIS that BXN™ cotton does not present a plant pest risk and is therefore no longer a regulated article. The effect of this determination is that cotton lines meeting the definition of BXN™ cotton and that have been field tested under permit, will no longer be subject to regulation. This notice also announces the availability of the determination that provides the basis for the ruling, as well as the availability of an environmental assessment of this action.

EFFECTIVE DATE: February 15, 1994.

ADDRESSES: The determination, the environmental assessment, the Calgene, Inc. submission, and written comments received in response to our September 8, 1993, notice published in the **Federal Register** may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to this room are requested to call ahead on (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Senior Microbiologist, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7601. For a copy of the determination or the environmental assessment, please write or call Ms. Kay Peterson at this same address and telephone number.

SUPPLEMENTARY INFORMATION: On September 8, 1993 (58 FR 47249–47250, Docket No. 93–116–1), the Animal and Plant Health Inspection Service (APHIS) published a notice announcing receipt of a petition from Calgene, Inc. (Calgene) of Davis, CA, that requested a determination on the regulatory status of BXN™ cotton. This notice also indicated the role of the Food and Drug Administration and the United States Environmental Protection Agency in the regulation of food products derived from BXN™ cotton and the potential use of the herbicide bromoxynil on BXN™ cotton, respectively. This notice further announced that the petition was available for public review and invited written comments on whether BXN™ cotton poses a plant pest risk, to be submitted on or before November 8, 1993.

Comments

APHIS received a total of 45 comments from State officials, universities, farmers associations and cooperative extension services, environmental and consumer organizations, and business and professional associations. Among these commenters, 34 were in favor of granting the petition, 9 were opposed, and 2 others addressed APHIS' decision on the petition itself only parenthetically. APHIS has provided a complete discussion of the comments and any issues raised by the commenters in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

BXN™ cotton, as defined by its developer (Calgene, Inc., of Davis, CA), is any cotton cultivar or progeny of a cotton line containing the BXN gene (a gene, derived from the soil microbe *Klebsiella pneumoniae* subsp. *ozaenae* that encodes the enzyme nitrilase, which can degrade the herbicide bromoxynil) with its associated regulatory sequences, i.e., sequences that allow for expression of the gene's enzyme product. By definition, BXN™ cotton may also contain: the *kan*^{r} marker gene (encoding the enzyme aminoglycoside 3'-phosphotransferase II, which confers resistance to the antibiotic kanamycin) with its associated regulatory sequences; a DNA fragment containing the origin of replication of the pRi plasmid from *Agrobacterium rhizogenes*; T–DNA left and right border sequences from an *Agrobacterium tumefaciens* Ti plasmid; a segment of DNA from transposon Tn*5*; a portion of a synthetic polylinker sequence from *lacZ*'; and a segment of DNA containing the origin of replication of plasmid pBR322. Expression of the BXN™ gene and the *kan*^{r} gene is directed by copies of the promoter from the *35S* gene from cauliflower mosaic virus and terminated using sequences derived from the *tml* gene from the octopine-type Ti plasmid pTiA6 from *A. tumefaciens*.

BXN™ cotton contains components from organisms that are known plant pathogens, i.e., the bacterium *Agrobacterium tumefaciens* and cauliflower mosaic virus. BXN™ cotton has therefore been a regulated article under APHIS jurisdiction, and its field tests in 1989, 1990, 1991, 1992, and 1993 have been in accordance with APHIS regulations at 7 CFR part 340. APHIS' determination that BXN™ cotton that has been field tested under permit does not present a plant pest risk is based on an analysis of data provided to APHIS by Calgene and other relevant published scientific data obtained by APHIS concerning the components of BXN™ cotton and observable properties of the cotton lines themselves. From this review, we have determined that these BXN™ cotton lines: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than their non-engineered parental varieties; (3) are unlikely to increase the weediness potential for any other cultivated plant or native wild species with which the organism can interbreed; (4) will not cause damage to processed agricultural commodities; and (5) are unlikely to harm other organisms, such as bees and earthworms, that are beneficial to agriculture. In addition, we have determined that there is a reasonable

certainty that progeny BXN™ cotton lines bred from these lines will not exhibit new plant pest properties, i.e., properties substantially different from any observed for the BXN™ cotton lines already field tested, or those observed for cotton in traditional breeding programs. However, APHIS believes that it is prudent to require information to corroborate that new BXN™ cotton lines, not derived from BXN™ lines already field tested under permit, do not exhibit unexpected qualities.

Calgene has provided information and data from field testing of some of the cotton lines fitting their definition of BXN™ cotton and intended to be representative of all those lines. Our determination, however, applies only to cotton lines that fit Calgene's definition of BXN™ cotton and that have been field tested under permit. The effect of this determination is that such cotton lines will no longer be considered regulated articles under the APHIS regulations at 7 CFR part 340. Permits under those regulations will no longer be required from APHIS for field testing, importation, or interstate movement of BXN™ cotton lines that have been field tested under permit or their progeny. Normal agronomic practices involving these BXN™ cotton lines, e.g., cultivation, propagation, movement, and cross-breeding with other non-regulated cotton lines, can now be conducted without an APHIS permit. (Importation of BXN™ cotton (and nursery stock or seeds capable of propagation) is still, however, subject to the restrictions found in the Foreign Quarantine Notices regulations at 7 CFR part 319.) Variety registration and/or seed certification for individual cotton lines carrying the BXN™ gene may involve future actions by the U.S. Plant Variety Protection Office and State Seed Certification officials.

The potential environmental impacts associated with this determination have been examined in accordance with regulations and guidelines implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 7 CFR part 1b; 44 FR 50381–50384; and 44 FR 51272–51274). An Environmental Assessment (EA) was prepared and a Finding of No Significant Impact (FONSI) was reached by APHIS for the determination that BXN™ cotton that has been field tested under permit is no longer a regulated article under its regulations at 7 CFR part 340.

Done in Washington, DC, this 15th day of February 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–3886 Filed 2–18–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–002–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–006–01	U.S. Department of Agriculture, Agricultural Research Service.	01–06–94	*Fusarium graminearum* genetically engineered to block synthesis of trichothecene toxins.	Illinois.
94–006–02, renewal of permit 92–037–07, issued on 05–18–92.	Upjohn Company	01–06–94	Cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), watermelon virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to these viruses.	Florida.
94–010–01	Connecticut Agricultural Experiment Station	01–10–94	*Cryphonectria parasitica,* a causal agent of chestnut blight, genetically engineered to be hypovirulent.	Connecticut, West Virginia.

Done in Washington, DC, this 15th day of February 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–3887 Filed 2–18–94; 8:45 am]

BILLING CODE 3410–34–P

ARMS CONTROL AND DISARMAMENT AGENCY

U.S. Government Sponsored Chemical Weapons Convention (CWC) Seminars for the Chemical and Related Industry

AGENCY: United States Arms Control and Disarmament Agency (ACDA).

ACTION: ACDA will sponsor seminars to explain the CWC and its significance for U.S. industry.

SUMMARY: The Chemical Weapons Convention (CWC) will directly affect private sector chemical producers, consumers and processors. The CWC imposes requirements on certain industrial facilities.

Depending on the specific chemical, the CWC requires:

- Detailed reports of the quantities produced, processed, or consumed in your facilities;
- Detailed production plans and site (plant) information;
- Short-notice on-site inspections of industry facilities and records by international inspection teams.

The key issues for U.S. chemical and related industry managers:

- Compliance with CWC Requirements;
- Protection of confidential/ proprietary business information;
- Prevention of adverse publicity/ controversy;
- Prevention of unnecessary costs/ production disruptions;
- Inspection readiness;
- Schedule for implementation.

The U.S. Arms Control and Disarmament Agency is sponsoring regional one-day seminars to explain the CWC, the domestic draft implementation legislation that is currently being reviewed by the Senate, and their significance to U.S. industry. You are invited to attend one of the following:

Atlanta, GA	April 12, 1994.
New Orleans, LA	April 15, 1994.
Las Vegas, NV	April 29, 1994.
Baltimore, MD	May 3, 1994.
Boston, MA	May 5, 1994.
Chicago, IL	May 11, 1994.

FOR FURTHER INFORMATION CONTACT: For registration materials and more information on how the CWC affects your company, contact: Geoff Nagler, EAI Corporation, 2111 Eisenhower Avenue, suite 301, Alexandria, VA 22314–4679, Telephone: (800) 528–1041 or (703) 739–1033, Fax: (703) 739–1525.

Cathleen E. Lawrence,

Director of Administration.

[FR Doc. 94–3878 Filed 2–18–94; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Berkeley, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–003R. *Applicant:* University of California, Berkeley, Berkeley, CA 94720. *Instrument:* Blackbody Furnace with Internationally Accredited Absolute Reference. *Manufacturer:* National Physical Laboratory, United Kingdom. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides: (1) highly flat spectral emissivity over the 3–30 μm range, (2) an isothermal emissivity to 0.999, (3) characterization relative to an absolute standard cavity and (4) operability in an airborne observatory. *Advice Received From:* National Institute of Standards and Technology, January 4, 1994.

Docket Number: 93–138. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Scintillometer, Model SLS 20. *Manufacturer:* Scintec, Germany. *Intended Use:* See notice at 58 FR 63924, December 3, 1993. *Reasons:* The foreign instrument provides measurement of the refractive index, provides continuous measurement of the refractive index parameter (C_n^2) and the inner scale of turbulence (l_o) for estimating heat and momentum flux in the atmosphere along light propagation distances of tens to hundreds of meters. *Advice Received From:* National Oceanic and Atmospheric Administration, January 10, 1994.

Docket Number: 93–144. *Applicant:* Duke University, Durham, NC 27708–0227. *Instrument:* Electron Microprobe (Used), Model CAMEBAX. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 58 FR 65158, December 13, 1993. *Reasons:* The foreign instrument provides (1) non-destructive chemical analysis of micron-sized regions with detection limits of 0.01% and precision to 1.0% for major elements and (2) four wavelength dispersive spectrometers. *Advice Received From:* National Institute of Standards and Technology, November 10, 1993 (comparable case).

The National Institute of Standards and Technology and National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–3913 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Application: State of South Carolina With the Exceptions of Greenville, Charleston, and Columbia MSAs

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center program (MBDC) to operate a Rural Minority Business Development Center (RMBDC) for approximately a 3-year period, subject to agency priorities, recipient performance and the availability of funds. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995 is estimated at $411,765. The application must include a minimum cost-share of 15% of the total project cost, through

non-Federal contributions. The Federal amount includes $8,540 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The RMBDC will operate in the State of South Carolina geographic service area with the exceptions of Greenville, Charleston and Columbia, MSAs. The headquarters of the RMBDC will be located in Orangeburg, South Carolina.

The award number for this RMBDC will be 04–10–94007–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The RMBDC will provide business development services to the rural minority business community to help establish and maintain viable rural minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of rural minority individuals and firms; to offer a full range of management and technical assistance to rural minority entrepreneurs; and to serve as a conduit of information and assistance regarding rural minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of rural minority businesses, individuals and organizations (50 points); the resources available to the firm in providing rural business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must received at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

If an application is select for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Award under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The RMBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the RMBDC may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the RMBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine is funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the RMBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 24, 1994. Applications must be postmarked on or before March 24, 1994.

ADDRESSES:

Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION CONTACT: Robert M. Henderson, Acting Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on March 9, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1715, Atlanta, Georgia 30308–3516. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the RMBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility

Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the ward document.

11.800 Minority Business Development Centers

(Catalog of Federal Domestic Assistance)

Dated: February 15, 1994.

Robert Henderson,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 94–3843 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: San Antonio MBDC I.D. No. 06–10–94006–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995 is estimated at $283,156. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the San Antonio, Texas geographic service area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project costs through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 31, 1994.

Applications must be postmarked on or before March 31, 1994.

ADDRESSES: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Bobby Jefferson, Acting Regional Director, Dallas Regional Office, telephone (214) 767–8001.

A pre-bid conference will be held on March 10, 1994, in the Earl Cabell Federal Building, room 7B23, 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any

costs to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Office may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contacts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 15, 1994.

Bobby Jefferson,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 94–3870 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 940229–4029; I.D. 120893A]

Atlantic Shark Fisheries

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

ACTION: Notice of control date for entry into the Atlantic shark fisheries.

SUMMARY: This notice announces that anyone entering any Atlantic shark fishery after February 22, 1994 (control date), may not be assured of future access to or an allocation of the shark resource in the Atlantic Ocean under the Fishery Management Plan for Atlantic Sharks (FMP). This notice is intended to promote awareness of potential eligibility criteria for access to the Atlantic shark fisheries and to discourage new entries into the fisheries based on economic speculation while the Secretary of Commerce (Secretary) contemplates whether and how access to the Atlantic shark resources should be controlled.

ADDRESSES: Comments on the control date established herein should be directed to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347, FAX 301–713–2299, Kevin Foster, 508–281–9260 or Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are defined and managed under regulations at 50 CFR part 678 under the authority of the Magnuson Fisheries Conservation and Management Act (Magnuson Act). The Magnuson Act Amendments of 1990, Pub. L. 101–627, transferred management authority over the Atlantic shark fisheries to the Secretary as of November 28, 1990.

One of the concerns of the Atlantic shark industry, and the Secretary, is that current participants in the fisheries who will bear the brunt of the management restrictions on the fisheries, which are necessary for stock rebuilding, may not be the ones to whom future benefits accrue. To address these concerns, and to avoid speculative entry into a fishery that is overfished and may be overcapitalized, the Secretary is establishing a control date of February 22, 1994, for possible limited entry. The date selected is the date of publication. Vessels that have not entered the shark fishery prior to this date may not be allowed entry if a limited entry program, based on any criteria (such as individual catch levels or gear type used) that is developed. Also, NMFS advises that vessels already in the fishery may not meet eligibility criteria when and if these criteria are established.

For the purposes of this notice, NMFS has not developed specific criteria to define entry into a shark fishery. Entry

into the fishery may mean either purchase of a shark vessel or fishery permit, investment in the construction or modification of a vessel or gear for the purpose of fishing for Atlantic sharks (directly or incidentally), the documented landing of a specified quantity of Atlantic sharks, or a specified number of Atlantic shark landings. The Secretary, after full public process, may adopt one or more of these definitions of entry into the shark fishery at the time a limited access regime is proposed, but may choose other options as well.

Speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully- or over-developed. Those seeking possible windfall gain from a potential management change can exacerbate the original problems. To help distinguish *bona fide* and established Atlantic shark fishermen from speculative entrants into the fishery, a control date may be set before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering an Atlantic shark fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation.

This establishment of a control date does not commit the Secretary to any particular management regime or criterion for entry into Atlantic shark fisheries. Fishermen are not guaranteed future participation in the Atlantic shark fisheries regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Secretary may subsequently choose a different control date, or he may choose a management regime that does not make use of such a date. The Secretary is free to apply other qualifying criteria for fishery entry. The Secretary may give varying considerations to fishermen in the fisheries before and after the control date. Finally, the Secretary may choose to take no further action to control entry or access to the fisheries.

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

Dated: February 15, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–3832 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021594D]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Demersal Species Committee (in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board), Habitat Committee, Large Pelagic Committee, and Enforcement Committee will hold public meetings on March 8–10, 1994, at Gurney's Inn, Old Montauk Highway, Montauk, NY; telephone: (516) 668–2345. On March 8, the Demersal Committee and the ASMFC Board will begin their meeting at 1 p.m. On March 9, meetings will begin at 8 a.m. and continue until 5 p.m. On March 10, the meeting will begin at 8 a.m. and continue until noon.

The following topics will be discussed:

1. Summer flounder recreational management measures for 1994,
2. Scup and black sea bass management alternatives,
3. Tuna management,
4. Swordfish scoping, and
5. Enforcement workshop.

The Council meeting may be lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3938 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021594B]

North Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Halibut Working Group will hold a meeting on March 10–11, 1994, in NMFS main conference room on the 4th floor of the Federal Building, 907 West 9th Street, Juneau, AK. The meeting will begin at 1 p.m. on March 10, and adjourn by 4 p.m. on March 11.

The Working Group will begin to develop appropriate elements and options for a proposed moratorium on the entry of new charter vessels into the halibut fishery off Alaska.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3937 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021594C]

Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will meet on March 7–11, 1994, at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111. The meeting will begin on March 8, at 8 a.m. in closed session (not open to the public) to discuss personnel matters and litigation. An open session will begin at 8:30 a.m. The Council meeting will then reconvene at 8 a.m. each day from March 9 through Friday, March 11. The meeting may continue

each day into the evening hours if necessary to complete business.

The following items are on the Council's agenda:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call.
2. Remarks by Admiral John W. Lockwood, Coast Guard.
3. Approve Proposed Agenda.
4. Approve November 1993 Minutes.

B. Salmon Management

1. Review of 1993 Fisheries and Summary of 1994 Stock Abundance Estimates.
2. Reports of the Klamath and Sacramento Review Groups.
3. Endangered Species Act Considerations for 1994.
4. Report of the Working Group on Inseason.

Modification of Hook-and-Release Mortality Estimates

5. Preliminary Definition of 1994 Management Options.
6. Adopt 1994 Management Options for Analysis.
7. Preliminary Discussion of a Salmon Plan Amendment.
8. Adopt 1994 Options for Public Review.
9. Adopt Schedule of Hearings on 1994 Options.

C. Administrative and Other Matters

1. Request of the Western Pacific Fishery Management Council for Authority to Manage Pacific Ocean Pelagic Fish Resources.
2. Report of the Budget Committee.
3. Status of Legislation.
4. Appointments to Council Advisory Groups.
5. Work Load Priorities for 1994.
6. Adopt Draft Agenda for April 1994 Meeting

D. Pacific Halibut Allocation

1. Report of the Scientific and Statistical Committee on Halibut Bycatch and Stock Assessment.
2. Status of the 1994 Catch Sharing Plan.
3. Summary of International Pacific Halibut Commission Meeting.
4. Catch Sharing Plan for 1995 and Beyond.

E. Groundfish Management

1. Status of Federal Regulations.
2. Recommendations of the Groundfish Permit Review Board.
3. Status of the Proposed Fixed Gear Sablefish Individual Quota Program.
4. Data Collection Program for the Shore-based Whiting Fishery in 1994.
5. Report of Industry Workshops.
6. Black Rockfish Management off Oregon.

F. Habitat Issues

1. Report of the Snake River Salmon Recovery Team.
2. Report of the Habitat Steering Group.

Other Meetings

The Scientific and Statistical Committee will meet March 7 beginning at 1 p.m. and March 8 at 8 a.m. to address scientific issues on the Council agenda.

The Groundfish Permit Review Board will meet March 7 beginning at 8 a.m. to review appeals on applications for West Coast groundfish limited entry permits which were denied by NMFS.

The Salmon Technical Team will meet as necessary (irregular hours) throughout the March 7–11 period to prepare impact analyses of the proposed salmon management measures for 1994.

The Salmon Advisory Subpanel will convene at 9 a.m. on March 7 and at 8 a.m. each day thereafter through March 11 to address salmon management items on the Council agenda.

The Habitat Steering Group will meet from 1 p.m. to 5 p.m. on March 7 to consider activities affecting the habitat of fish stocks managed by the Council.

The Budget Committee will convene at 3 p.m. on March 7 to review the status of the fiscal year 1994 Council budget and other related issues.

The Enforcement Consultants will meet at 7 p.m. on March 8 to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after February 24, 1994.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR; telephone (503) 326–6352.

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3939 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing 1994 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

February 15, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of August 4, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated July 29, 1992, August 18, 1992 and November 23, 1992 between the Governments of the United States and Hong Kong establish limits for the period January 1, 1994 through December 31, 1994. A complete list of the limits is published below.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645 published on November 29, 1993).

Category	Twelve-month limit
Group I:	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	215,874,132 square meters equivalent.
Sublevels in Group I:	
200	295,943 kilograms.
219	34,325,660 square meters.

Category	Twelve-month limit
218/225/317/326	63,593,846 square meters of which not more than 3,502,500 square meters shall be in Category 218(1)—yarn dyed fabric other than denim and jacquard. [1]
226/313	61,572,862 square meters.
314	16,605,462 square meters.
315	8,209,797 square meters.
369(1) [2] (shoptowels)	674,679 kilograms.
604	203,145 kilograms.
611	5,411,903 square meters.
617	3,414,531 square meters.
Group II:	
237, 239, 330–359, 431–459, 630–659 and 843/844(1), as a group.	785,797,689 square meters equivalent.
Sublevels in Group II:	
237	992,605 dozen.
239	4,550,232 kilograms.
331	3,803,846 dozen pairs.
333/334	263,093 dozen.
335	314,397 dozen.
336	191,711 dozen.
338/339 [3] (shirts and blouses other than tank tops and tops, knit).	2,672,285 dozen.
338/339(1) [4] (tank tops and knit tops)	2,007,701 dozen.
340	2,558,995 dozen.
341	2,590,291 dozen.
342	489,201 dozen.
345	400,205 dozen.
347/348	6,116,749 dozen of which not more than 3,010,431 dozen shall be in Category 347; not more than 4,635,504 dozen shall be in Category 348.
350	120,853 dozen.
351	1,094,023 dozen.
352	5,838,370 dozen.
359(1) [5] (coveralls, overalls and jumpsuits)	525,282 kilograms.
359(2) [6] (outer vests)	1,094,796 kilograms.
433	9,181 dozen.
434	9,856 dozen.
435	70,350 dozen.
436	91,626 dozen.
438	752,516 dozen.
442	81,434 dozen.
443	57,811 numbers.
443/444/643/644/843/844(1) (made-to-measure suits).	51,977 numbers.
444	36,873 numbers.
445/446	1,243,809 dozen.
447/448	62,551 dozen.
631	550,910 dozen pairs.
633/634/635	1,180,105 dozen of which not more than 441,385 dozen shall be in Categories 633/634 and not more than 906,188 dozen shall be in Category 635.
636	258,011 dozen.
638/639	4,486,213 dozen.
640	818,017 dozen.
641	775,199 dozen.
642	205,180 dozen.
644	37,366 numbers.
645/646	1,289,860 dozen.
647	458,284 dozen.
648	986,119 dozen.
649	705,573 dozen.
650	145,910 dozen.
651	279,420 dozen.
652	4,227,137 dozen.
659(1) [7] (coveralls, overalls and jumpsuits)	580,574 kilograms.
659(2) [8] (swimsuits)	232,999 kilograms.
Group III:	
831–842, 843/844 (excluding made-to-measure suits), and 847–859, as a group.	43,781,993 square meters equivalent.
Sublevels in Group III:	
835	102,140 dozen.
836	141,109 dozen.
840	606,721 dozen.
842	227,787 dozen.
847	325,830 dozen.
Limits not in a group:	
845(1) [9] (sweaters made in Hong Kong)	1,101,878 dozen.

Category	Twelve-month limit
845(2)[10] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	2,637,477 dozen.
846(1)[11] (sweaters made in Hong Kong) ...	178,184 dozen.
846(2)[12] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	429,356 dozen.

[1] Category 218(1):The Government of Hong Kong will continue to visa these products as 218.
[2] Category 369(1): only HTS number 6307.10.2005.
[3] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[4] Categories 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[5] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.
[6] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010. 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.
[7] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
[8] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[9] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.0024, 6110.90.0042 and 6117.90.0021.
[10] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.0022 and 6110.90.0040.
[11] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.0020, 6110.90.0038 and 6117.90.0018.
[12] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.0018 and 6110.90.0036.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–3914 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–DR–F–M

Request for Public Comments on Bilateral Textile Consultations with Egypt on Certain Cotton and Man-Made Fiber Textile Products

February 15, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On January 31, 1994, under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated March 15, 1992 and June 9, 1992, between the Governments of the United States and Egypt, the United States Government requested consultations with the Government of the Arab Republic of Egypt with respect to cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Egypt.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 340/640, the Government of the United States has decided to control imports during the period which began on January 31, 1994 and extends through December 31, 1994.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, under the agreement with the Government of the Arab Republic of Egypt, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Arab Republic of Egypt.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of the Arab Republic of Egypt, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Egypt

Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts

January 1994

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Egypt reached 424,073 dozen during the year ending October 1993, more than six and one half times the 62,423 dozen imported from Egypt in the year ending October 1992. In the first ten months of 1993, imports of Category 340/640 from Egypt reached 402,042 dozen, nearly seven times the January-October 1992 level and nearly five times Egypt's total calendar year 1992 Category 340/640 imports.

The sharp and substantial increase of Category 340/640 imports from Egypt is causing a real risk of disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts fell from 16,956,000 dozen in 1989 to 12,850,000 dozen in 1992, a decline of 24 percent. This decline continued in 1993, with U.S. production falling to 6,320,000 dozen in the first half of 1993, 3 percent below the January-June 1992 level. In contrast, U.S. imports of Category 340/640 increased from 26,637,000 dozen in 1989 to 30,395,000 dozen in 1992, a 14 percent increase. Category 340/640 imports continued to increase in 1993, reaching 27,275,000 dozen during the first ten months of 1993, five percent above the January-October 1992 level.

The ratio of imports to domestic production increased from 157 percent in 1989 to 236 percent in 1992. This trend continued in 1993, with the ratio of imports to domestic production reaching 238 percent during January-June 1993. The domestic manufacturers' share of this market fell from 39 percent in 1989 to 30 percent during the first half of 1993, a decline of 9 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 77 percent of Category 340/640 imports from Egypt during the year ending in October 1993 entered the U.S. under HTSUSA 6205.20.2046—men's and boys' yarn dyed, napped woven cotton shirts, other than dress and corduroy; HTSUSA 6205.20.2065—men's woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling; and HTSUSA 6205.20.2075—boys' woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling, other than imported as a part of a playsuit. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable men's and boys' woven shirts.

Committee for the Implementation of Textile Agreements

February 15, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated March 15, 1992 and June 9, 1992, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 23, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Egypt and exported during the period beginning on January 31, 1994 and extending through December 31, 1994, in excess of 467,062 dozen.[1]

Textile products in Categories 340/640 which have been exported to the United States prior to January 31, 1994 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–3915 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after January 30, 1994.

DEPARTMENT OF ENERGY

Invitation for Proposals For Projects Designed To Support Decisionmaking Process Associated With DOE's Environmental Restoration and Waste Management Programs

AGENCY: Office of Environmental Restoration and Waste Management, U.S. Department of Energy.

ACTION: Notice of program interest.

SUMMARY: The U.S. Department of Energy (DOE), Office of Environmental Restoration and Waste Management (EM) may award grants or cooperative agreements to companies and universities, to fund (in whole or part) projects or cost share in projects that will provide for planning, conducting, and communicating environmental risk assessments at DOE facilities and sites in order to determine the public health and environmental risk associated with DOE's environmental management programs. DOE is interested in receiving proposals that describe capabilities, experience, and proposed methods for conducting credible risk assessments. DOE is specifically interested in receiving proposals that include statements of the proposer's capabilities, experience, and proposed methods for assessing risk to human health and the environment. Proposals must also show experience in effective and efficient management of the tasks required in support of risk assessments, in preparing and presenting reports, and in working with stakeholders and decision makers at all levels. Proposals must also identify the technical and scientific staff, their professional experience and their level of program involvement.

Applicants must demonstrate that they can apply the most recent, cost-effective technology in their approach for evaluating and managing risk assessments for environmental management. The proposal must demonstrate that:

1. The offeror is capable of conducting scientifically valid and responsible risk assessments without bias or organizational conflicts of interest in protecting the public health and environment. These risk assessments must include clear statements of what is known and the level of uncertainty of the risk data.

2. The offeror's risk assessments will be supportable by independent external review by technical experts.

3. The offeror has the experience and capability to plan, organize, manage, and facilitate local and national stakeholders' involvement in the

development of credible risk assessments.

4. The offeror has the experience and ability to effectively communicate complicated scientific information on potential risks and uncertainties, to local and national stakeholders, other concerned citizens, and decision makers at all levels.

5. The offeror presently has or is capable of obtaining staff with the training, expertise, and experience needed to conduct scientifically complex risk assessments. Such assessments should include statements that clearly identify sensitive populations and exposed populations, and that characterize the degree of risk and the level of uncertainty in the process and assessments.

6. The offeror has the ability to integrate the activities of all organizations conducting risk assessments.

7. The offeror has management capability for both financial and scientific management and a demonstrated skill in planning and scheduling.

DATES: Due to programmatic constraints, proposals related to credible risk assessment at DOE facilities need to be received as early as possible. To be assured of consideration, these proposals should be received by the Department within 45 days after the date of this notice. Proposals shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for submission to the review panel. Applications which do not meet the deadline will be considered as late applications and may not be considered. Proposals should be submitted to the Unsolicited Proposals Management Section, Reports and Analysis Branch, HR–532, Procurement and Assistance Management Directorate, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

For more information about risk assessment, interested institutions or corporations are referred to the National Research Council's report "Building Consensus Through Risk Assessment and Management of the Department of Energy's Environmental Remediation Program," National Academy Press, 1994, and the presentations contained therein by Assistant Secretary Thomas Grumbly and concerned stakeholders. This booklet may be obtained by contacting the National Academy of Sciences at (800) 624–6242 or at (202) 334–3313 in the Washington Metropolitan Area.

FOR FURTHER INFORMATION: Requests for technical information about this notice of program interest should contact Dr. Michael Heeb, EM–6, Department of Energy, Office of Environmental Restoration and Waste Management, Washington, DC 20585, telephone (202) 586–6173. For procurement related information, contact Mr. Ron Logerwell, Department of Energy, Office of Environmental Restoration and Waste Management, Office of Acquisition Management, (EM–16), Washington, DC 20585, (202) 586–1031.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

A. The Department of Energy desires to work towards environmental excellence, and science and technology leadership. DOE intends to progress towards EM's goal and involve the best national science and engineering communities. The primary objective of the Office of Environmental Restoration and Waste Management is to meet the challenge of greater environmental responsibility.

B. This announcement incorporates the merit review process for EM review of financial assistance applications as published in the **Federal Register** on May 6, 1991 (56 FR 20602) and fulfills the requirements set forth in DOE Financial Assistance Rules 10 CFR part 600.

C. Merit review is the process of evaluating applications for discretionary financial assistance using predetermined criteria. The review is thorough, consistent, and independent and is completed by individuals with expert knowledge in the field in question. The purpose of the review is to provide analysis on the merits of applications to a Program Official having decision-making authority (the Selection Official) over the award of discretionary financial assistance.

II. Responsible Official

The EM Director of the Office of Integrated Risk Management or his/her designee will be responsible for this system of objective merit review of discretionary financial assistance applications funded by EM.

III. Deviations

Single-case deviations from the following procedures may be authorized in writing by EM's Responsible Official upon the written request by a member of the EM staff. Whenever a proposed review would deviate from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

IV. Evaluation Process

A. Initial Screening Procedure

1. Applications will normally be submitted to the Department of Energy, Office of Management Support, HR–532, Washington, DC 20585. Applications will be assigned a control number by HR–532 and those pertaining to the Office of Environmental Restoration and Waste Management (EM) will be provided to EM. EM will assign an EM Project Office for initial screening to assure the following standards are met before conducting a detailed merit review and evaluation:

a. *Appropriateness to the EM Mission:* Applications must be relevant to EM mission requirements as stated in this notice.

b. *Technical/Scientific Content and Merit:* Those applications judged to be without sufficient detail for evaluation will not be considered.

c. *No Unnecessary Duplications or Overlap:* Applications proposing to perform research already being supported by DOE or other Federal agencies generally will not be subjected to formal merit review unless there is a convincing programmatic reason to do so.

d. *Completeness:* Applications not meeting the requirements of 10 CFR 600, subpart A, may be returned to the sender for correction or modification. Until the application meets the above standards, it will not be given detailed merit review.

B. Proposal Format

The proposal must consist of two sections, technical and cost.

Technical Proposal will be no more than 50 pages in length; resumes of key personnel involved should be submitted as an appendix and will not be considered part of the technical proposal 50 page limit. It is left to the proposer to determine how best to use the 50 pages: however the technical proposal should be divided into the following four sections:

Section 1—Executive Summary

Section 2—Proposal

This section will provide the detailed technical explanation of the proposed activities. The activities should be addressed with respect to the preliminary screening standards and technical evaluation criteria listed in Subsection G, Evaluation Criteria.

Section 3—Statement of Work

A statement of work is to be supplied that discusses the specific tasks to be carried out to achieve the goals stated in Section I.

Section 4—Selection Criteria Index

An index must be provided showing the pages on which each of the selection criteria are addressed.

Appendix A.—Key Personnel

Résumés should be succinct and clearly illustrate how the individuals technical background and experience are related achieving the proposals objectives.

Cost Proposals will have no page limit or page layout requirement. However, the cost proposal must include a summary breakdown of all costs, and give a detailed breakdown of costs on a task-by-task basis for each task appearing in the Statement of Work. In addition, any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, it shall not be consideration in the selection process and shall be considered only at the time the award is negotiated.

2. The determination to return an application based on the above standards will be made in writing by the EM Project Officer. In cases where the Project Officer is also the selection official, approval will be obtained from at least one level higher than that of the Project Officer.

C. Qualifications of Reviewers and Selection Official

1. The members of the reviewing group may be a mixture of Federal or non-Federal experts. The review group, when possible, will consist of at least three qualified persons from outside the Office of Integrated Risk Management in addition to the designated Project Officer if the Project Officer serves on the group. When possible, the merit review group will exclude anyone who, on behalf of the Federal Government, performs any of the following functions:

a. Providing substantial technical assistance to the applicant.

b. Approval/disapproval or having any other decision-making role regarding the application.

c. Serving as the project manager or otherwise monitoring, auditing, evaluating the recipient's programmatic performance.

d. Exercising line authority over anyone ineligible to serve as reviewers because of the above limitations.

2. Reviewers will be chosen by the Director of the Office of Integrated Risk Management based on their expertise and professional qualifications as related to the proposed work.

3. Reviewers may be Federal employees, including those from EM that are neither the selection official nor those in a direct line of supervision above the Project Office. Non-Federal employees may also be reviewers.

4. Reviewers will not include former employees of the Project Officer's immediate office or any former employee having line authority over that immediate office within the past 1 year.

5. The designated Project Officer will not serve on the review group or be an external reader unless specifically approved by the Responsible Official.

6. Selection officials and reviewers must comply with the requirements of 10 CFR 1010 (a) and 1010.302(a)(1) concerning conflict of interest. Individuals who cannot meet these requirements with regard to a particular application may not review, discuss, or make an evaluation of an application in which they have a conflict of interest; and may not participate in any meeting involving the review of an application in which there is a conflict of interest.

D. Project Officer/Contracting Officer Representative

1. The Project Officer will be a Federal Employee, from Headquarters or the field, assigned to review the application. The Project Officer may also be designated as the Contracting Officer Representative (COR) from an eventual contract action. This assignment will be made in writing by, or with the concurrence of, the employee's supervisor.

2. The Project Officer will be responsible for coordinating the Merit Review and providing guidance to external reviewers as described in this notice.

3. The Project Officer is responsible for conducting the initial screening. If the application does not satisfy the initial screening, the Project Officer will provide the applicant a rejection letter (informing appropriate officials) or request additional information if required.

4. The Project Officer will be responsible for compiling the information from the Merit Review and preparing the Selection Report/ Justification for Acceptance for the Selection Official. This report should address the evaluation criteria including the information from the initial screening, any programmatic comments reflecting a Federal policy perspective, and the rationale for selection or rejection.

5. For solicited applications, once the Selection Official approves the Selection Report, the Contracting Officer will inform the applicant. For other applications, once the Selection Official approves the Justification for Selection, the Project Officer is then responsible for preparing the rejection letter or Procurement request documents. The Project Officer will also recommend assignment to a field office for award and implementation if the award is not made at Headquarters.

E. Formal Review Mechanism

There will be one mechanism available to accomplish a merit review. At least three qualified individuals will perform the review. In those instances where three or more qualified reviewers cannot be obtained to conduct a formal merit review, the selection official must issue a waiver, which is based upon a written explanation of the situation by the assigned Project Officer. In the event that the Project Officer is a reviewer and is also the selection official, this waiver shall be considered and issued by an EM official one level higher than that of the Project Officer or selection official. The formal review mechanism is as follows:

1. Review Group

a. An organization of standing committees called Technical Peer Review Groups (TPRGs) will be the principal method of application review. These review groups are appropriate when required by legislation or when:

(1) Sufficient number of applications on a specific topic is received on a regular basis in accordance with a predetermined review schedule.

(2) Sufficient number of people is available to accept appointments, serve over reasonably protracted periods of time, and convene regularly or at the call of the chairperson.

(3) Legislative authority for particular programs extends for more than 1 year.

b. persons outside the cognizant program office shall constitute at least one half the reviewers unless a deviation has been approved under 10 CFR 600.18(g).

c. Members of TPRGs will independently review applications and will individually present results of their reviews to the Project Officer. Reviewers will not meet to review and present a general recommendation. Reviewers may be called together by the Project Officer to receive material, review issues, or share information, but no attempt will be made to achieve a group consensus.

2. Field Readers

a. Field readers may be used for applications that cannot be effectively reviewed by the TPRG. This may include applications which are outside the scope of TPRGs, when the workload of TPRGs requires augmentation, or when specific expertise is required.

b. Field readers will follow the guidance provided by the Project Officer for conducting their review. Field readers will independently review applications and will individually present results of their reviews to the Project Officer.

c. Field readers may be called together by the Project Officer to reassess material, review issues, or share information but no attempt will be made to achieve a group consensus.

F. Review Process

1. The EM Project Officer will provide reviewers with a copy of the application, programmatic guidance, conflict of interest disclosures, certificates of confidentiality, and other information needed to conduct the review (such as site-specific needs and schedules for technologies). The Project Officer may provide instructions to comparatively evaluate proposals if there are multiple proposals.

2. Reviewers should sign the certificate of confidentiality and conflict of interest disclosures and return them before initiating their review.

3. Based upon his/her review of the application and related documents, the reviewer is expected to provide the EM Project Officer with a written analysis based on the guidance and/or other program information for each application.

4. All reviews serve as input for the decision by the selection official and are not binding. Significant adverse evaluations will be addressed in writing in a selection statement document.

5. Upon request by applicants, a written summary will be provided to the applicants on the evaluation of their applications.

G. Evaluation Criteria

Review criteria include, but are not limited to, the following list. These criteria will be used by reviewers after the application has been through the initial screening. For unsolicited applications, this review may also address guidance the Project Officer provides from the initial screening.

1. Capabilities, experience, and proposed methods for conducting credible risk assessments and proposed methods for assessing risks to human health and the environment.

2. Experience in effective and efficient management of the tasks required in support of risk assessments in preparing and presenting reports, and in working with stakeholders and decisionmakers at all levels.

3. Quality, availability, and experience of organization, technical and administrative staff and their level of involvement.

4. The appropriateness and adequacy of the proposed budget.

H. Awards

Approximately one to ten awards may be made during FY 1994. An award will not exceed $5 million in total award value. If sufficient acceptable applications are submitted available funding may determine the number of awards. Awards, if any, will be determined through evaluation of applications received against the evaluation criteria and the availability of funds. Awards for either grants or cooperative agreements will be made only to technically acceptable applicants. Awards will be on a schedule to be agreed to by DOE and the awardee. Budget and project periods may be negotiated to meet the needs of particular projects. DOE reserves the right to support or not support any portion, all, or none of the proposals submitted.

I. Selection

Selection of an application for award will be based on the findings of the conformance to elements 1 through 4 of the Summary, Section IV.A.a–d, adherence to the proposal format as stated under Subsection B and G, and finally, how well the application serves the EM program objectives. Furthermore, selection of an application for award is subject to the availability of funds.

Issued in Washington, on February 15, 1994.

Richard J. Guimond,

Rear Admiral, USPHS, Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 94–3904 Filed 2–18–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 11262–002 Colorado]

Continental Energy Company, Inc.; Surrender of Preliminary Permit

February 15, 1994.

Take notice that Continental Energy Company, Inc., Permittee for the Mesa Creek Project No. 11262, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11262 was issued June 8, 1992, and would have expired May 31, 1995. The project would have been located partially within Grand Mesa National Forest, on Mesa Creek, in Mesa County, Colorado.

The Permittee filed the request on February 7, 1994, and the preliminary permit for Project No. 11262 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3868 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–131–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 15, 1994.

Take notice that on February 9, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Seventh Revised Sheet No. 20A
Original Sheet No. 95C

The proposed effective date of Sheet Nos. 20A and 95C is March 11, 1994.

Algonquin states that the purpose of this filing is to provide for the recovery of transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's fourth direct bill of Account No. 191 purchased gas costs filed on February 9, 1994. Algonquin requests that the Commission grant any waiver of the Commission's regulations that may be necessary to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations.

All such motions or protests should be filed on or before February 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3865 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–16–000]

Florida Gas Transmission Co.; Technical Conference

February 15, 1994.

Take notice that a technical conference will be convened in this proceeding on February 23, 1994, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The purpose of this conference is to afford Florida Gas and interested parties an opportunity to discuss curtailment on Florida Gas' system, specifically including the scheduling and curtailment issues raised by a(n unpublished) remand order issued February 16, 1993, in *Georgia Pacific* v. *FERC*, D.C. Cir. Nos. 91–1489 and 91–1490.[1]

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208–1076.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3869 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–132–000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 15, 1994.

Take notice that on February 9, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective February 1, 1994:

First Revised Sheet No. 136
First Revised Sheet No. 138

Southern states that the purpose of this filing is to change its delivery point allocation methodology in its transportation tariff to allow it to reallocate the volumes of gas delivered for a shipper under its firm and interruptible agreements to maximize the allocation to the shipper's firm agreement for billing purposes. A change has also been proposed that will allow the allocation of no-notice volumes to a shipper's two-part FT–NN agreement prior to allocating the no-notice volumes to the same shipper's one-part FT–NN agreement.

Southern has requested all waivers necessary to make these sheets effective February 1, 1994; provided, however, that if Southern does not receive an order by March 1, 1994, approving these revisions, it has requested that the Commission approve the revised tariff sheets to be effective March 1, 1994.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests should be filed on or before February 23, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3866 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–197–000]

Williams Gas Processing-Mid-Continent Region Co.; Petition for Declaratory Order

February 15, 1994.

Take notice that on January 24, 1994, Williams Gas Processing-Mid-Continent Region Company (WGP–MCR), Post Office Box 3102, Tulsa, Oklahoma 74101, filed a petition for a declaratory order in Docket No. CP94–197–000, requesting that the Commission declare that certain natural gas gathering facilities currently owned by Williams Natural Gas Company (WNG) are exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA) upon WGP–MCR acquiring, owning, and operating such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WGP–MCR will acquire most of WNG's gathering systems. The facilities are located in Kansas, Oklahoma, and Texas. The acquisition will include two small processing facilities (the Guymon Drip Control Plant and the Pampa Drip Control Plant). The facilities are approximately 800 miles of two-inch through twenty-six-inch.

Any person desiring to be heard or to make a protest with reference to said petition should, on or before March 8, 1994, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3867 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4838–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 24, 1994.

FOR FURTHER INFORMATION CONATCT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

[1] See Florida Gas Transmission Co., 65 FERC ¶ 61,336 at 62,597 (1994).

Office of Prevention, Pesticides and Toxic Substances

Title: Requirements for the use of 1080 Collars for Livestock Protection (EPA ICR No. 1249.04; OMB No. 2070–0074). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Sodium monoflouroacetate (Compound 1080), a previously banned pesticide, was re-approved for use in a new delivery mechanism, the toxic collar. The EPA requires certified applicators, States, and registrants to monitor the use and effectiveness of the collar. The respondents are required to submit to the EPA an annual report containing the monitoring data. In addition, certified applicators must report to the States or the EPA all incidents of accidental poisoning of humans and domestic animals, as well as non-target species, and they must keep records of any hazards caused by the collar. The Agency uses these data to monitor the use of the collar, and to ensure the safety of livestock.

Burden Statement: The burden for this collection of information is estimated to average 37.1 hours per response for reporting, and 2.9 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Toxic collar applicators.

Estimated No. of Respondents: 151 Certified pesticide applicators, 4 states, and 6 registrants.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,439 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 14, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–3896 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4836–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 24, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks (EPA ICR No. 1285.04; OMB No. 2060–0132). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers may choose to pay a monetary penalty in order to sell heavy-duty engines, heavy-duty vehicles, including light-duty trucks, which fail to conform with certain emission standards. Before selling these engines, manufacturers must perform a Production Compliance Audit to establish the amount of the penalty.

Burden Statement: The public reporting burden for this collection of information is estimated to average 144 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Manufacturers of heavy-duty engines and heavy-duty vehicles (SIC #371).

Estimated Number of Respondents: 6.

Estimated Total Annual Burden on Respondents: 906 hours.

Frequency of Collection: Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 14, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–3895 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4838–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 24, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, and Distribution in Commerce Exemptions. (EPA ICR No.: 0857.06; OMB No.: 2070–0021). This is a request for extension of the expiration date of a currently approved collection.

Abstract: The Toxic Substances Control Act (TSCA) prohibits the manufacture of PCBs, or their processing or distribution in commerce. However, the statute sets conditions under which EPA may grant exemptions to this prohibition. Companies wishing to obtain the exemption must petition EPA by submitting certain information to the Agency. The information includes name and address of the petitioner, and amount and use of PCBs the petitioner wishes to manufacture, process, or distribute in commerce. The petitioner must provide evidence that the use of PCBs will not result in an unreasonable risk of injury to human health or the environment. The petitioner must also provide evidence that demonstrates good faith efforts to develop a chemical substitute for PCBs which does not pose

an unreasonable risk of injury to human health or the environment.

To renew an existing exemption, a petitioner must submit to the Agency a letter stating that there are no changes in the original petition for exemption. The letter must be submitted at least six months prior to the date the existing exemption expires, it must be signed by a designated official, and it must be sent to the EPA by certified mail.

EPA uses the information to determine whether petitioners have met the exemption requirements prescribed by TSCA.

Burden Statement: The burden for this collection of information is estimated to average 8 hours per response for new petitions and 2 hours per response for renewal petitions. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Companies wishing to obtain an exemption from prohibitions against the manufacture, processing or distribution of PCBs in commerce.

Estimated No. of Respondents: 6 respondents for new petitions and 5 respondents for renewal petitions.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 58 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 14, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–3897 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4839–4]

Acid Rain Program: Public Comment Period and Proposed Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment a draft, five-year retired unit exemption to a utility unit under the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the retired unit exemption must be received no later than 30 days after the date of this notice or the publication date of this notice in a local newspaper.

ADDRESSES: *Administrative Records.* The administrative record, except information protected as confidential, may be viewed during normal business hours at EPA Region 5, 17th floor, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning the retired unit exemption to David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the unit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the exemption.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decisionmaking process by clarifying significant issues affecting the exemption.

FOR FURTHER INFORMATION CONTACT: Call Pat Gimino, EPA Region V, at (312) 353–8651.

SUPPLEMENTARY INFORMATION: EPA proposes to issue exemptions from the Acid Rain permit and continuous emission monitoring requirements for Breed unit 1 in Indiana. The designated representative for Breed is John McManus.

Dated: February 10, 1994.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–3883 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4837–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees, for access to information which has been submitted to EPA under several of the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted five days from February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Powers, National Program Director, Senior Environmental Employment Program (8701), Environmental Protection Agency, 401 M Street SW., Washington, DC 20560. Telephone (202) 260–2573.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide, and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these

documents may contain information claimed as confidential.

EPA may provide confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
CQ815413–01	National Pacific/Asian Resource Center on Aging.
CQ815485–01	National Caucus and Center on Black Aged.
CQ815923–01	American Association of Retired Persons.
CQ816164–01	National Caucus and Center on Black Aged.
CQ816300–01	American Association of Retired Persons.
CQ816301–01	American Association of Retired Persons.
CQ816365–01	National Council of Senior Citizens.
CQ816382–01	American Association of Retired Persons.
CQ816383–01	American Association of Retired Persons.
CQ816384–01	American Association of Retired Persons.
CQ816480–01	American Association of Retired Persons.
CQ816493–01	American Association of Retired Persons.
CQ816510–01	American Association of Retired Persons.
CQ816529–01	American Association of Retired Persons.
CQ816734–01	National Council of Senior Citizens.
CQ816989–01	National Caucus and Center on Black Aged.
CQ816990–01	National Caucus and Center on Black Aged.
CQ817139–01	American Association of Retired Persons.
CQ817380–01	National Council on the Aging.
CQ817464–01	National Council on the Aging.
CQ817522–01	National Council of Senior Citizens.
CQ817736–01	American Association of Retired Persons.
CQ817738–01	American Association of Retired Persons.
CQ817782–01	National Caucus and Center on Black Aged.
CQ817783–01	National Caucus and Center on Black Aged.
CQ817801–01	National Council of Senior Citizens.
CQ818131–01	National Caucus and Center on Black Aged.
CQ818132–01	National Caucus and Center on Black Aged.
CQ818186–01	American Association of Retired Persons.
CQ818570–01	National Council of Senior Citizens.
CQ818587–01	National Pacific/Asian Resource Center on Aging.
CQ818634–01	National Pacific/Asian Resource Center on Aging.
CQ818638–01	National Pacific/Asian Resource Center on Aging.
CQ818697–01	Asociacion Nacional pro Personas Mayores.
CQ818851–01	Asociacion Nacional pro Personas Mayores.
CQ818917–01	National Council of Senior Citizens.
CQ818939–01	American Association of Retired Persons.
CQ819088–01	National Caucus and Center on Black Aged.
CQ819103–01	National Council of Senior Citizens.
CQ819187–01	National Caucus and Center on Black Aged.
CQ819369–01	American Association of Retired Persons.
CQ819370–01	American Association of Retired Persons.
CQ819404–01	American Association of Retired Persons.
CQ819519–01	American Association of Retired Persons.
CQ819520–01	American Association of Retired Persons.
CQ819521–01	American Association of Retired Persons.
CQ819522–01	American Association of Retired Persons.
CQ819523–01	American Association of Retired Persons.
CQ819524–01	American Association of Retired Persons.
CQ819525–01	American Association of Retired Persons.
CQ819526–01	American Association of Retired Persons.
CQ819527–01	National Caucus and Center on Black Aged.
CQ819613–01	American Association of Retired Persons.
CQ819690–01	American Association of Retired Persons.
CQ819702–01	American Association of Retired Persons.
CQ819705–01	National Council of Senior Citizens.
CQ819851–01	National Council on the Aging.
CQ819874–01	American Association of Retired Persons.
CQ820372–01	American Association of Retired Persons.
CQ820550–01	National Council of Senior Citizens.
CQ820551–01	National Council of Senior Citizens.
CQ820552–01	National Council of Senior Citizens.
CQ820665–01	American Association of Retired Persons.
CQ820829–01	National Council on the Aging.
CQ820916–01	National Council of Senior Citizens.
CQ820932–01	American Association of Retired Persons.
CQ820934–01	American Association of Retired Persons.

Cooperative agreement No.	Organization
CQ820962–01	American Association of Retired Persons.
CQ821058–01	National Caucus and Center on Black Aged.
CQ821104–01	National Caucus and Center on Black Aged.
CQ821110–01	National Council on the Aging.
CQ821346–01	National Caucus and Center on Black Aged.
CQ821547–01	National Caucus and Center on Black Aged.
CQ821548–01	National Caucus and Center on Black Aged.
CQ821549–01	National Caucus and Center on Black Aged.
CQ821572–01	National Caucus and Center on Black Aged.
CQ821598–01	American Association of Retired Persons.
CQ821982–01	National Council on Aging.
CQ822261–01	Asociacion Nacional pro Personas Mayores.
CQ822511–01	Asociacion Nacional pro Personas Mayores.
CQ822533–01	National Council of Senior Citizens.
CQ822540–01	National Caucus and Center on Black Aged.
CQ822541–01	National Caucus and Center on Black Aged.
CQ822542–01	National Caucus and Center on Black Aged.
CQ822545–01	Asociacion Nacional pro Personas Mayores.
CQ822594–01	Asociacion Nacional pro Personas Mayores.
CQ822612–01	National Council on Aging.
CQ822631–01	National Pacific/Asian Resource Center on Aging.
CQ822645–01	National Pacific/Asian Resource Center on Aging.
CQ822646–01	National Council on Aging.
CQ822647–01	National Pacific/Asian Resource Center on Aging.
CQ822652–01	American Association of Retired Persons.

All organizations are located in Washington, DC, with the exceptions of the National Pacific/Asian Resource Center on Aging (Seattle, WA) and Asociacion Nacional pro Personas Mayores (Los Angeles, CA).

EPA amended its confidentiality regulations at 40 CFR part 2, subpart B to authorize SEE enrollees for access to confidential business information (58 FR 7187, February 5, 1993). As discussed in that notice, EPA offices had been giving SEE enrollees access to confidential information under the impression that Agency confidentiality regulations allowed such access. The February 5, 1993 **Federal Register** notice rectified that error by amending these regulations to provide for such access. Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.301(h)(2)(iii). This notice is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: February 4, 1994.

Karen Morehouse,

Acting Director, Office of Exploratory Research.

[FR Doc. 94–3898 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4840–1]

Access to Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to conduct reviews of selected recipients' procurement, property, financial, and general administrative management systems. During the review of these systems, the contractor will have access to information which has been submitted to EPA under 40 CFR parts 31 and 35. Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The Contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data five working days from February 22, 1994.

ADDRESSES: Send or deliver written comments to Martha Nicodemus, Grants, Audit & Contracts Branch (8PM–GAC), 999 18th Street, Suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Martha Nicodemus, Grants, Audit and Contracts Branch, 999 18th Street, Suite 500, Denver, Colorado 80202. Telephone (303) 293–1672.

SUPPLEMENTARY INFORMATION: Under Contract 68–W3–0002, Delivery Order 003, Booz-Allen, & Hamilton, Inc., will be conducting on-site technical assistance reviews of the financial, property, procurement, and administrative systems in the States offices of Colorado Department of Health, Wyoming Department of Environmental Quality, and Utah Department of Environmental Quality to determine whether their systems comply with EPA regulations and policies. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) *Expenditures.* Review expenditure documentation such as expense reports, time sheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature, and reconciliation of time sheets to expense reports;

(2) *Financial Reports.* Review financial drawdowns, Financial Status Reports, and internal status reports to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required;

(3) *Procurement Transactions.* Review a sample of bid requests and/or requests for proposals, and the resulting

contracts to determine compliance with EPA procurement requirements;

(4) *Property.* Review a sample of property purchased with EPA money (including how the property was used) to determine the degree of compliance with property requirements to acquire, manage, and dispose of the property; and

(5) *Recordkeeping Procedures.* Review a sample of documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation.

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under 40 CFR parts 31 and 35, some of which may contain information claimed or determined to be Confidential Business Information.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to Confidential Business Information to provide the support and services required under this Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc., will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: February 4, 1994.

Kerrigan G. Clough,

Assistant Regional Administrator for Policy & Management.

[FR Doc. 94–3899 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4839–9]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a one-day meeting of the Technology Innovation and Economics (TIE) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the TIE Committee identifies actions that EPA can take to speed the development, commercialization, and use of technologies that will result in environmental improvement and economic growth.

Five topics will be discussed during the meeting:

1. The Draft EPA Technology Innovation Strategy.
2. The FY 1994 Program Plan for the President's Environmental Technology Initiative (ETI).
3. Priorities that should be considered for funding in FY 1995 under the ETI.
4. The Draft Report and Recommendations of the Effluent Guidelines Task Force on Selection Criteria for Preliminary Industry Studies.
5. Draft Recommendations from the Information Resources Management Task Force.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Wednesday, March 2, 1994, from 9 a.m. to 5 p.m. in room 383 at the National Governors' Association Hall of the States, 444 North Capitol Street, Washington, DC.

ADDRESSES: Written comments should be sent to: Mark Joyce 1601F, Office of Cooperative Environmental Management, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: February 10, 1994.

Mark Joyce,

Designated Federal Official.

[FR. Doc. 94–3882 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board

[FRL–4839–8]

Environmental Engineering Committee and Subcommittee; Two Open Meetings

Pursuant to the Federal Advisory Committee Act, Public law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet on Wednesday, March 2 through Thursday, March 3, 1994. The meeting will be at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

At this meeting, the primary activities of the EEC are: (1) To hear, review, and possibly approve in substance or in whole the report of its Environmental Futures Writing Subcommittee; and (2) to provide a consultation to EPA's Office of Emergency and Remedial Response on Selected Issues in Ground-Water Modeling for Superfund's Soil Screening Levels. The EEC will also be briefed on other engineering technology activities and will engage in planning for subsequent meetings. On Friday, March 4, 1994, the EEC's Environmental Futures Writing Subcommittee will meet at the same location to make any necessary corrections to their report.

Both meetings are open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Mrs. Dorothy Clark, Secretary, Science Advisory Board (1400F), US EPA, Washington, DC 20460, at 202/260–6552. Written comments of any length may be provided up until the meeting, but 35 copies must be supplied. Members of the public who wish to make a brief oral presentation should contact Mrs. Kathleen Conway (202/260–2558) no later than noon Wednesday February 23.

Dated: February 9, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–3881 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–300224A; FRL–4751–3]

Abandoned and Incomplete Pesticide Petitions; Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that it will subject to a final review all pesticide petitions for tolerances, exemptions from the requirement of a tolerance, and food or feed additive regulations currently pending with the Agency where the petitioner has failed to respond to a notice of deficiency within 75 days of receipt of the notice. At the time of a final review, pesticide petitions that do not provide sufficient evidence for the Agency to find that the tolerance or exemption is protective of the public health will be denied. The policies reflected in this Statement will be applied by the Agency on a case-by-case basis.

DATES: The policies announced in this Statement are currently in effect.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins or Melissa L. Chun, Registration Division (7505W), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone numbers: 6th Fl., Westfield Building, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8358 (Tompkins) or (703)-308-8318 (Chun).

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of September 4, 1991 (56 FR 43759), EPA issued a Policy Statement concerning its procedures for reviewing petitions for tolerances, exemptions from the requirement of a tolerance, and food or feed additive regulations under section 408 or 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (as amended). In the Statement, EPA said it would subject certain pesticide petitions to a final review unless, within a specified period, the petitioner submits the necessary data or a reasonable timetable for supplying data to correct deficiencies. Additionally, EPA announced that it would subject all other pending and future petitions to such a final review annually. If, at the time of any final review, there is insufficient scientific data before the Administrator to establish a tolerance, exemption from a tolerance, or a food or feed additive regulation capable of protecting the public health, the petition will be denied.

EPA received comments from the Mobay Corp. (Mobay) in response to the Policy Statement. This notice clarifies the intent of the previous policy statement and responds to the comments. Mobay's primary concern appeared to be that EPA would deny petitions simply for failure to comply with timeframes for responding to notices of deficiency or for submitting data, but this was not EPA's intent, and the timeframes outlined in the Statement are for establishing internal administrative guidelines for final rulings on petitions.

II. Background and Clarification of Policy

EPA is responsible for processing tolerance petitions for residues of pesticides in or on raw agricultural commodities under section 408 of the FFDCA and petitions for food additive regulations for residues of pesticides in or on processed food or feed under section 409 of the FFDCA. Under section 408(d) of the act, the Administrator may establish a tolerance or an exemption from the requirement of a tolerance for a raw agricultural commodity upon the request of a person who has submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FFDCA sec. 408(e), the Administrator may on his or her own initiative or upon the request of an interested person, establish a tolerance or an exemption from the requirement of a tolerance. Under FFDCA sec. 409(c), the Administrator may establish a food additive regulation for pesticide residues in or on food or feed upon the request of any person, or the Administrator may deny a petition.

Over the last 20 years, EPA has accumulated a large inventory of pending petitions for pesticide tolerances, exemptions from the requirement of a tolerance, and food or feed additive regulations (hereafter referred to collectively in this notice as "pesticide petitions"). By the end of 1989 the Agency had in its inventory approximately 1,000 pending petitions. Although the Agency has reviewed 750 of these petitions and notified the petitioners that these petitions lack sufficient data to establish the requested tolerance, exemption or food or feed additive regulation, petitioners have failed to respond in the case of 386 petitions. As a matter of course, EPA has treated such deficient petitions as pending until the petitioner either provides the required information or withdraws the petition.

Until the petitioner provides EPA with the required data, the Agency cannot establish an exemption from the requirement of a tolerance or establish a tolerance above zero for the use described in the petition. While it may establish zero tolerances, EPA is reluctant to do so for the uses described in the hundreds of deficient pesticide petitions. Use of the zero tolerance concept for so many deficient pesticide petitions would cause the Agency to establish hundreds of unnecessary tolerances and clutter the tolerance regulations.

EPA's former policy, which allowed deficient pesticide petitions to remain extant, and its general reluctance to establish unnecessary zero tolerances have resulted in a backlog of hundreds of pending petitions. This backlog has created serious administrative problems for the Agency. (See 56 FR 43759; Sept. 4, 1991.) To alleviate these problems, EPA has revised its internal administrative procedures for reviewing pesticide petitions.

To restate and clarify the policy announced, the Agency requested that petitioners who had filed petitions that had been pending with EPA for 5 years or more and for which 4 years had passed since the petitioner has responded to the Agency's last correspondence to provide the Agency with a reasonable timetable within 75 days of that notice for submitting the missing information. If the petitioner did not respond to the notice, submitted a response found inadequate, or requested that the petition be reviewed "as is," the Agency announced that it would generally exercise its discretion and subject the petition to a final review. EPA may make internal policy decisions, such as when to subject a pesticide petition to a final review, on a case-by-case basis. In the Policy Statement, EPA identified in a table those petitions for which it was requesting some response within 75 days.

In addition, for all other pending and future petitions, as soon as the Agency identifies a petition as being deficient, the Agency will notify the petitioner, either by letter or by notice in the **Federal Register**, requesting that the petitioner respond within 75 days by providing a reasonable timetable for supplying the Agency with the needed data. If the petitioner demonstrates in his or her response that it will supply the data to the Agency within a reasonable period of time, the Agency may in its discretion postpone a final review. However, if the petitioner does not respond or does not respond adequately, EPA will generally schedule a final review of the petition.

If at the time of any final review there are insufficient scientific data before the Administrator to establish a tolerance, exemption from a tolerance, or a food or feed additive regulation capable of protecting the public health, the petition will be denied.

III. Response to Mobay's Comments

A. Authority to Deny Petitions Under Section 408 of FFDCA.

Mobay comments that unlike FFDCA sec. 409(c)(1)(B), the FFDCA provides the Agency with no authority to deny petitions submitted pursuant to section 408(d) or 408(e) of the act.

EPA disagrees with Mobay's conclusion. First, section 408(e) of the FFDCA states that on its own initiative or upon request by an interested person, "the Administrator may *** propose the issuance of a regulation establishing a tolerance" or an exemption from a tolerance requirement. Proposal of a tolerance under FFDCA sec. 408(e), even one requested by interested persons, is entirely discretionary to the Administrator. If the Agency is free not to propose a requested tolerance, it is also permitted to deny such a requested tolerance. According to the Court in *Nader v. EPA*, "[s]o deferential is

subsection (e) that the Administrator is not only free to deny the requested regulation, she need not even propose it. See 40 CFR § 180.29(a) (1987)." 859 F.2d 747, 752 (d.c. Cir. 1988).

Further, although the FFDCA does not provide explicit authority for denial of section 408(d) petitions, neither does it or its legislative history discuss whether EPA may deny pesticide petitions that do not provide sufficient information to establish a tolerance or exemption capable of protecting the public health. Due to Congress' silence on this precise issue, any reasonable interpretation that is consistent with the purpose of the statute is valid. *Chevron v. EPA*, 467 U.S. 837, 842-844 (1984). See also *Young v. Community Nutrition Institute*, 476 U.S. 974, 981-982 (1986). Even while Mobay argues against EPA's denial authority, it admits that denial is a reasonable means for responding to what it has classified as "abandoned" section 408 petitions.

B. Basis for Denial of Section 408 or 409 Petitions

Mobay argues that, even if there is an implicit authority "to deny petitions for tolerances under section 408(b), EPA cannot deny a petition on the basis of administrative convenience and to enhance the Agency's revenues." Mobay also maintains that EPA may deny a petition for a food additive regulation under section 409 of the FFDCA only if the scientific data "fails to establish that the proposed use of the food additive *** will be safe *** or shows that the proposed use of the additive would promote deception of the consumer ***."

Contrary to Mobay's conclusion, EPA does not intend to deny petitions for administrative convenience or to raise revenues. Rather, EPA is changing its internal procedures for reviewing pesticide petitions due to the large number of petitions still pending with the Agency. EPA will be reviewing the pending petitions identified in Table 1 of the Policy Statement (56 FR 43759; Sept. 4, 1991). In addition, it will attempt to make a final review of all other pending and future petitions after 75 days from the receipt of the notice of deficiency if EPA receives no response or an inadequate response from the petitioner, or if the petitioner requests that EPA review the petition "as is." Subsequent to such reviews some petitions will be denied where there is insufficient information for the Agency to find that the proposed tolerance or exemption is protective of the public health. However, at no time will pesticide petitions be denied for administrative convenience or to raise revenues.

C. The Impact of Denial of a Petition Versus Setting a Zero Tolerance

Mobay disagrees with the Agency's position that denial of a tolerance petition is equivalent, for practical purposes, to setting a zero tolerance. Mobay provided no explanation as to how the two actions could have a different impact from a petitioner's perspective.

EPA believes there is no functional difference between the denial of a petition and establishing a zero tolerance. A commodity bearing a pesticide residue for which a tolerance has been denied or for which a zero tolerance has been established would be considered unsafe under section 408 of the FFDCA and adulterated under section 402(a)(2)(B) of the FFDCA. No rights or burdens would be created, imposed, or removed by denying a petition rather than setting a zero tolerance. The legal and practical implications of both actions are the same.

D. Compliance With Rulemaking Procedures Set Forth in the Administrative Procedures Act (APA)

Mobay states that "EPA's decision to deny petitions under Sections 408 and 409 of the FFDCA if a petitioner either fails to (1) respond to EPA's notice of deficiency within 75 days, or (2) supplement the data within a 4 year time period is clearly a rule under the Administrative Procedure Act (APA)." According to Mobay, EPA's intended action is a substantive rule requiring compliance with the notice and comment opportunities provided in section 553 of the APA because EPA's intended action is of future effect and of general applicability, and acts as an amendment to 40 CFR 180.7(d) which "provides a petitioner with an indefinite period of time to supplement a deficient petition after notification of deficiencies."

Contrary to Mobay's assertions, EPA's publication of this policy is designed to establish internal guidelines for identifying "stale" petitions that require formal action. It does not affect any rights of petitioners or bind EPA's discretion. EPA is not under any obligation to publish for comment its internal guidelines for review of petitions and could at any time, and at its sole discretion, take formal action denying a petition failing to meet statutory criteria.

EPA does not, as Mobay assumed, intend to deny petitions for failure to comply with the 75 day or 4 year timeframes. As previously mentioned, these timeframes are internal guidance as to when a petition is probably stale and thus should be considered for formal action removing it from the pending status. Any formal action will be based on the applicable statutory criteria.

This policy does not amend the EPA regulation which allows petitioners to supplement deficient petitions. While 40 CFR 180.7(d) permits a petitioner to correct a deficiency prior to filing, nothing in that section prescribes when EPA can or must make a decision on a pesticide petition that has been filed. Neither the statute nor regulations in 40 CFR part 180 give a petitioner the right to maintain a deficient petition before the Agency indefinitely. In fact, FFDCA sec. 408 anticipates EPA final action on petitions in 180 days, a considerably shorter timeframe than those outlined in this policy for scheduling a final review. The goal of reviewing petitions within 4 years and the proposed internal procedure of sending deficiency notices with a request for a response do not affect in any meaningful way the petitioner's ability to supplement deficient petitions. An adequate response to the Agency's request within 75 days preserves the petitioner's right to provide supplemental data for up to 4 years without the Agency's taking formal action to review the petition. Given that the statute contemplates an Agency decision within 180 days, the Agency's policy of allowing a petition to remain extant up to 4 years from the date EPA approves the schedule for generation of data is reasonable, even generous.

E. Incomplete Petitions and the Potential for Error in EPA's Files

Mobay argues that the Agency has not presented any compelling reason why incomplete versus abandoned petitions should be denied. Further, Mobay comments that, even should the Agency have some compelling reason to deny incomplete petitions, the inaccuracy of the Agency's files and records is evidence that the "potential for erroneous decisions far outweighs any need the Agency may have to cleanse its records."

Mobay's comment assumes a distinction between incomplete and abandoned pesticide petitions not made by EPA in this policy, and Mobay does not explain the distinction. As previously noted, EPA is applying the policy announced in this Notice to reform its internal procedures for timing the final review of all pesticide petitions. At the point at which EPA determines that a petition is deficient, it

will notify the petitioner. Failing an adequate response, the deficient petition will be subject to a final review. Upon a final review, EPA will deny those pesticide petitions which do not provide sufficient data to establish a tolerance, exemption from a tolerance, or food or feed additive regulation capable of protecting the public health.

Further, the potential inaccuracies in EPA's files argue in favor of instituting this policy rather than against it. One of the main objectives of the policy is to ensure that EPA has accurate records to determine which pending petitions are still active and what their deficiencies may be. The accuracy of EPA's files will be increased by regularizing the Agency's monitoring of the status of pesticide petitions. If EPA has made an error, then the petitioner has the opportunity to notify EPA of the error well before a final review of the petition.

IV. Implementation

EPA will be subjecting to a final review those pending petitions identified at 56 FR 43759 in Table 1 of the Policy Statement for which it received no response, an inadequate response, or a request to review the petition "as is." In addition, EPA will notify all other petitioners of any deficiencies in their petitions and allow 75 days to respond to the notification. EPA will attempt to make a final review of all other pending and future petitions after 75 days from the receipt of the notice of deficiency if EPA receives no response or an inadequate response from the petitioner, or if the petitioner requests that EPA review the petition "as is." If EPA determines, upon a final review, that a petition does not include sufficient information to find that the requested tolerance or exemption from a tolerance is protective of the public health, it will notify the petitioner by letter or FR notice that the petition is being denied.

V. Format of Submissions

A. Request to Withdraw a Pesticide Petition

All requests to withdraw a pesticide petition should be submitted on company letterhead and specify the pesticide petition number which the Agency assigned to the petition, the active ingredient of the chemical, and the raw agricultural commodities and food or feed items involved.

B. Requests to Retain Petitions

All requests to retain a pesticide petition should be submitted on company letterhead and specify the pesticide petition number which the Agency assigned to the petition, the active ingredient of the chemical, and raw agricultural commodities and food or feed items involved. The request should contain a timetable listing data deficiencies identified by EPA letters and the date the company expects to submit these data. This timeframe should not exceed a 4-year period.

C. Where to Send Requests

All requests should be submitted to the following address: Front End Processing Staff, Registration Division (7505C), 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

Dated: December 23, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–3758 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44606; FRL–4760–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on isopropanol (CAS No. 67–63–0), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for isopropanol were submitted by the Chemical Manufacturers Association Isopropanol Panel on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2325. They were received by EPA on January 21, 1994. The submission describes a vapor inhalation oncogenicity study in mice. This chemical is used as a solvent in consumer products and industrial products and procedures.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44606). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET–G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 8, 1994.

Denise M. Keehner,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–3830 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 14, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

Please note: The Commission has requested emergency OMB review of

this item by February 15, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: Transport Rate Structure and Pricing, CC Docket No. 91–213, Second Report and Order.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting requirement and one-time collection.

Estimated Annual Burden: 55 responses; 2 hours average burden per response; 110 hours total annual burden.

Needs and Uses: In the Second Report and Order, CC Docket No. 91–213 (released 1/31/94), the Commission modified certain features of the price cap regulatory system applicable to local exchange carriers (LECs) to accommodate the recent restructure of the LECs local transport rates. Transport services, including all the transmission-related elements, the tandem switching charge, and the interconnection charge, were moved out of the price cap basket for traffic sensitive services and placed into a combined "trunking" basket containing transport and special access services. The Commission realigned the service categories and subcategories within the trunking basket to reflect the similarities between certain special access and flat-related transport services, and to accommodate the new density zone pricing system that were adopted for both special access and transport. The pricing bands applicable to the service categories and subcategories were also adapted. All LECs subject to the price cap rules are required to file a supplemental tariff review plan to recalculate their price cap indexes pursuant to the decision in the Order. The recalculated indexes should be used as the basis of any price cap filing that changes rates of services in the trunking or traffic sensitive baskets subsequent to the effective date of the initial restructured transport tariffs. Subsequent tariff filings must be made pursuant to the modified rules. The information will be used to aid in the review of the LECs' transport service restructure by the Commission and interested parties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3819 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1999]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

February 17, 1994.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc., (202) 857–3800. Opposition to these petitions must be filed March 9, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject

Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz. (PR Docket No. 93–35)

Petition for Reconsideration

Number of Petitions Filed: 7

Request for Waiver

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton.

Acting Secretary.

[FR Doc. 94–3863 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

Renewal Applications Designated for Hearing

1. The Commission has before it the following regulations for renewal of license:

Applicant	City/State	File Nos.	MM docket No.
The Lutheran Church/Missouri Synod	Clayton, MO	BR–890929VC BRH–890929VB	94–10

(Seeking renewal of the licenses of Stations KFUO/KFUO–FM)

2. Pursuant to section 309(e) of the communications Act of 1934, as amended, the above application has been designated for hearing on the issues set forth below:

a. To determine the extent to which the licensee of Stations KFUO/KFUO–FM complied with the affirmative action provisions specified in § 73.2080(b) of the Commission's Rules, 47 CFR 73.2080.

a. To determine whether the licensee of Stations KFUO/KFUO–FM made misrepresentations of fact or was lacking in candor in violation of § 73.1015 of the Commission's Rules, 47 CFR 73.1015, with regard to the stations' EEO program and documents submitted in support thereof.

c. To determine whether, in light of evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience and necessity.

A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 32), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3857 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance

Corporation (FDIC) was duly appointed receiver for each of the financial institutions specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of these receivership estates are insufficient to satisfy all classes of claims, asserted or unasserted against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable state and federal law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any other creditor and therefore the claim of any such creditor is worthless.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–0160.

SUPPLEMENTARY INFORMATION:

Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims

Union Bank & Trust, #2813, Dallas, Texas
Western State Bank of Denton, #2499, Denton, Texas
Peoples State Bank, #4306, Dallas, Texas.

Dated: February 15, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–3825 Filed 2–18–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0166.

Title: Crisis Counseling Assistance and Training.

Abstract: Public Law (PL) 93–288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100–707, authorizes the President to provide financial assistance to State and local governments for professional counseling services to victims of major disasters in order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The Department of Health and Human Services Center for Mental Health Services and FEMA monitor State Crisis Counseling and Assistance Training program's (CCP's) to ensure that the goals of the program for people affected by disasters are met, special problems in areas where technical assistance might be necessary are identified, grants are properly managed, and technical assistance and guidance are provided on mental health matters as they relate to the crisis counseling assistance.

FEMA provides funds in the form of a Federal grant to State or local mental health agencies or private mental health organizations designed by the Governor to provide crisis counseling services to the Presidentially declared communities. Assistance is provided under two separate programs: Immediate Services Program and Regular Program. To obtain a grant, a State agency must submit a grant application. If approved and funded, the State agency must provide progress and financial reports on a quarterly basis.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,272 hours.

Number of Respondents: Immediate Services—17; Regular Program—7.

Estimated Average Burden Time Per Response: Immediate Services—24 hours reporting and 48 hours recordkeeping; Regular Program—52 hours reporting and 260 hours recordkeeping.

Frequency of Response: Other—application, final report; Quarterly, and Recordkeeping.

Dated: February 14, 1994.

Wesley C. Moore,

Director, Office of Administration Support.

[FR Doc. 94–3900 Filed 2–18–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0223.

Title: Damage Survey Report.

Abstract: The information will be collected with input from State and local governments describing in detail facilities that have been damaged in a major disaster. Following a major disaster declaration by the President, the State and Disaster Recovery Manager arranges for damage surveys to be made by teams of Federal and State inspectors and a local representative. The following FEMA forms are completed and are attached as supporting justification to the applicant's project application: FEMA Form 90–91, Damage Survey Report—Data Sheet, completed for each damaged facility and for each item of emergency and permanent work identified by the local representative for each damaged facility; FEMA Form 90–

3, Pumping Equipment, provides information on any damaged pumping equipment; FEMA Form 90–51, Building Survey, provides information on damage to buildings; and FEMA Form 90–53, Bridge Survey, provides information on any damage to bridges. Prior to the survey team beginning their inspections, the local representative must compile information in accordance with the checklist requirements for damage surveys in DAP 1, Public Assistance Guide for Applicants.

Type of Respondents: State or local governments, Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 6,155 hours.

Number of Respondents: 12,160.

Estimated Average Burden Time per Response: 30 minutes each to complete FEMA Forms, and 8 hours each to compile checklist information.

Frequency of Response: On occasion.

Dated: February 14, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–3901 Filed 2–18–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Reinstatement of 3067–0222.

Title: Mobile Home Assistance—Request for the Site Inspection and Landowner's Authorization/Ingress-Egress Agreement.

Abstract: Information collected to determine site feasibility for the placement of a mobile home; to obtain written permission from the property owner to allow the mobile home on his/her land; and to obtain from adjacent property owners rights of ingress/egress for movement of the mobile home to and from the land.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 333 hours.

Number of Respondents: 1,000.

Estimated Average Burden Time Per Response: 20 minutes.

Frequency of Response: On occasion.

Dated: February 8, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–3902 Filed 2–18–94; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Ambank Company, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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 request for a hearing on this question must be accompanied by 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 the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ambank Company, Inc., Sioux Center, Iowa; to engage *de novo* through its subsidiary, Northwest Appraisal Services, Sioux Center, Iowa, in performing real estate appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y.

2. First Midwest Corporation of Delaware, Melrose Park, Illinois; to engage *de novo* through its subsidiary, Midwest Trust Services, Inc., Elmwood Park, Illinois, in accepting and executing trusts and carrying on a general trust company business pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities are intended to serve the Chicago metropolitan area including Cook, Lake, Will, DuPage and McHenry Counties.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Cass Commercial Corporation, St. Louis, Missouri; to engage *de novo* through its subsidiary, Cass Logistics, Inc., Bridgeton, Missouri, in acquiring, holding, and disposing of loans or other extensions of credit extended by Cass Commercial Corporation's subsidiary bank, Cass Bank & Trust Company, St. Louis, Missouri, and providing necessary servicing activities in connection therewith pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Wabasha Holding Company, Wabasha, Minnesota; to engage *de novo* in the purchase of participations in loans and/or loan pools collateralized with leases pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Community Bancshares, Inc., Winnfield, Louisiana; engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

2. Winn Bancshares, Inc., Winnfield, Louisiana; to engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3844 Filed 2-18-94; 8:45 am]

BILLING CODE 6210-01-F

Hancock Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice. have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 18, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hancock Bancorp, Inc., Plymouth, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank of Plymouth, Plymouth, Illinois.

2. Ida Grove Bancshares, Inc., Ida Grove, Iowa; to acquire 100 percent of the voting shares of P.S.B. Corporation, Odebolt, Iowa, and thereby indirectly acquire Liberty Bank & Trust, Odebolt, Iowa.

3. LSBancorp, Inc., LaSalle, Illinois; to acquire 100 percent of the voting shares of Community Bank of Utica, Utica, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Farmers Bancshares, Inc., Breese, Illinois, and thereby indirectly acquire State Bank of Breese, Breese, Illinois, and Farmers State Bank of Valmeyer, Valmeyer, Illinois.

2. Mark Twain Bancshares, Inc., St. Louis, Missouri; to acquire at least 66.7 percent of the voting shares of C.B. Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire Century Bank, St. Louis, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community Investment Services, Inc., North Branch, Minnesota; to acquire 94.43 percent of the voting shares of A & P Bank Holding Company, and thereby indirectly acquire 84.51 percent of the voting shares of Community National Bank, North Branch, Minnesota, and directly acquire 7.66 percent of Community National Bank.

2. Kelliher Bancshares, Inc., Kelliher, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Kelliher, Kelliher, Minnesota.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3845 Filed 2-18-94; 8:45 am]

BILLING CODE 6210-01-F

Joyce Williams Porter, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Joyce Williams Porter, Alpharetta, Georgia; to acquire an additional 14.06 percent of the voting shares of First Colony Bancshares, Inc., Atlanta, Georgia, for a total of 14.13 percent, and thereby indirectly acquire First Colony Bank, Atlanta, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. James Levendofsky, Belleville, Kansas; to acquire an additional 18 percent of the voting shares of Peoples BanCorp of Belleville, Inc., Belleville, Kansas, for a total of 32.25 percent, and thereby indirectly acquire Peoples National Bank of Belleville, Belleville, Kansas.

2. A.P. Martin and Lloyd M. Pickering, Jr., Trustees of the A.P. Martin Trust, Okemah, Oklahoma; to acquire 37.33 percent of the voting shares of OK Bancorporation, Inc., Okemah, Oklahoma, and thereby indirectly acquire Okemah National Bank, Okemah, Oklahoma.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3846 Filed 2-18-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Post-FTS2000 Development Record Conference Proceedings; Availability Date Change

February 4, 1994.

AGENCY: GSA.

ACTION: Notice for Request for Post-FTS2000 Ideas/Comments—Inter-city Telecommunications Services—Public Review of the Post-FTS2000 Concept Development Record (Release #2)—Conference Proceedings.

SUMMARY: The response date for written responses to the Concept Development Record—Release #2 publicized in the Commerce Business Daily on January 18, 1994, and in the **Federal Register** on January 26, 1994, is changed from February 15, 1994, to March 1, 1994. Written responses may be submitted to the General Services Administration, Attn: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182, by FAX at (703) 760–7523, or electronically at concept @access.digex.com. The Transcript of the three-day Concept Development Conference proceedings (October 19–21, 1993) is now available on 3.5" MS–DOS diskettes for $90.00/set under document ordering No. PB94–500881. Also, Appendices A through D (list of attendees, questions/answers, speaker's view-graphs, and misc items) can be purchased separately in hard copy format for $44.50/ea. and on microfiche for $17.50/ea. under document ordering number PB94–136645. To place your order for a copy of the Concept Development Record (Release #2), please call the NTIS Sales Desk (with the document ordering number) at (703) 487–4650. The address for NTIS is: Department of Commerce, National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

DATES: The due date for written responses to the Concept Development Record (Release #2) is March 1, 1994.

ADDRESSES: Please mail all responses pertaining to the Concept Development Record (Release #2) to: General Services Administration, Attn: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182.

FOR FURTHER INFORMATION CONTACT: Richard J. Kosko at (703) 760–7562.

Dated: February 4, 1994.

Barbara R. Norsworthy,

Deputy Director, Network Telecommunications Procurement Division.

[FR Doc. 94–3873 Filed 2–18–94; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Safe Medical Devices Act of 1990; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under the Safe Medical Devices Act of 1990, Public Law 101–629, as amended hereafter. This delegation excludes the authority to submit reports to the Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: February 10, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3872 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

[Docket No. 94N–0034]

Drug Export; Acellular Pertussis Vaccine Adsorbed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Cyanamid Co., Lederle-Praxis Biologicals Division, has filed an application requesting approval for the export of the human biological product Acellular Pertussis Vaccine Adsorbed to the Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center of Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that American Cyanamide Co., Lederle-Praxis Biologicals Division, 401 North Middletown Rd., Pearl River, NY 10965, has filed an application requesting approval for the export of the human biological product Acellular Pertussis Vaccine Adsorbed to the Federal Republic of Germany. The Acellular Pertussis Vaccine Adsorbed is for active immunization against pertussis (whooping cough) in children from 15 months to 6 years of age. The application was received and filed in the Center for Biologics Evaluation and Research on January 24, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 4, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 9, 1994.

P. Michael Dubinsky,

Acting Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 94–3814 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of two FDA advisory committees by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that the renewal is in the public interest.

Name of the committee	Date of expiration
Food Advisory Committee	December 18, 1995
Vaccines and Related Biological Products Advisory Committee	December 31, 1995

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: February 14, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–3854 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Education Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, on March 1, 1994, The Georgetown Inn, 1310 Wisconsin Avenue NW., Washington, DC 20007.

This meeting will be open to the public on March 1, 1994, from 8 a.m. to 8:30 a.m., to review administrative details and other cancer education review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on March 1 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Boulevard, room 630E, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Neal B. West, Scientific Review Administrator, Cancer Education Review Committee, National Cancer Institute, Executive Boulevard, room 611D, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/402–2785) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Neal B. West in advance of meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 92.292, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.395, Cancer Biology Research; 03.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3910 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on March 6–9, 1994, The Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

This meeting will be open to the public on March 6, 1994, from 7:30 pm to 8:30 pm, to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on March 6 from 8:30 pm to recess, on March 7 from 8 am to recess, on March 8 from 8 am to recess, and on March 9 from 8 am to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Executive Plaza North, room 611A, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mary Bell in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3918 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the March 1, 1994, meeting of the National Institute on Deafness and Other Communication Disorders Special

Emphasis Panel, which was published in the **Federal Register** on January 31, 1994, 59 FR 4289.

This Special Emphasis Panel was to have convened at 8 a.m. on March 1, 1994, at the Chevy Chase Holiday Inn, but has been changed to 8 a.m., March 11, 1994, at the Bethesda Marriott, 5151 Pooks Hills Road, Bethesda MD.

The meeting will be closed to the public.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3907 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sections 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and their discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: March 14–16, 1994.

Time of Meeting: March 14: 8 p.m.–10 p.m. March 15: 3 p.m.–8 p.m. March 16: 8 a.m.–11 a.m.

Place of Meeting: La Guardia Marriott Hotel, East Elmhurst, NY.

Agenda: Review of grant application.

Contact Person: Dr. Marilyn Semmes, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93,173, Biological Research Related to Deafness and Other Communication Disorders.)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3919 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for March 1994.

The Extramural Science Advisory Board will discuss NIDA's program areas and monograph series. This meeting will be open on the dates indicated below; however, attendance by the public will be limited to space available.

The initial review groups will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the initial review groups will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicated below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Extramural Science Advisory Board, NIDA.

Meeting Date: March 1–2, 1994.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: March 1–2, 9 a.m. to 5 p.m.

Contact: Jacqueline P. Downing, room 10A–55, Parklawn Building, Telephone (301) 443–1056.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: March 8–9, 1994.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland 20852.

Open: March 8, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., March 8, to adjournment on March 9.

Contact: Mary Custer, Ph.D., Room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: March 8–10, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: March 8, 9 a.m. to 8:30 a.m.

Closed: 9:30 a.m., March 8, to adjournment on March 10.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3909 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

INTERAGENCY FLOODPLAIN MANAGEMENT REVIEW COMMITTEE

Mississippi River Basin Floodplain Management; Request for Comments

SUMMARY: Damages resulting from the heavy rainfalls and related flooding of 1993 in the Upper Mississippi and Lower Missouri River basins were some of the most devastating in the history of the Nation. The magnitude of these floods has raised serious concerns about this country's ability to provide adequate flood protection and to respond quickly and effectively during post-flood recovery. Perhaps most significantly, it has forced the Nation to reconsider its best long-term strategy, not only to prevent a recurrence of the 1993 experience, but to ensure that floodplains and related watersheds function to the fullest extent possible in

ways that achieve environmental, economic, and socio-cultural objectives.

In response to the Flood of 1993, an Interagency Floodplain Management Review Committee was formed by the Administration to examine what happened and why, to solicit opinions, and to make recommendation as to what changes in current policies would most effectively achieve the goals of floodplain management; this Review Committee is part of the Administration's larger Floodplain Management Task Force. A final report of this Review Committee will include: a description of the flood event, including quantitative assessments of the damages incurred; an assessment of the performance of Federal flood control measures; a summary of the concerns of affected parties as expressed during the public input phase of this study; the identification of attributes which could be used to identify areas where alternative flood, floodplain, and watershed management measures might be taken to yield the highest overall socio-cultural, economic, and environmental payoff; proposals for administrative or legislative change which would enhance the flexibility and effectiveness of floodplain and watershed management; and a framework to focus and guide development of comprehensive answers for improved floodplain and watershed management by describing questions that remain to be addressed and identifying data and resource needs.

As part of the Review Committee's outreach efforts, interested parties are invited to submit comments and recommendations related to floodplain and watershed management policies and programs.

DATES: Comments must be received on or before April 1, 1994. The draft report from this Committee is due on May 1, 1994. The final report is to be submitted on June 1, 1994.

ADDRESSES: Send written comments to BG Gerald E. Galloway, Executive Director, Floodplain Management Review Committee, 730 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: BG Gerald E. Galloway, Executive Director, 202 408–5295.

BG Gerald E. Galloway,

Executive Director.

[FR Doc. 94–3822 Filed 2–18–94; 8:45 am]

BILLING CODE 3125–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–702631

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 1.

Applicant requests amendment to their current permit to include take activities for: Callippe silverspot butterfly (*Speyeria callippe callippe*), Behren's silverspot butterfly (*Speyeria zerene behrensii*) and Alameda whipsnake (*Masicophis lateralis euryxanthus*) for the purpose of scientific research and enhancement of propagation or survival, if or when they become Federally protected as endangered or threatened by the Endangered Species Act.

PRT–784974

Applicant: Ohio State University, Columbus, OH.

The applicant requests a permit to export eight captive-bred Cotton-top tamarins to (*Saguinus oedipus*) to Columbia, South America, for the purpose scientific research aimed at the conservation of the species.

PRT–786485

Applicant: Dr. Charles Bechert II, Fort Lauderdale, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by H.Z. Kock, "Verborgenfontein", Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–784254

Applicant: AAZPA SSP for Black Rhino, Brownsville, TX.

The applicant requests a permit to import two captive-held Black rhinoceros (*Diceros bicornis minor*) from Zimbabwe to enhance the propagation or survival of the species through captive-breeding. These rhinos were wild-caught during a rhino conservation translocation operation undertaken by Zimbabwe's Department of National Parks and Wildlife.

PRT–786600

Applicant: National Marine Fisheries Service, Southwest Region, Long Beach, CA.

The applicant requests a permit to import 50 dead specimens of the following sea turtle species: green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), olive ridley (*Lepidochelys olivacea*) and loggerhead (*Caretta caretta*), for biometrics, necropsy, and analysis of stomach contents to enhance the propagation and survival of the species.

PRT–784960

Applicant: Dr. Kenneth Counts, Vilonia, AR.

The applicant requests a permit to purchase in interstate commerce 3 captive-bred San Francisco Garter snakes (*Thamnophis sirtalis tetrataenia*) from Lloyd Lemke, Visalia, California to enhance the propagation or survival of the species through captive-breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 15, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–3848 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[OR–942–00–4730–02: G4–077; 0–00151]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Meridian

Oregon

T. 14 S., R. 1 E., accepted January 5, 1994.
T. 9 S., R. 2 E., accepted December 15, 1993.
T. 18 S., R. 5 W., accepted January 3, 1994.
T. 30 S., R. 5 W., accepted January 4, 1994.
T. 20 S., R. 10 W., accepted December 15, 1993.
T. 28 S., R. 11 W., accepted December 1, 1993.
T. 41 S., R. 12 W., accepted December 7, 1993.
T. 40 S., R. 13 W., accepted January 3, 1994.

Washington

T. 10 N., R. 5 E., accepted January 12, 1994.
T. 11 N., R. 5 E., accepted January 12, 1994.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 7, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–3833 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–359 (Preliminary) and 731–TA–686–687 (Preliminary)]

Certain Steel Wire Rod From Belgium and Germany

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–359 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and of preliminary antidumping investigations Nos. 731–TA–684–685 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Germany of certain steel wire rod,[1] provided for in subheadings 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, 7213.50.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States that are alleged to be subsidized by the Government of Germany and to be sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by March 31, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 14, 1994, by Connecticut Steel Corp., Wallingford, CT; Georgetown Steel Corp., Georgetown, SC; North Star Steel Texas, Inc., Beaumont, TX; Co-Steel Raritan River Steel Co., Perth Amboy, NJ; Keystone Steel & Wire Corp., Peoria, IL; and Northwestern Steel & Wire Co., Sterling, IL.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this

[1] For purposes of these investigations, certain steel wire rod is defined as hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter. The following products are excluded from the scope of these investigations:

—steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and having the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorus plus sulfur less than or equal to 0.04 percent, and nitrogen less than or equal to 0.006 percent (termed "1080 tire cord" quality wire rod);

—free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium;

—stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and

—wire rod 7.9 to 18 mm in diameter, containing 0.43 to 0.73 percent carbon by weight, and having partial decarburization and seams no more than 0.75 mm in depth.

notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 4, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than March 1, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 9, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3987 Filed 2–18–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–32 (Sub–No. 66X)]

Boston and Maine Corp.—Discontinuance of Trackage Rights Exemption—In Middlesex County, MA

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue trackage rights over approximately 1.90 miles of railroad owned by the Massachusetts Bay Transportation Authority (MBTA) on its "Central Massachusetts Branch" line, extending between milepost 8.30 and milepost 10.20, in Waltham, Middlesex County, MA.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7 (service of environmental report on agencies); 49 CFR 1105.8 (historic reports); 49 CFR 1105.11 (transmittal letter); 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on March 24, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by March 4, 1994. Petitions to reopen must be filed by March 14, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[1]

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Esq., Vice President and General Counsel, Law Department, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If this notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Decided: February 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3921 Filed 2–18–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Because MBTA will continue to provide service over the line, there is no need to provide for trail use/rail banking or public use conditions, or to include offer of financial assistance language, routinely provided for in abandonment proceedings.

[Docket No. AB–213 (Sub-No. 4)]

Canadian Pacific Limited—Abandonment—Line Between Skinner and Vanceboro, ME

The Commission's Section of Environmental Analysis (SEA) hereby notifies all interested parties that SEA will prepare a Draft Environmental Impact Statement (DEIS) and conduct scoping meetings in this proceeding. The Canadian Pacific Limited (CP) filed an application for authority to abandon and discontinue all freight and passenger operations over 201.2 miles of rail line between Skinner and Vanceboro, in Franklin, Somerset, Piscataquis, Penobscot, Aroostook, and Washington Counties, Maine. Because of the proposed abandonment's potential for significant environmental impacts, SEA has determined that preparation of a DEIS is necessary.

The DEIS will address the environmental impacts associated with this proposed abandonment and will be served on all the parties to the proceeding and made available to the public. There will be a 45 day comment period from the date the DEIS is served to allow the public opportunity to comment. After assessing all of the comments to the DEIS and any other comments filed during the environmental review process, SEA will issue a Final Environmental Impact Statement (FEIS) that will include SEA's final recommendations to the Commission. The Commission will consider the FEIS and the environmental record in making its decision.

The purpose of the scoping process is to identify significant environmental issues and determine the scope of issues to be addressed in the DEIS. Issues typically addressed in DEIS's include alternatives to the proposed action, impacts on transportation systems, land use, socio-economic impacts, energy resources, air quality, noise quality, public health and safety, biological resources, water quality, historic

resources, coastal zone management consistency review, and mitigation to reduce or avoid impacts on the environment. Persons that cannot attend the scoping meetings may submit questions and comments in writing up to 30 days after the scoping meetings. Written comments may be submitted directly to the Commission no later than April 15, 1994. Public scoping meetings will be held on the following dates.

- March 15, 1994, from 2 p.m. to 6 p.m. at The American Legion Hall, Maine Street, Woodland, ME, and
- March 16, 1994, from 10 a.m. to 12 p.m. at City Hall, City Council Chambers, 73 Harlow Street, Bangor, ME.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball at (202) 927–6213 or Vicki Dettmar at (202) 927–6211, Section of Environmental Analysis, room 3219, Office of Economic and Environmental Analysis, 12th and Constitution Avenue, NW., Interstate Commerce Commission, Washington, DC TDD for hearing impaired: (202) 927–5721.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3922 Filed 2–18–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before April 8, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, Patent and Trademark Office (N1–241–90–5). Electronic and textual records of the Automated Patent Search System.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–93–2). Comprehensive records schedule for the Arabian Gulf Program Office.

3. Department of Education, Office of Educational Research and Improvement (N1–441–94–1). Data filed relating to kindergarten, 1971–1975.

4. Department of Education, Routine and facilitative financial and administrative records relating to the Federal real property assistance program (N1–441–93–5).

5. Department of Health and Human Service, Centers for Disease Control and Prevention (N1–442–91–11). Comprehensive schedule for National Institute of Occupational Safety and Health electronic records.

6. Department of Health and Human Service, Centers for Disease Control and Prevention. (N1–442–91–12). Comprehensive schedule of electronic records of the Center for Infectious Diseases.

7. Department of Health and Human Services, Public Health Service, National Institutes of Health (N1–443–93–1). Medical Staff credentials.

8. Department of Health, Education and Welfare, Office of the Secretary (N1–235–93–1). Completed job satisfaction surveys filled out by Departmental employees, 1971.

9. Department of the Interior, U.S. Geological Survey (N1–57–93–1). Hard copy seismograms.

10. Department of the Interior, Bureau of Mines (N1–70–93–1). Revisions to the records schedule for the Division of Organization and Management.

11. Department of Labor, Office of the Executive Secretariat (N1–174–93–3). Miscellaneous subject files, 1991–1993.

12. Department of State, Bureau of Politico-Military Affairs (N1–59–94–2). Compliance tracking system used by the Office of Defense Trade Controls.

13. Department of Treasury, Office of Thrift Supervision (N1–483–92–7). Records of the Controller's Division.

14. Department of Treasury, Office of Thrift Supervision (N1–483–93–16). Summary reports on financial institutions.

15. Department of Treasury, Office of Thrift Supervision (N1–483–93–18). Summary reports produced by the Branch Office Survey System.

16. ACTION, Office of Management and Budget (N1–362–94–3). General correspondence of the Inspector General.

17. Environmental Protection Agency, Office of Pesticides (N1–412–93–3). Records relating to the National Pesticides Survey.

18. National Archives and Records Administration (N2–107–94–1). Routine

and facilitative records accumulated by the Office of the Secretary of War.

19. National Archives and Records Administration (N2–145–94–1). Routine sound recordings used for training by the Agricultural Stabilization & Conservation Service.

20. Peace Corps (N1–490–93–2). Volunteer training evaluation files relating to projects in El Salvador and Honduras, 1965–67.

21. Securities and Exchange Commission. (N1–266–93–1). Records relating to the Study of Investment Trusts and Companies, 1935–38.

22. Tennessee Valley Authority, Resource Group (N1–142–92–17. Computer cassette tapes and engineering drawings relating to the Ammonia from Coal Project.

Dated: February 10, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–3917 Filed 2–18–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a planning meeting for the Professional Theater Companies Section of the Theater Advisory Panel will be held on February 28, 1994 from 10 a.m. to 4 p.m., in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 16, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4073 Filed 2–18–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Astronomy Subcommittee to Advisory Committee for Mathematical and Physical Science and National Astronomy Centers Presentation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences, Subcommittee on Astronomy.

Date and Time: March 2, 3, and 4, 1994 8:30 am–5 pm.

Place: National Science Foundation, room 375.1.

Type of Meeting: Open.

Contact Person: Morris L. Aizenman, EO/AST, room 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1820.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: Budget and Long-Range Planning Discussions with Subcommittee and Annual Presentations by National Astronomy Centers.

Agenda

Wednesday, March 2, 1994

All day: Budget and Long-Range Planning Discussions with Subcommittee.

Thursday, March 3, 1994

8:30 am: National Astronomy & Ionosphere Center Presentation.

1:00 pm: National Radio Astronomy Observatory Presentation.

Friday, March 4, 1994

8:30 am: National Optical Astronomy Observatories Presentation.

1:00 pm: General Discussions with Subcommittee.

Reason for Late Notice: Weather conditions have made it difficult to determine meeting date suitable for members and NSF staff.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3916 Filed 2–18–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on Wednesday, March 9, 1994, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personnel privacy.

The agenda for the subject meeting shall be as follows: Wednesday, March 9, 1994—2:15 p.m. until 4:45 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m. (est). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 13, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–3851 Filed 2–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Donald C. Cook Nuclear Plant Units 1 and 2

Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 55.59(a)(1), "Each licensee shall—(1) Successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration."

III

By letter dated October 4, 1993, the licensee requested an exemption from administering the operating portion of the annual operator requalification examination in January–February, 1994 due to the installation of modifications in the control room. The modifications, which include replacing all Foxboro controllers with Taylor model 30 controllers and a reconfiguration of the control room, have been completed in the simulator but will not be installed in the Unit 1 and Unit 2 control rooms until the refueling outages in February and August, 1994, respectively.

The licensee is requesting the exemption from the operational portion of the requalification examination in order to provide more simulator training time on the new modifications and to avoid administering a requalification examination on a simulator which is configured differently from the plant control rooms. The licensee will administer the operating portion of the requalification examination on the simulator in the May–June, 1994 time frame. The licensee's 24-month requalification cycle ends February 11, 1994; therefore, the exemption from the requirements of the regulation would be for a period of approximately 4 months.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV

Currently, the Donald C. Cook Licensed Operator Requalification Training Program beings and ends in early February of even years. This one-time exemption would permit an operating examination from the current 24-month requalification cycle to be administered approximately 4 months into the next cycle. The next examination will be administered on schedule in January 1995, which will be consistent with the annual examination requirement cited in 10 CFR 55.59(a)(2).

V

The staff has reviewed the licensee's request and concluded that issuance of this exemption will not endanger life or property and will have no significant effect on the safety of the public or the plant.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that this exemption as described in section III is authorized by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants a one-time exemption from the requirements of 10 CFR 55.59(a)(1) for a period of February 1994 to June 1994, with respect to the 24-month requalification program. This exemption applies only to the operational examination portion of the requalification program. No changes to the written portion of the requalification program have been requested by the licensee or granted by this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (February 14, 1994, 59 FR 6978).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of February, 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3850 Filed 2–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., et. al.; Kewaunee Nuclear Power Plant

Exemption

I

The Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), are the holders of Facility Operating License No. DPR–43 which authorizes operation of the Kewaunee Nuclear Power Plant (KNPP). The licensee provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in Kewaunee County, Wisconsin.

II

In a letter dated November 16, 1993, the licensee applied for a partial exemption from the Commission's regulations. The subject exemption is from the requirements of 10 CFR part 50, Appendix J, Section III.D.1.(a). This Section requires, in part, that ". . . a set of three Type A tests shall be performed at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection." The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection 10-year interval. Kewaunee's 10-year Appendix J interval ends in 1994 and the third Type A test is scheduled for the 1994 refueling outage.

The 10-year plant inservice inspection (ISI) is the series of inspections performed every 10 years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The licensee performs the ISI volumetric, surface and visual examinations of components and system pressure tests in accordance with 10 CFR 50.55a(g)(4) throughout the

10-year inspection interval. The major portion of this effort is presently being performed every 12 months during the refueling outages. Kewaunee's second 10-year ISI interval ends in June 1994. Kewaunee is scheduled to complete the second 10-year ISI program during the spring of 1995, as allowed by section XI IWA 2400(c). The reactor vessel inspection during the 1995 refueling outage will complete the second 10-year ISI program. Kewaunee is also scheduled to begin the third 10-year program during the 1995 refueling outage. As a result, the completion of the second 10-year ISI program will occur in 1995 and the 10-year Appendix J interval will end in the spring of 1994.

There is no benefit to be gained by the coupling requirement cited above in that elements of the ISI program are conducted throughout each 10-year cycle rather than during a refueling outage at the end of the 10-year cycle. Consequently, the subject coupling requirement offers no benefit either to safety or to the economical operation of the facility.

Moreover, each of these two surveillance tests (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A test assures the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI program provides assurance of the integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. There is no safety-related concern necessitating their coupling in the same refueling outage. Accordingly, the staff finds that application of the regulation is not necessary to achieve the underlying purpose of the rule.

On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A tests from the 10-year ISI program will not present an undue risk to the public health and safety.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section II is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the exemption with respect to the requirements of 10 CFR part 50, Appendix J, Paragraph III.D.1.(a). Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 1037).

Dated at Rockville, Maryland, this 14th day of February 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3849 Filed 2–18–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OPM Form 1593 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. OPM Form 1593, Survey of Federal Applicants and Recently Hired Employees, is used to collect quality indicator data from Federal applicants and recently hired employees. The form is part of a series of studies to assess and monitor the quality of the Federal workforce that has been implemented by the Office of Personnel Research and Development to improve the quality and image of the Federal service through more effective recruitment, retention, performance evaluation, and compensation practices. Approximately 75,000 Federal applicants and recently hired employees are expected to complete the questionnaire form and the form takes approximately 15 minutes to complete, for a total public burden of 18,750 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before March 24, 1994.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street NW., Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen Kelly, (202) 606–1926.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–3765 Filed 2–18–94; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Request for Proposals

AGENCY: Prospective Payment Assessment Commission.

ACTION: Notice.

The Prospective Payment Assessment Commission (ProPAC) is seeking a contractor to provide computer programming support services including data base development/management and empirical analysis. These services will support ProPAC's evaluation and monitoring of Medicare's Prospective Payment System (PPS) for inpatient care and other Medicare facility-related payment policies. A single contractor is being sought to provide these services under a time-and-materials contract for a period of one year with options to extend the contract for up to two additional years. RFP 02–94–ProPAC will be issued on or about March 7, 1994. Interested sources must submit a written request to the address below for a copy of this RFP.

Roles and Responsibilities of ProPAC

ProPAC was created in the same legislation that enacted Medicare's prospective payment system for hospital inpatient care. ProPAC's responsibilities include analyzing payment policies for all facility services furnished to Medicare beneficiaries. Congress also has asked ProPAC to examine and report on the Medicaid program, and on broader issues regarding the effectiveness and quality of health care delivery in the Untied States. ProPAC writes reports on various aspects of health care reform, such as issues relating to expanding the PPS system to all payers, and on issues pertaining to implementing a global budget for health care service.

Criteria for Proposals

Applicants are requested to submit proposals to provide computer programming support services in support of ProPAC's intramural research activities (database development and empirical analyses) in the general areas defined above. Work completed under this contract will be on an as-required basis and shall be performed upon the issuance of task requests by ProPAC's Project Officer and designated staff of

the Commission. The following provides a basic outline of what should be included in a formal proposal:

1. Proposed personnel available to work on the contract.

2. Corporate qualifications, including documentation of the offeror's experience with the skills and techniques required to perform the required analyses using large Medicare databases.

3. Management plan, including a description of how the offeror plans to use project staff, together with corporate resources, to complete task requests. Special attention should be paid to describing how the Contractor will meet ProPAC's peak work loads.

4. Technical approach, including a description of the offeror's technical approach that is specific, detailed and complete enough to clearly and fully demonstrate that the offeror thoroughly understands the intent of the Statement of Work, together with proposed approaches. It is recognized that all the technical factors cannot be detailed in advance, but the technical proposal must be sufficient as to how it is proposed to comply with the applicable Statement of Work, including a full explanation of the techniques and procedures you propose to follow. This discussion will describe the offeror's previous experience with editing and manipulating Medicare Part A and Part B provider-level and patient-level files, including a discussion of problems encountered and how these problems were dealt with.

ProPAC currently uses the computer facilities of the House Information Systems (HIS), U.S. House of Representatives. HIS provides ProPAC with on-line and batch processing computer services using an IBM 9021–620, four-way multiprocessor, operating under Multiple Virtual Storage, Enterprise System (MVS/ES). The Contractor shall be able to carry out the programming tasks defined in this statement of work using these facilities.

The Contractor shall expect that during the term of the contract there will be special projects that will require the use of special programs, hardware, and data. These projects will also require that the Contractor transfer data across hardware platforms. The Contractor will be required to respond to changing priorities as the Commission adjust its analytic agenda. The types of tasks to be performed by the Contractor under the contract are summarized as follows:

Database development. The Contractor shall provide programming services supporting file establishment, testing, and documentation of new data sets. These data sets include, but are not limited to:

Health Care Financing Administration (HCFA) patient record data files—for example, PATBILL, MEDPAR (for hospital, SNF, and HHA patients), BMAD Beneficiary files, and National Claims History files;

HCFA facility data files—for example, Medicare Cost Reports (for PPS and excluded hospitals, SNFs, HHAs, and dialysis facilities), BMAD Provider file and Provider of Service (POS) files;

American Hospital Association (AHA) Annual and Panel surveys of hospitals;

Other patient and provider data files—for example, California Office of Statewide Health Planning and Development Disclosure Reports for hospitals or skilled nursing facilities;

Geographic data files—for example, geographic information system spatial databases (including state and county boundary files and roadway networks) and socio-economic databases (such as the Area Resource File).

Data base development activities include copying tapes and creating HIS (disk or cartridge) files, comparing file documentation with actual file structure (and updating documentation where necessary), editing files, and preparing descriptive statistics (on file variables to check variable ranges, etc.). The Contractor will also be required to key-in data elements not readily available in machine-readable form.

User-file creation. The Contractor will create analysis files for statistical applications software (e.g., SAS), other applications software (e.g. TransCAD geographic information microcomputer software) or programming languages (e.g., PL/I). The construction of analysis files will involve merging and extracting data elements from multiple sources, such as the linking of multiple claims files to create episodes of service. In addition to file construction, activities will include developing documentation and file layouts for analysis files and conducting edit checks of existing and created variables in analysis files.

Empirical analysis of data files. The Contractor shall develop analytical programs using either statistical software packages or programming languages. ProPAC project analysts will provide written requests for empirical analysis with specifications such as the data files to use, calculations to perform, procedures to use, tables to generate, and statistical tests to conduct. The analytical programming will support ProPAC analyses in the project areas including, but not limited to the following:

1. Facility Costs and Payments;

2. Variations in Resource Use;

3. Studies of Medical Technologies, Procedures, and Practice;

4. Beneficiary Access to and Quality of Care;

5. Patterns of Care Across Providers;

6. Outpatient and Post-Acute (SNF and Home Health) Services;

7. End-stage Renal Disease;

8. Other Topic Areas, including analysis of PPS outlier payment policy, hospital productivity, changes in case mix, rural hospitals and cost-shifting.

The Contractor shall ensure that data are provided accurately and on time. This includes ensuring the programs are debugged, proper screens are applied to the data, and the final product represents what the analyst requested.

Developing and Updating Simulation Models

The Contractor will develop and update models (programs) that simulate payments to hospitals under PPS and additional models related to PPS or other Medicare payment systems (for example simulation of alternative payment systems for payments to hospitals for ambulatory surgery or radiology provided on an outpatient basis). These models will incorporate policy parameters such as payments for medical education and capital; changes in hospital labor market area definitions and wage indexes; changes in the DRG classification system; and changing from national to regional limits on allowable costs for payments to SNFs.

Submission of Proposals

Applicants will be given approximately 30 days to submit a formal proposal.

Review of Proposals

Proposals will be reviewed by a panel of at least four (4) individuals. Reviewers will score applications, basing their scoring decisions and approval recommendations on the criteria established in the RFP. Foremost consideration will be given to the technical evaluation, however, a proposal must be fairly and reasonably priced to win the award.

General Information

Number and Size of Project

One contract will be awarded in response to this RFP. The period of performance of the basic contract will be for one year from the date of award. At the option of the government, the period of performance may be extended for up to two additional one-year periods.

Authority

The Commission's authority for issuing this RFP is based on Section 1886(e)(6)(c)(iii) of the Social Security Act.

Submission Address

For a copy of this RFP, all interested sources must submit a written request to the following address: Prospective Payment Assessment Commission, 300 7th Street, SW., Suite 301B, Washington, DC 20024, ATTN: Mrs. Jeannette A. Younes.

Obligation

This notice in no way commits ProPAC to obligate funds to any offeror.

Dated: February 15, 1994.

Donald A. Young,

Executive Director.

[FR Doc. 94–3838 Filed 2–18–94; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–20074; 812–7513]

Cityfed Financial Corp.; Notice of Application

February 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Cityfed Financial Corp. ("Cityfed").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 6(e) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder. Applicant would be exempt until the earlier of one year from the date of the requested order or such time as applicant would no longer be required to register as an investment company.

FILING DATE: The application was filed on October 19, 1990 and amended on September 23, 1993 and January 18, 1994. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Robert A. Robertson, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Cityfed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). City Federal was the source of substantially all of Cityfed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (the "OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation (the "RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B., whose deposits, assets, and liabilities in turn were acquired by City Savings, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, Cityfed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. On September 30, 1993, Cityfed held cash and securities of approximately $9.7 million. Because of Cityfed's asset composition, it may be an investment company under the Act. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against Cityfed and certain Cityfed officers and directors, Cityfed could not acquire an operating company within the one year safe harbor. The expiration of the safe harbor period necessitated the filing of an application for exemption from all provisions of the Act, with certain exceptions.

3. While Cityfed's board of directors has considered from time to time whether to engage in an operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against Cityfed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On December 7, 1992, the RTC filed suit against Cityfed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal (the "First RTC Action"). In connection with this action, the RTC sought a court order to place Cityfed's assets under the control of the court. On January 5, 1993, the RTC and Cityfed entered into an agreement (the "Agreement") whereby the RTC would refrain from seeking the above order and Cityfed could continue to make payments for ordinary and reasonable business expenses and certain legal fees. Cityfed, however, must give a monthly accounting of its expenditures to the RTC, and the RTC may apply to the court for an appropriate order to prohibit an expenditure. In addition, Cityfed must give the RTC written notice before paying extraordinary expenses of more than $5,000 and before making certain payments for defense costs, attorneys' fees and other legal disbursements.

5. On September 30, 1993, the OTS staff advised Cityfed that it intended to recommend that the OTS initiate an administrative enforcement proceeding against Cityfed. Applicant represents that in such a proceeding, the OTS will likely assert claims similar to the RTC in the First RTC Action and may attempt to freeze Cityfed's assets. Because such a proceeding may render moot the issues in the First RTC Action, the court entered an order on October 15, 1993 to stay that action for 60 days. The court subsequently ordered the stay extended to January 28, 1994. The orders do not affect the Agreement,

except to provide that the Agreement will terminate upon the effective date of any order issued by the OTS, or of any consent order or agreement between the OTS and Cityfed, that addresses the subject matter of the Agreement. As of the date of filing the last amendment to this application, the OTS has not initiated any administrative enforcement proceeding against Cityfed.

6. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans (the "Second RTC Action"). The RTC seeks in excess of $200 million in damages. Under Cityfed's bylaws, Cityfed may be obligated to indemnify these former officers and directors and advance their legal expenses. Currently, Cityfed is advancing reasonable defense costs to the former directors and officers named in the First and Second RTC Actions. Furthermore, Cityfed is currently aware of several other legal actions involving former officers, directors, or employees of Cityfed who have requested that Cityfed advance expenses and indemnify them. Cityfed generally has agreed to advance expenses in connection with these requests. Cityfed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

7. Currently, Cityfed's stock is traded sporadically in the over-the-counter market. Cityfed has one employee who is president, chief executive officer and treasurer. Cityfed's secretary does not receive any compensation for her service. If Cityfed is unable to resolve the above claims successfully, Cityfed may seek protection from the bankruptcy courts or liquidate. Cityfed asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved.

8. During the term of the proposed exemption, Cityfed will comply with sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, subject to the following modifications. With respect to section 17(d), Cityfed represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of City Federal have existing rights under the plan. Cityfed asserts that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d–1 thereunder. Because the plan was adopted when Cityfed was an operating company and to the extent there are existing rights under the plan, Cityfed seeks an exemption to the extent necessary from section 17(d). In addition, Cityfed may become subject to the jurisdiction of a bankruptcy court. With respect to transactions approved by the bankruptcy court, applicants request an exemption from sections 17(a) and 17(d) as further described in condition 3 below.

Applicant's Legal Analysis

1. Section 3(a)(1) defines an investment company as any issuer of a security who "is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(3) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash). Cityfed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, applicant requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions.

2. In determining whether to grant an exemption for a transient investment company, the Commission considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. Cityfed asserts that it meets these criteria.

3. Cityfed's failure to become primarily engaged in a non-investment business by the end of the one year safe harbor of rule 3a–2 is due to factors beyond its control. Because of outstanding and potential claims against Cityfed and certain of its officers and directors, Cityfed cannot acquire an operating company. Cityfed has diligently pursued its claims against others and has taken steps to determine the extent of its contingent liabilities. Since the filing of this application on October 19, 1990, Cityfed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

4. Cityfed requests an order that would exempt it from all provisions of the Act, subject to certain exemptions, until the earlier of one year from the date of any order issued on this application or such time as Cityfed would no longer be required to register as an investment company under the Act.

Applicant's Conditions

Cityfed agrees that the requested exemption will be subject to the following conditions, each of which will apply to Cityfed from the date of the order until it no longer meets the definition of an investment company or during the period of time it is exempt from registration under the Act:

1. Cityfed will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by Cityfed's board of directors, subject to two exceptions:

a. Cityfed may make an equity investment in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by Cityfed's board of directors; and

b. Cityfed may invest in one or more money market mutual funds that limit their investments to "Eligible Securities" within the meaning of rule 2a–7(a)(5) promulgated under the Act.

2. Cityfed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that Cityfed and other persons, in their transactions and relations with Cityfed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if Cityfed were a registered investment company, except insofar as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of Cityfed may engage in a transaction that otherwise would be prohibited by these sections with Cityfed:

(a) if such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to Cityfed, and (ii) the participation of Cityfed in the

proposed transaction will not be on a basis less advantageous to Cityfed than that of other participants; and

(b) in connection with each such transaction, Cityfed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3874 Filed 2–18–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Commercial Net Lease Realty, Inc., Common Stock, $0.01 Par Value) File No. 1–11290

February 15, 1994.

Commercial Net Lease Realty, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security 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:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on January 7, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before March 9, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3875 Filed 2–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20075; 812–8442]

PFAMCo Funds, et al.

February 15, 1994.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: PFAMCo Funds, Pacific Financial Asset Management Corporation ("PFAMCo"), Pacific Equities Network (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for a conditional exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess a contingent deferred sales charge (a "CDSC") on certain redemptions of shares, and waive the CDSC under certain circumstances.

FILING DATE: The application was filed on June 14, 1993, and amended on October 21, 1993, and December 22, 1993. By letters dated February 14, 1994, and February 15, 1994, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request a notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. PFAMCo Funds is a Massachusetts business trust that is a registered open-end management investment company. PFAMCo Funds currently consists of fourteen portfolios. Shares of PFAMCo Funds generally are distributed through the Distributor, a registered broker-dealer and an indirect subsidiary of Pacific Mutual Life Insurance Company.

2. PFAMCo is a registered investment adviser and also an indirect subsidiary of Pacific Mutual Life Insurance Company. PFAMCo serves as investment adviser under an investment advisory agreement, and as administrator under an administration agreement, to the portfolios of PFAMCo Funds. Under the administration agreement, PFAMCo has overall responsibility, subject to the supervision of PFAMCo Funds' board of trustees, for providing or procuring, at PFAMCo's expense, the administrative and other services necessary for the operation of PFAMCo Funds and its portfolios. These services include custodial, administrative, transfer agency, portfolio accounting, dividend disbursing, auditing, and ordinary legal services. PFAMCo also acts as a liaison among the various service providers. PFAMCo Funds differs from most mutual funds in that the services provided under the administration agreement are paid by PFAMCo, as administrator, whereas most mutual funds pay for these services directly from fund assets.

3. Applicants request an exemption on behalf of themselves, the portfolios of PFAMCo Funds, and any other open-end investment company, or portfolio thereof, that may be established in the future that is advised or administered by PFAMCo (or any entity controlling, controlled by, or under common control with PFAMCo) or for which the Distributor (or any entity controlling, controlled by, or under common control with the Distributor) serves as principal underwriter and that becomes part of the same "group of investment companies," as that term is defined in rule 11a–3 (collectively, the "Funds"). Pursuant to the requested exemption, each Fund would be able to offer multiple classes of shares that would be identical in all respects to shares of the other classes of shares of the Fund, except for class designation, the allocation of certain expenses, voting rights, and exchange privileges.

4. Applicants propose that each Fund would enter into an agreement (the "Administration Agreement") with its administrator, which may be PFAMCo or another person, for the provision or procurement of the administrative and other services necessary for the ordinary operation of the Fund. These services would include transfer agency, custodian, recordkeeping, dividend disbursing, auditing, and ordinary legal services. The administrator would provide or procure such services for a fee (the "Administration Fee") to be agreed upon by the administrator and the Fund. The Administration Agreement will provide that the services that are rendered to the Fund will be rendered to each class of the Fund, and each such class will be obligated to pay the applicable Administration Fee.

5. Any services required for the operation of a class in addition to those provided in the Administration Agreement would be provided for in a separate agreement or addendum (the "Class Addendum"). Under the Class Addendum, the Fund's administrator would provide or procure the services contracted for in the Class Addendum for a specified fee (the "Class Addendum Fee"). The services rendered under the Class Addendum will relate only to the class or classes specified in that Class Addendum, and only such class or classes shall be obligated to pay the Class Addendum Fee. Different classes may have different Class Addenda, each of which would reflect the different servicing needs of those classes that require service beyond that provided in the Administration Agreement. If a class is offered in connection with a 12b–1 plan, the expenses payable for distribution services would not be included in a Class Addendum, but would be payable under a separate 12b–1 agreement. A class could have a 12b–1 plan and a Class Addendum.

6. Each Fund could offer one class (the "Institutional Class") solely to pension and profit sharing plans, employee benefit trusts, endowments, foundations, corporations, other institutions, and high net worth individuals. The Institutional Class would be similar or identical to the shares currently offered by PFAMCo Funds. There would be no sales charge imposed on the purchase and redemption of shares of the Institutional Class, and no 12b–1 fees. There would be a significant minimum initial investment, which currently is $200,000 for PFAMCo Funds. Applicants anticipate that the Institutional Class will be the only class without a Class Addendum; all of the administrative services for the Institutional Class would be provided under the Administration Agreement.

7. Each Fund could offer one class (the "Benefit Plan Class") only to qualified or nonqualified employee benefit plans. In addition to the services provided under the Administration Agreement, a Fund's administrator would provide or procure additional administrative and recordkeeping services necessary for the employee benefit plans to invest in the Funds. The administrator would charge a Class Administration Fee for the services, which fee is expected to be no more than 35 basis points of the net assets attributable to the Benefit Plan Class. The services are limited to: furnishing participant sub-accounting; maintaining separate records for each plan; assistance in processing purchase and redemption transactions; disbursing or crediting to the plans and maintaining records of all proceeds of redemptions of shares and all other distributions not reinvested in shares; preparing and transmitting to the plans, plan participants, or the trustees of the plans periodic account statements, and the integration of such statements with those of other transactions and balances in other accounts of the plan or participant; transmitting to the plans prospectuses, proxy materials, reports, and other information required to be sent to shareholders under the federal securities laws; transmitting to the transfer agent purchase orders and redemption requests placed by the plans; transmitting to a Fund or its agents periodic reports necessary to enable the Fund to comply with state Blue Sky requirements; transmitting to the plans or the trustees of the plans confirmations of purchase orders and redemption requests placed by the plans; maintaining all account balance information for the plans and daily and monthly purchase summaries expressed in shares and dollar amounts; and preparing, filing, and transmitting all federal, state, and local government reports and returns as required by law with respect to each account maintained on behalf of a plan; providing information to plans and participants about a Fund and its portfolios; and maintaining account designations and addresses.

8. A Fund may offer Benefit Plan Classes whose shares only are offered to qualified retirement plans for which a trustee is vested with investment discretion as to plan assets ("Excluded Classes") by means of a separate prospectus. The Excluded Classes do not include Benefit Plan Classes whose shares are offered to self-directed plans in which an individual plan beneficiary can make an investment decision. As a result, there will be no overlap between the investors eligible to invest on their own behalf in Excluded Classes and any other class of a Fund.

9. Each Fund may offer one class of shares (the "Administrative Services Class") to the clients, members, or customers of banks, broker-dealers, consultants, administrators, and other financial institutions ("Organizations"), which would provide certain services to their customers who purchase shares of the Administrative Services Class. Arrangements between the administrator and the Fund relating to such additional services are "Administrative Services Arrangements." The administrator would either provide these additional services directly or would procure these services by entering into agreements with the Organizations. The services would be limited to: receiving, aggregating, and processing shareholder orders; furnishing shareholder sub-accounting; providing and maintaining elective shareholder services such as check writing and wire transfer services; providing and maintaining pre-authorized investment plans; communicating periodically with shareholders; acting as the sole shareholder of record and nominee for shareholders; maintaining account records for shareholders; answering questions and handling correspondence from shareholders about their accounts; issuing confirmations for transactions by shareholders; and performing similar account administrative services.

10. Each Fund also could offer classes with a 12b–1 plan (the "12b–1 Classes"). Under a 12b–1 plan, a Fund

would enter into agreements with certain financial institutions ("Service Agents") providing for distribution or distribution assistance of the shares of the 12b–1 Class. A Fund typically would make payments (the "12b–1 Plan Payments") to the Distributor or the Service Agent for such services.

11. The Funds may in the future offer classes in addition to those described above, provided the Funds met the conditions imposed in any order of the SEC granting the requested relief.

12. The net asset value of all shares of a Fund would be computed on the same days and at the same times. The gross income of a Fund would be allocated to each class on the basis of the relative net assets of each class. Expenses specifically attributable to the particular class ("Class Expenses") and 12b–1 Plan Payments would be charged directly to the particular class to which they are attributable. Class Expenses would consist of fees under a Class Addendum that relates to the class; litigation and indemnification expenses, if any, relating solely to one class; and fees of independent directors/trustees ("trustees") incurred as a result of issues relating to one class. Class Expenses will be limited to those above, and the fees under a Class Addendum will be limited to fees payable for services set forth in the description of the Class Addenda for the Benefit Plan Class and the Administrative Services Class. Expenses incurred by a Fund not attributable to a particular class would be subtracted from the gross income on the basis of the relative net assets of each class of the Fund. Such expenses include litigation and indemnification expenses, if any, relating to a Fund, independent trustees' fees, and fees under the applicable Administration Agreement.

13. Because any 12b–1 Plan Payments and any Class Expenses that would be borne by a class of shares may vary for each class, the net income of (and dividends payable to) each class may vary from that of the other class or classes of the same Fund. Accordingly, for Funds that do not declare dividends daily (such as non-money market funds), the net asset value per share attributable to each class would differ between dividend declaration dates.

14. Applicants also request an exemption to permit the Funds to assess a CDSC on redemptions of shares of a 12b–1 Class. The CDSC will not be imposed on redemptions of shares that were purchased after a specified period prior to the redemption, which is expected to be six years, or on CDSC shares derived from reinvestment of dividends and distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the shares. In addition, no CDSC will be imposed on shares purchased prior to any order granting the requested exemption.

15. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that redemption is made first of shares or amounts representing capital appreciation, or reinvestment of dividends and capital gain distributions. Other shares or amounts then would be considered to be redeemed in the order purchased, unless the Fund chose to redeem in another order that would result in a lower sales load. This will result in the charge, if any, being imposed at the lowest possible rate. In all cases, the sum of any front-end sales charge, asset-based sales charge, shareholder services charge, and CDSC will not exceed the maximum sales charge provided for in article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

16. No CDSC will be imposed in connection with an exchange privilege whereby an investor exchanges CDSC shares of a Fund for CDSC shares of another Fund. All exchanges would be effected in accordance with rule 11a–3.

17. The Funds request the ability to waive the CDSC in connection with (a) redemptions by officers, directors, trustees, and employees of Pacific Mutual Life Insurance Company, and any of its affiliates, and such persons' immediate families, (b) involuntary redemptions effected pursuant to the Fund's right to liquidate shareholder accounts having an aggregate net asset value of less than the minimum account balance set forth in the Fund's then-current prospectus, and (c) total or partial redemptions made in connection with the following distributions permitted to be made under the Internal Revenue Code ("Code") from an IRA or other qualified retirement plan: (i) Any redemption in connection with a lump sum or other distribution following retirement, or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½; and (ii) any redemption that results from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, or from the death or disability of the employee (see sections 72(m)(7) and 408(f)(3) of the Code). As an alternative to waiver category (c), and if the trustees of the Fund determine to adopt this alternative, the Fund could waive the CDSC with respect to any partial or complete in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an IRA or Keogh Plan, or custodial account resulting from the tax-free return of an excess contribution to an IRA.

18. Applicants also could provide a *pro rata* credit paid by the Fund's distributor for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within a specified period after the redemption. To effect this credit, the distributor would purchase additional shares for the account of an investor who reinvests the redemption proceeds on which a CDSC was paid, in an amount equal to the CDSC charged on the redemption.

Applicants' Legal Analysis

1. Applicants requests an exemption under section 6(c) from sections 18(f)(1), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that, by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, affect the Funds' existing assets or reserves, or increase the speculative character of the shares of a Fund.

2. In addition, applicants believe that the establishment of a multi-class distribution system with the proposed fee structure benefits shareholders by providing predictability of expenses and ease of understanding the expenses that will be paid. The proposed arrangement provides an additional choice for investors to whom such predictability is important. The structure makes a party other than the Fund assume the economic risks of paying a Fund's operating expenses during the start-up phase, and bear the expenses of providing services to the classes.

3. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1, to assess and, under certain circumstances, waive a

CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge, or no sales charge at all.

Applicant's Conditions

Applicants agree that any order granting the requested exemption shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund relate solely to: (a) The impact of the disproportionate 12b-1 Payments and Class Expenses; (b) voting rights as to matters exclusively affecting one class of shares; (c) exchange features; and (d) class designation differences. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order or other relief from the SEC.

2. The trustees of PFAMCo Funds and of any subsequently created Funds, including a majority of the independent trustees, will approve the offering of multiple classes of shares (the "Multi-Class System"). The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the relevant Fund, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to such Fund's trustees, and the trustees shall review, at least quarterly after such initial determination, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. The board of trustees of each Fund, including a majority of the independent trustees, will review the services to be provided and fees to be charged to a class pursuant to a proposed Class Addendum, and will make a determination (i) that the Class Addendum is in the best interests of the class of the Fund subject to the Class Addendum and the shareholders of the class; (ii) that the fees charged to the class by the administrator in relation to the services to be provided to the class under the Class Addendum are fair and reasonable; and (iii) that the services to be provided for the class and the Class Administration Fee to be charged for such services are reasonably designed so that such services that benefit only a class, as opposed to the Fund generally, would augment (and not be duplicative of) services rendered to the Fund pursuant to the Administration Agreement.[1]

5. On an ongoing basis, a Fund's trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's investment adviser, sub-investment adviser (if any), administrator (if separate), and distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the adviser and the distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

6. The Administrative Services Arrangements will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The trustees of each Fund will receive quarterly and annual statements concerning expenditures of a Fund or class thereof pursuant to 12b–1 plans and Administrative Services Arrangements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments made by a class under its 12b–1 plan or administrative fees, and any Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by applicants (which applicants agree to provide), will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Accounting Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure

[1] Applicants represent that, to enable the board to make such determinations, the board would be provided with information regarding all of the expenses borne by the Administrator in providing or procuring services for each class.

implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

11. The prospectus of each class of a Fund will contain a statement to the effect that a salesperson or any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in that Fund.

12. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase shares of the Excluded Classes be sold only shares of the Excluded Classes, rather than any other class of shares offered by the Fund.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, CDSCs, and exchange privileges (if any) applicable to each class of shares in each prospectus, regardless of whether each class of shares are offered through each prospectus, except that such disclosure need not be made with respect to any Excluded Classes. Excluded Classes will be offered solely pursuant to a separate prospectus. Each prospectus for Excluded Classes will disclose the existence of the Fund's other classes, and the prospectuses for the Fund's other classes will identify the persons eligible to purchase shares of the Excluded Classes. Each Fund will disclose the respective expenses and performance data applicable to all other classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all other classes of shares, except the Excluded Classes. Advertising materials reflecting the expenses or performance data for an Excluded Class will be available only to those persons eligible to purchase that class. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of shares separately, except for the Excluded Classes.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply SEC approval, authorization of or acquiescence in any particular level of payments that applicants may make pursuant to any Administration Agreement, Class Addendum, or any 12b–1 plan, in reliance on the exemptive order.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3876 Filed 2–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20071; No. 811–2583]

The Travelers Fund B–1 for Variable Contracts; Application for Order

February 14, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Travelers Fund B–1 for Variable Contracts ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 8, 1993, and amended on January 27, 1984.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 11, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 272–2676, or Michael V. Wible, Special Counsel, on (202) 272–2060, Office of Insurance Products (Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a diversified open-end management company, is a Separate Account formed under Connecticut insurance laws by The Travelers Insurance Company ("Travelers"), a life insurance company domiciled in Connecticut.

2. On July 3, 1975, Applicant filed a Notice of Registration on Form N–8B–1 under section 8(b) of the 1940 Act (File No. 811–2583) and a Registration Statement on Form S–5 under the Securities Act of 1933 (File No. 2–54173) to register units of interest of variable annuity contracts ("Contracts"). Applicant's Registration Statement became effective on April 30, 1976. The initial public offering commenced on May 1, 1976.

3. On November 19, 1993, the Contracts were exchanged for another Travelers' variable annuity contract ("New Contract") pursuant to an offer of exchange extended by Travelers to Contractowners on September 10, 1992. All Contractowners contacted either consented to the offer to exchange or surrendered their contracts. The New

Contract has as an investment option The Travelers Quality Bond Account for Variable Annuities ("Account QB"). Account QB is an investment company with identical investment objectives, adviser and management fees as that of the Applicant. All units in Applicant held under the existing contracts were exchanged for units of equal value in Account QB under the New Contract. The offer of exchange was made in compliance with Rule 11a–2 under the 1940 Act. All portfolio securities of the Applicant were transferred to Account QB, valued on the basis of net asset values of the securities as determined in accordance with the methods set forth in the Statement of Additional Information of the Applicant and Account QB. No brokerage commissions were paid. The transfer of portfolio securities was made pursuant to a Commission order under section 17(b) granting an exemption from section 17(a) of the 1940 Act. (Release No. IC–19232, File No. 812–8172.)

4. As of November 18, 1993, Applicant had 630,239.9891 units of interest outstanding and net assets of $2,773,229.14, representing 4.388301 Contracts issued prior to December 23, 1983 and 4.284953 Contracts issued subsequent to that date.

5. Any expenses connected with the offer of exchange or the liquidation of the Applicant will be paid by Travelers.

6. Applicant has not remaining assets, and no debts or liabilities remain outstanding. No distributions were made to Applicant's security holders. Applicant is not a party to any litigation or administrative proceedings. There are no security holders of Applicant.

7. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

9. Travelers intends to notify the Connecticut and New York Insurance Departments, each having approved the transfer of assets, that it no longer intends to utilize the Applicant as a separate account.

10. Applicant has made on a timely basis all filings required on Form N–SAR. Applicant's last filing on Form N–SAR for the period ended June 30, 1993, was made on or before August 30, 1993.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3877 Filed 2–18–94; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Request for Comments Concerning Foreign Government Discrimination in Procurement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comments.

SUMMARY: This notice requests written submissions from the public concerning discrimination against United States products and services by foreign governments in their procurement practices. This information will be used in compiling the annual report on foreign discrimination in government procurement specified by section 305 of the Trade Agreements Act of 1979 (Trade Agreements Act), as amended by Title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515).

Section 305 of the Trade Agreements Act requires the President to submit an annual report on the extent to which foreign countries discriminate against United States products or services in making government procurements. In the annual report, the President is required to identify any countries that:

(a) Are signatories to the GATT Agreement on Government Procurement (Agreement) and are not in compliance with the requirements of the Agreement;

(b)(i) Are signatories to the Agreement; (ii) are in compliance with the Agreement, but maintain a significant and persistent pattern or practice of discrimination in the government procurement of products or services from the United States not covered by the Agreement, which results in identifiable harm to U.S. business; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

(c) Are not Signatories to the Agreement and maintain a significant and persistent pattern or practice of discrimination in government procurement of products or services from the United States, which results in identifiable harm to U.S. business, and whose products or services are acquired in significant amounts by the United States Government.

The functions vested in the President under Section 305 of the Trade Agreements Act were delegated to the United States Trade Representative (USTR) pursuant to Section 4–101 of Executive Order 12661 (54 FR 779).

DATES: Submissions containing the information described below must be received on or before March 15, 1994

ADDRESSES: Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506, and must include not less than twenty (20) copies. Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such at the top of the cover page or letter and each succeeding page and must be accompanied by a nonconfidential summary.

FOR FURTHER INFORMATION CONTACT: Elena Bryan (202–395–5097) or Mark Linscott (202–395–3063), Office of GATT Affairs, or Laura B. Sherman (202–395–3150), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Section 305 of the Trade Agreements Act requires an annual report to be submitted no later than April 30, 1993 to the appropriate Committees of the House of Representatives and the Senate. The USTR is required to request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices.

USTR invites submissions from interested parties concerning foreign government procurement practices that should be considered in developing the annual report. Pursuant to section 305(d)(5) of the Trade Agreements Act, submissions are sought from any interested parties in the United States and in countries that are signatories to the Agreement, as well as in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

Each submission should provide, in order, the following general information: (1) The party submitting the information; (2) the foreign country or countries that are the subject of the

submission and the entities of each subject country's government whose practices are being identified, and (3) the U.S. products or services that are affected by the non-compliance or discrimination.

Each submission should provide, in order, the following specific information on non-compliance with the Agreement or discrimination: (1) The circumstances under which discrimination has occurred, including information regarding the date and nature of procurement(s) where discrimination was encountered; (2) policies or practices which are deemed to be discriminatory (where possible, include copies of discriminatory laws, policies or regulations), and (3) the extent to which noncompliance with the Code or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when they are seeking to sell goods or services to the United States Government. Wherever possible, submissions should address the extent to which countries identified: (i) Use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures; (ii) conduct what normally would have been one procurement as two or more procurements, in order to decrease the anticipated contact value below the Agreement's value threshold or to make the procurement less attractive to U.S. businesses; (iii) announce procurement opportunities without adequate time for U.S. businesses to submit bids, and (iv) employ specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements.

Finally, each submission should: (1) Identify requirements of the Agreement which are not being observed by the country identified or describe how the country identified has maintained a significant and persistent pattern or practice of discrimination in government procurement of non-Code-Covered goods; (2) identify the specific impact of the discriminatory policy or practice on United States businesses (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons), and (3) describe the extent to which the products or services of the country identified are acquired in significant amounts by the United States Government.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–3812 Filed 2–18–94; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 11, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49409

Date filed: February 9, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 9, 1994

Description: Application of Evergreen International Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to engage in foreign air transportation of property and mail between the U.S. and Russia and beyond to China, Hong Kong, South Korea, Singapore and Taiwan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–3827 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD02–94–010]

Second Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commander, Second Coast Guard District is sponsoring an Industry Day event in St. Louis, Missouri. This notice will advertise the event which is open to the public.

DATES: Industry Day will be held on March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles L. McAllister or Lieutenant Patrick G. Gerrity at Commander (mpb), Second Coast Guard District, 1222 Spruce Street, room 2.102G, St. Louis, Missouri 63103–2832. The telephone number is: (314) 539–2655.

SUPPLEMENTARY INFORMATION: Industry Day is designed to provide an open exchange of information, ideas, and opinions on matters of mutual interest or concern to the inland marine community and the Coast Guard. Industry Day activities will be held at the Frontenac Hilton Hotel, 1335 South Lindbergh Blvd., St. Louis, Missouri. The schedule of events follows:

Wednesday, 9 March

5–7 p.m. Registration for early arrivals.

Thursday, 10 March

7:30 a.m. Registration continues.

8:30 a.m. General Session: Opening comments and Selected Presentations.

10 a.m. Panel Discussions: Three separate small group panels will focus on the towing industry, shoreside facilities, and the small passenger industry.

12 p.m. Luncheon.

1:30 p.m. Panel Discussions continue.

5 p.m. Industry Day concludes.

Advance registration and payment of a $25.00 conference fee is required. The fee includes the cost of a luncheon and refreshments.

Persons interested in attending Industry Day may request registration forms or additional information on the Industry Day activities and on events scheduled by other groups to coincide with Industry Day at the address provided above. Persons interested in submitting written recommendations for agenda discussion topics should mail their recommendations directly to Commander (mpb), also at the address provided above.

Completed registration forms and fees should be mailed directly to the Frontenac Hilton Hotel, Attn: Reservations, c/o Laura Arbet, 1335 S. Lindbergh, St. Louis, Missouri 63131. Registration forms and fees must be received by March 7, 1994.

Dated: February 8, 1994.

Paul M. Blayney,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 94–3926 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Bishop International Airport, Flint, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Bishop International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by Bishop International Airport Authority. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Bishop International Airport were in compliance with applicable requirements effective March 1, 1993. The proposed noise compatibility program will be approved or disapproved on or before July 25, 1994.

EFFECTIVE DATES: The effective date of the start of the FAA's review of the noise compatibility program is January 26, 1994. The public comment periods ends March 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Bishop International Airport which will be approved or disapproved on or before July 25, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Bishop International Airport, effective on January 26, 1994. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 25, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing no compatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111,

Bishop International Airport, G–3425 W. Bristol Road, Flint, Michigan 48507.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on January 26, 1994.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 94–3889 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the La Crosse Municipal Airport, La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Duane Haataja, Airport Manager, of the City of La Crosse at the following address: La Crosse Municipal Airport, 2850 Airport Drive, La Crosse, Wisconsin 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 31, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of La Crosse was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than April 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: July 1, 1994
Proposed charge expiration date: July 31, 1997
Total estimated PFC revenue: $795,299
Brief description of proposed projects:
Conduct planning studies; Acquire snow removal equipment; Install card access system; Construct taxiway and runway improvements; Acquire land; Construct ARFF building.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, Illinois on February 9, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–3890 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Outagamie County Airport, Appleton, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Arthur E. Borchardt, Manager of the Outagamie County Airport at the following address: Outagamie County Airport, W6390 Challenger Drive, Suite 201, Appleton, Wisconsin 54915.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Outagamie County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 27, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by Outagamie County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 26, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1994
Proposed charge expiration date: May 30, 2001
Total estimated PFC revenue: $3,811,673
Brief description of proposed project(s):

Projects To Impose and Use a PFC

Acquire Land; Install Security Fencing; Runway Signs; Terminal Building Water Line; Grove Runway 11/29; Acquire Snow Removal Equipment; Reconstruct General Aviation Apron and Taxiways "D" and "G"; Expand ARFF Building; Reconstruct and Expand Terminal Apron; Prepare PFC Application.

Projects Only To Impose a PFC

Terminal Baggage Claim Expansion; Improve Stormwater Drainage; Emergency Generator; Reconstruct Taxiway "B"; Acquire Land; Friction Testing Vehicle.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not Applicable.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Outagamie County Airport.

Issued in Des Plaines, Illinois on February 9, 1994.

Larry Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–3891 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Washington National Airport, Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Washington National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington

Airports District Office 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Washington National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part III 158 of the Federal Aviation Regulations (14 CFR part 158.)

On December 22, 1993, the FAA determined that the application to use the revenue from a PFC submitted by The Metropolitan Washington Airports Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 14, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date:
November 1, 1993

Proposed charge expiration date:
November 1, 2000

Total estimated PFC revenue:
$166,739,071

Brief description of proposed project(s):

—New Thirty-five Gate North Passenger Terminal Complex including Metro Station, utility relocation, connector and signage.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on February 10, 1994.

Peter A. Nelson,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 94–3892 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–11; Notice 01]

Evaluation Report on Glass-Plastic Windshield Glazing, Federal Motor Vehicle Safety Standards, Motor Vehicle Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials." This staff report evaluates the safety, durability, and cost of glass-plastic windshield glazing which was introduced, for a limited time, in selected new passenger car models. The report was developed in accordance with Executive Order 12866, which requires Federal agencies to carry out periodic reviews of regulations that they have promulgated. NHTSA seeks public review and comment on this evaluation. Comments will be used to complete the review as required by the Executive Order.

DATES: Comments must be received no later than May 23, 1994.

ADDRESSES:

Report: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to: Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. [Docket Hours, 9:30 a.m.–4 p.m., Monday through Friday.] It is requested but not required that 10 copies of comments be submitted.

Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1574).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 205 (49 CFR 571.205), "Glazing Materials," issued by NHTSA in January 1968, prescribes safety requirements for all glazing materials used in motor vehicles, including the windshield, the windows, and any interior partitions. The purpose of the standard is to reduce injuries resulting from impact with glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windshield in collisions.

In 1985, the agency published an evaluation study (DOT HS 806 693, February 1985) of conventional windshield glazing which has been standard equipment in American-made vehicles since the mid-1960's. Conventional glazing, often referred to as "HPR" (or High Penetration Resistant) glazing, was found to be a significant safety improvement over prior glazing designs, and was credited with bringing about a major reduction in the frequency and severity of head and facial injuries which resulted from occupants being thrown against the windshield in crashes. The primary benefit of the HPR design was a large reduction in the more severe facial lacerations and fractures, with a more modest reduction in minor lacerations, the majority of which still remained after HPR glazing was introduced.

In 1983, NHTSA amended FMVSS No. 205 to permit (but not require) the use of a new type of glazing, known as "glass-plastic" glazing. Glass-plastic glazing is similar in construction to the type used in the HPR windshield design except for the addition of a thin sheet of plastic bonded to the inside surface of the windshield. This feature was believed to have a high potential for reducing lacerative injuries to occupants who struck the windshield during crashes. At the same time, there was some concern over the durability of the softer plastic liner of the glass-plastic windshield relative to the inner glass surface of the standard HPR windshield.

Following NHTSA's amendment of FMVSS No. 205, two motor vehicle manufacturers equipped a number of their cars with glass-plastic windshields for field testing in rental fleets. One of the manufacturers also introduced the windshield to the general public by making it standard equipment on selected make models for a limited period of time.

NHTSA is conducting an evaluation study of glass-plastic glazing to assess its potential for lacerative injury reduction, its durability characteristics,

and its costs. The report is based on analyses of data from State crash files; fleet tests; and on information from vehicle manufacturers, glass companies, and other sources. The primary findings and conclusions of the study are:

- *Safety.* Although insufficient to support firm conclusions, crash data from both State files and fleet tests indicate that lacerative injury reduction benefits from glass-plastic windshields are substantially less than the virtual elimination of these injuries, originally projected by the agency. While the plastic inner liner does reduce cuts from broken glass, lacerations can still occur from blunt impact with the plastic liner.
- *Durability.* Data from rental fleet operations and manufacturer warranty claims indicate that durability problems are greater than anticipated. Primarily, these problems involve the susceptibility of the plastic inner liner to damage (cuts, scratches) from the everyday motor vehicle environment.
- *Costs.* In volume quantities, it is estimated that a glass-plastic windshield will add $65 to the cost of a new car. Additional consumer costs would accrue due to the lower durability of the windshield compared to the conventional windshield. The cost of replacing a glass-plastic windshield is estimated to be over $1,700, compared to about $500 for replacing a conventional windshield. This high cost difference has caused most replacements of glass-plastic windshields to be made with conventional windshields, thereby negating any safety benefit inherent in the glass-plastic glazing.
- Today's high rates of safety belt use, together with the high installation rates of air bags—in contrast to the situation a decade ago when the agency authorized the use of glass-plastic glazing means that the size of the lacerative injury problem due to windshield contact in crashes is now substantially smaller and will continue to decrease.

NHTSA invites comments from interested persons on the evaluation study summarized in this notice and on other relevant issues.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary comments in a concise fashion.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: February 9, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94–3871 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

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).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting[1] is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: February 23, 1994, 2:00 p.m.

PLACE: 825 North Capitol Street NE., room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 995th Meeting—February 23, 1994, Regular Meeting (2:00 p.m.)

CAH–1.
Project No. 1333–003, Pacific Gas and Electric Company
CAH–2.
Project No. 10684–001, Lansing Board of Water and Light
CAH–3.
Project No. 11370–001, BAE Energy, Inc.
CAH–4.
Docket Nos. HB08–93A–75–001 and HB08–93A–76–001, Virginia Electric and Power Company
CAH–5.
Project No. 485–032, Georgia Power Company
CAH–6.
Project No. 2535–002, South Carolina Electric & Gas Company
CAH–7.
Project No. 9759–007, Centreville Hydro, Inc.
CAH–8.
Docket No. RM94–11–000, Deletion of Definition
CAH–9.
Project No. 3862–003, City of LeClaire, Iowa
CAH–10.
Project No. 7218–006, Bluestone Energy Design, Inc.
CAH–11.
Project No. 2471–011, Wisconsin Electric Power Company

Consent Agenda—Electric

CAE–1.
Docket No. QF94–9–000, Bayside Cogeneration, L.P.
CAE–2.
Docket No. AC94–17–001, Midwest Power Systems, Inc.
CAE–3.
Docket No. EL90–48–004, City of New Orleans, Louisiana v. Energy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power & Light Company System Energy Resources, Inc.
CAE–4.
Docket Nos. EL94–3–001 and QF84–433–005, New Charleston Power I, L.P.
CAE–5.
Docket No. ER79–97–016, Century Power Corporation
CAE–6.
Docket No. EL93–28–001, Seminole Electric Cooperative, Inc. v. Florida Power & Light Company
Docket No. EL93–40–001, Flordia Municipal Power Agency v. Florida Power & Light Company
Docket Nos. ER93–465–005, ER93–507–002, ER93–922–003 and EL94–12–001, Florida Power & Light Company
CAE–7.
Docket No. ER94–24–001, Enron Power Marketing, Inc.
CAE–8.
Docket No. EG94–14–000, Southern Electric Wholesale Generators, Inc.
CAE–9.
Docket No. ER93–498–000, Central Louisiana Electric Company
Docket No. EL93–33–000, Louisiana Electric Power Authority v. Central Louisiana Electric Company
CAE–10.
Docket No. ER93–159–002, Puget Sound Power & Light Company
CAE–11.
Docket No. ER94–652–000, Florida Power & Light Company
CAE–12.
Omitted

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP94–123–000, Mississippi River Transmission Corporation
CAG–2.
Docket No. RP94–125–000, Texas Gas Transmission Corporation
CAG–3.
Docket No. GT94–21–000, Texas Eastern Transmission Corporation
CAG–4.
Docket No. RP94–116–000, Texas Eastern Transmission Corporation
CAG–5.
Docket No. RP94–120–000, Koch Gateway Pipeline Company
CAG–6.
Docket No. RP94–122–000, Natural Gas Pipeline Company of America
CAG–7.
Docket No. RP94–68–001, Mississippi River Transmission Corporation
CAG–8.
Docket No. RP94–127–000, Tennessee Gas Pipeline Company
CAG–9.
Docket No. RP94–121–000, Northwest Pipeline Corporation
CAG–10.
Docket No. RP94–128–000, South Georgia Natural Gas Company
CAG–11.
Docket Nos. RP91–106–000, RP91–109–000, RP91–215–000, RP92–8–000, RP92–49–000 and RP92–103–000, Transwestern Pipeline Company
CAG–12.
Docket No. RP93–147–000, Tennessee Gas Pipeline Company
CAG–13.
Omitted
CAG–14.
Docket Nos. RP94–1–000, RP94–1–004 and RP93–161–004, Columbia Gas Transmission Corporation
CAG–15.
Docket Nos. TA92–1–63–004, TM92–5–63–002 and TQ92–7–63–002, Carnegie Natural Gas Company
CAG–16.
Omitted
CAG–17.
Docket No. PR91–1–001, Tejas Gas Pipeline Company
CAG–18.
Docket No. PR93–5–000, Pontchartrain Natural Gas System
CAG–19.
Docket No. RP88–44–038, El Paso Natural Gas Company
CAG–20.
Docket No. RP92–185–010, El Paso Natural Gas Company
CAG–21.
Omitted
CAG–22.
Docket Nos. RP94–111–000, RP94–97–000 and RS92–87–000, Transwestern Pipeline Company
CAG–23.
CP92–203–004, K N Wattenberg Transmission, Ltd.
CAG–24.
Docket No. RP85–39–015, Wyoming Interstate Company, Ltd
CAG–25.

[1] Note: The Commission meeting has been changed to 2:00 p.m.

Docket Nos. RP94–76–002, RP93–184–003 and RP93–185–003, Carnegie Natural Gas Company
CAG–26.
Docket Nos. RP91–41–019 and RP91–90–011, Columbia Gas Transmission Corporation
CAG–27.
Omitted
CAG–28.
Docket No. RP94–60–003, Transwestern Pipeline Company
CAG–29.
Docket No. RP93–163–001, Aquila Energy Marketing Corporation v. Natural Gas Pipeline Company of America
CAG–30.
Docket No. RP93–160–001, Tennessee Gas Pipeline Company
CAG–31.
Omitted
CAG–32.
Docket Nos. RP93–56–002, RP93–86–002 and RP93–139–002, Transwestern Pipeline Company
CAG–33.
Docket No. RP91–203–031, Tennessee Gas Pipeline Company
CAG–34.
Docket No. RP88–44–044, El Paso Natural Gas Company
CAG–35.
Docket Nos. RP91–104–005, RP91–106–004, RP91–109–005, RP91–215–005, RP91–217–003 and RP92–8–003, Trunkline Gas Company
CAG–36.
Docket No. GP90–11–002, NICOR Exploration Company
CAG–37.
Omitted
CAG–38.
Docket Nos. RP90–137–013, TM93–6–49–005, RP93–175–003, RS92–13–000 Williston Basin Interstate Pipeline Company
CAG–39.
Docket No. RP92–166–012, Panhandle Eastern Pipe Line Company
CAG–40.
Omitted
CAG–41.
Docket No. PR91–23–001, Midcoast Ventures I
CAG–42.
Omitted
CAG–43.
Docket No. RM87–34–071, Regulation of Natural Gas Pipelines After Partial Wellhead
Decontrol Docket Nos. TA91–1–21–004 and TM91–8–21–004, Columbia Gas Transmission Corporation
Docket No. RM85–1–185, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket No. CP87–115–010, Tennessee Gas Pipeline Company
CAG–44.
Docket Nos. RP93–151–004, RS92–23–014, RP91–132–035, RP91–203–035 and RP94–39–001, Tennessee Gas Pipeline Company
CAG–45.
Docket No. RM91–8–004, Qualifying Certain Tight Formation Gas for Tax Credits
CAG–46.
Docket No. RS92–1–009, ANR Pipeline Company
CAG–47.
Docket No. RS92–63–008 and 010, Great Lakes Gas Transmission Limited Partnership
CAG–48.
Docket Nos. CP93–690–001 and CP93–697–001, High Island Offshore System
CAG–49.
Docket No. CP89–710–013, Transcontinental Gas Pipeline Corporation
Docket No. CP88–171–029, Tennessee Gas Pipeline Company
CAG–50.
Docket Nos. CP92–184–006 and CP92–459–005, Texas Eastern Transmission Corporation
CAG–51.
Docket No. CP93–707–001, Transcontinental Gas Pipe Line Corporation
CAG–52.
Docket No. CP93–541–000, Young Gas Storage Company, Ltd
CAG–53.
Omitted
CAG–54.
Docket No. CP94–68–000, Transcontinental Gas Pipeline Corporation
CAG–55.
Docket No. CP94–123–000, Questar Pipeline Company
CAG–56.
Omitted
CAG–57.
Docket No. CP94–166–000, Viosca Knoll Gathering System
CAG–58.
Docket No. RP94–119–000, Texas Gas Transmission Corporation
CAG–59.
Docket Nos. RP92–137–011 and RP92–108–004, Transcontinental Gas Pipe Line Corporation
CAG–60.
Docket No. RM93–4–001, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. TX94–3–000, Minnesota Municipal Power Agency v. Southern Minnesota Municipal Power Agency. Order on complaint under Section 211 of the Federal Power Act.
E–2.
Docket Nos. ER93–465–000 and ER93–922–000, Florida Power & Light Company. Supplemental order on policy issues.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RO89–2–001, Cities Service Oil and Gas Corporation. Order on reconsideration.

II. Restructuring Matters

RS–1.
Docket Nos. RS92–10–007, CP71–273–006, RP92–134–008 and RP93–15–005, Southern Natural Gas Company. Order on rehearing.
RS–2.
Docket Nos. RS92–26–010 and 011, Koch Gateway Pipeline Company. Order on rehearing.
RS–3.
Docket No. RS92–4–008, Colorado Interstate Gas Company. Order on compliance.
RS–4.
Docket Nos. RS92–43–011, RP93–4–014 and RS92–43–009, Mississippi River Transmission Corporation. Order on compliance and rehearing.
RS–5.
Docket Nos. RS92–15–008, 009, 010, 011, RP93–62–008, 009 and 010, Equitrans, Inc. Order on compliance and rehearing.
RS–6.
Docket Nos. RS92–30–006 and RS92–30–007, Carnegie Natural Gas Company. Order on compliance and rehearing.
RS–7.
Docket Nos. RS92–5–012, 013, 014, RP90–180–023, 024, RP91–82–014, 015, RP91–161–019, 020, RP92–3–010, 011, RP93–66–003, 004, RP93–115–003 and 004, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–011, 012, 013, 014, RP90–170–020, 021, RP91–160–016, 017, RP92–2–010, 011, CP93–736–002 and 003, Columbia Gulf Transmission Company. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: February 16, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4061 Filed 2–17–94; 3:16 pm]

BILLING CODE 6717–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, February 24, 1994.

PLACE: 9th Floor, 1120 Twentieth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *W–P Coal Co.*, Docket No. WEVA 92–746 (Issues include whether the judge erred in concluding that the Secretary of Labor acted improperly in citing W–P for violations of the Mine Act committed its contractor.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters,

must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *W–P Coal Co.*, Docket No. WEVA 92–746 (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: February 16, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–4062 Filed 2–17–94; 3:17 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, February 28, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6110A—Highway Accident Report: Tractor-Semitrailer Collision with Bridge Columns on Interstate 65 near Evergreen, Alabama, on May 19, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 17, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–4085 Filed 2–17–94; 3:40 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 21, 28, March 7, and 14, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 21

Thursday, February 24

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 28—Tentative

Monday, February 28

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Tuesday, March 1

10:00 a.m.
Briefing on Proposed Changes to Part 100 (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 7—Tentative

Thursday, March 10

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 14—Tentative

Monday, March 14

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula N. Alford, 703–235–4473)

Friday, March 18

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

ADDITIONAL INFORMATION: "Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS)" (Public Meeting) scheduled for February 10 was *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 17, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–4086 Filed 2–17–94; 3:41 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Amend Agenda

At the February 7, 1994, meeting of the Board of Governors, noticed in the **Federal Register** on January 28, 1994, (59 FR 4138) the members voted unanimously to add to the agenda consideration of a contract for consulting services for the design of an EVA program for the Postal Service and that no earlier public announcement of the new item on the agenda was possible. The Governors were of the opinion that public access to the discussion would likely disclose information, the premature disclosure of which could significantly frustrate possible future actions by the Postal Service.

Accordingly, the members unanimously determined that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, discussion of the matter was properly closed to public observation.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39 Code of Federal regulations, the General Counsel of the Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 94–4063 Filed 2–17–94; 3:18 pm]

BILLING CODE 7710–12–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1464]

TIME AND DATE: 10 a.m. (EST), February 23, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on January 19, 1994.

Action Items

New Business

C—Energy

C1. Award of a 3-year Contract to Norfolk Southern Railway Company for Transportation of Coal to John Sevier Fossil Plant.

C2. Contract Extension with CSX Transportation for Transportation of Coal to Kingston Fossil Plant.

E—Real Property

E1. Sale of Permanent and Temporary Construction Easements to the City of Tupelo

Affecting Approximately 1.1 Acre of Land in Lee County, Mississippi.

E2. Sale of Land at Public Auction Affecting Approximately an Acre Portion of TVA's Bowling Green, Kentucky, Customer Service Center Property in Warren County, Kentucky.

E3. Sale at Public Auction of a Coal Lease Affecting Approximately 1,690 Acres of the Red Bird Coal Reserves in Clay and Leslie Counties, Kentucky.

E4. Addition of Commercial Recreation to Planned Tract Allocation and Proposed 19-Year Commercial Recreation Lease Affecting Approximately 11.98 Acres of Land on Chickamauga Reservoir, Meigs County, Tennessee.

E5. Sale of Noncommercial, Nonexclusive Permanent Easements to Three Individuals for Construction and Maintenance of Recreational Water-Use Facilities Affecting Approximately 0.46 Acre of Tellico Lake Shoreline, Monroe and Loudon Counties, Tennessee.

F—Unclassified

F1. Approval to Enter into a Contract with Stone and Webster Engineering Corporation, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F2. Supplement No. 1 to Procurement Contract Nos. TV–92PGN77052E–01 and –02 with FD Engineers and Constructors, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F3. Proposed TVA Policy on Contracting Decisions.

F4. Proposed Policy for Utilization of Tennessee Valley Region Businesses.

CONTACT PERSON FOR MORE INFORMATION:

Ron Loving, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 732–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: February 16, 1994.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 94–4074 Filed 2–17–94; 3:19 pm]

BILLING CODE 8120–08–M

Corrections

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations and Statement Regarding Administrative Practice and Procedure

Correction

In notice document 94-2225 beginning on page 4669 in the issue of Tuesday, February 1, 1994 make the following correction:

On page 4672, in the third column, in the last line, after "access to it).[32]" insert "The file should, to the extent feasible, contain notices of the rulemaking, all written[33] comments submitted to the agency, and copies or an index of all written factual material, studies, or reports substantially relied on or seriously considered by the agency in formulating its proposed and final rule (except insofar as disclosure is prohibited by law). Materials substantially relied on or seriously considered need not encompass every study, report, or other document that the agency may have in its files or has otherwise used, but they should include those that exerted a significant impact on the agency's thinking, even if they represent an approach that the agency ultimately did not accept."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL91-28-002, et. al.]

Carolina Power & Light Co., et. al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 94-3221 beginning on page 6627, in the issue of Friday, February 11, 1994, make the following correction:

On page 6628, in the first column, under the heading **Northern States Power Company**, in the first line, "[Docket No. ER92-412-001]", should read "[Docket No. ER93-412-001]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C-0295]

Listing of Color Additives Subject to Certification; FD&C Blue No. 1

Correction

In rule document 93-3554 beginning on page 7636 in the issue of Wednesday, February 16, 1994 make the following correction.

On page 7636, in the third column, in the **DATES:**, in the first line, "February 17, 1994," should read "March 19, 1994,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C-0292]

Listing of Color Additives Subject to Certification; FD&C Red No. 40

Correction

In rule document 94-3553 beginning on page 7635 in the issue of Wednesday, February 16, 1994 make the following correction.

On page 7635, in the first column, in the **DATES:**, in the first line, "February 17, 1994," should read "March 19, 1994,".

BILLING CODE 1505-01-D

federal register

Tuesday
February 22, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Salinan Tribe of Monterey County, California; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Salinan Tribe of Monterey County, c/o Rosie Shaffer, P.O. Box 403, King City, California 93930, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on November 15, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: January 27, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–3936 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
February 22, 1994

Part III

The President

Memorandum of January 17—Federal Leadership of Fair Housing

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

Presidential Documents

Title 3—

The President

Memorandum of January 17, 1994

Federal Leadership of Fair Housing

Memorandum for the Heads of Executive Departments and Agencies

On April 11, 1968, one week after the assassination of the great civil rights leader Martin Luther King, Jr., the Fair Housing Act was enacted (1) to prohibit discrimination in housing, and (2) to direct the Secretary of Housing and Urban Development to affirmatively further fair housing in Federal housing and urban development programs. Twenty-five years later, despite a strengthening of the Fair Housing Act 5 years ago, hundreds of acts of housing discrimination occur in our Nation each day.

Americans of every income level, seeking to live where they choose, feel the weight of discrimination because of the color of their skin, their race, their religion, their gender, their country of origin, or because they are disabled or have children.

An increasing body of evidence indicates that barriers to fair housing are pervasive. Forty percent of all families move every 5 years. This statistic is significant given the results of a recent study, commissioned by the Department of Housing and Urban Development (HUD), which found that more than half of the African Americans and Latinos seeking to rent or buy a home are treated differently than whites with the same qualifications. Moreover, based upon Home Mortgage Disclosure Act data, the number of minority persons who are rejected when attempting to obtain loans to purchase homes is two to three times higher than it is for nonminorities in almost every metropolitan area of this country.

Racial and ethnic segregation, both in the private housing market and in public and assisted housing, has been well documented. Despite legislation (the Fair Housing Act) and Executive action (Executive Order No. 11063), the divisive impact of housing segregation persists in metropolitan areas all across this country. Too many lower income and minority Americans face barriers to housing outside of central cities. Segregation in housing and schools deprives too many of our children and youth of an opportunity to enter the marketplace or work on an equal footing. For too many families, our cities are no longer the launching pads for economic self-sufficiency and upward mobility that they have been for countless immigrants and minorities since the country's birth. And many Americans who are better off abandon the cities.

The resulting decline in the very heart of too many of our metropolitan areas threatens all of us: the health of our dynamic regional economies—the very lifeblood of future national economic growth and higher living standards for all of us and all of our children—is placed at risk.

We can do better. We can start by making sure that our own Federal policies and programs across all of our agencies support the fair housing and equal opportunity goals to which all Americans are committed. If all of our executive agencies affirmatively further fair housing in the design of their policies and administration of their programs relating to housing and urban development, a truly nondiscriminatory housing market will be closer to achievement.

By an Executive Order ("the Order") I am issuing today and this memorandum, I am addressing those needs. The Secretary of Housing and Urban Development and, where appropriate, the Attorney General—the officials

with the primary responsibility for the enforcement of Federal fair housing laws—will take the lead in developing and coordinating measures to carry out the purposes of this Order.

Through this Order, I am first expanding Executive Order No. 11063 to provide protection against discrimination in programs of Federal insurance or guaranty to persons who are disabled and to families with children.

Second, I am revoking the old Executive Order No. 12259 entitled "Leadership and Coordination of Fair Housing in Federal Programs." The new Executive order reflects the expanded authority of the Secretary of Housing and Urban Development and I am directing him to take stronger measures to provide leadership and coordination in affirmatively furthering fair housing in Federal programs.

Third, I ask the heads of departments and agencies, including the Federal banking agencies, to cooperate with the Secretary of Housing and Urban Development in identifying ways to structure agency programs and activities to affirmatively further fair housing and to promptly negotiate memoranda of understanding with him to accomplish that goal.

Further, I direct the Secretary of Housing and Urban Development to review all of HUD's programs to assure that they truly provide equal opportunity and promote economic self-sufficiency for those who are beneficiaries and recipients of those programs.

I also direct the Secretary to review HUD's programs to assure that they contain the maximum incentives to affirmatively further fair housing and to eliminate barriers to free choice where they continue to exist. This review shall include Federally assisted housing, Federally insured housing and other housing and housing related programs, including those of the Government National Mortgage Association and the Federal Housing Administration.

Today, I am establishing a new Cabinet-level organization to focus the cooperative efforts of all agencies on fair housing. The President's Fair Housing Council will be chaired by the Secretary of Housing and Urban Development and will consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Chair of the Federal Deposit Insurance Corporation.

The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

I direct the Secretary of Housing and Urban Development and the President's Fair Housing Council to develop a pilot program to be implemented in selected metropolitan areas. This initiative will promote fair housing choice by helping inner-city families to move to suburban neighborhoods and by making the central city more attractive to those who have left it. I direct the members of the Council to undertake a demonstration program that will reinvent the way assisted housing is offered to applicants, will break down jurisdictional barriers in housing opportunities, and will promote the use of subsidies that diminish residential segregation, and will combine these initiatives with refined educational incentives aimed at improving the effectiveness of inner-city schools. I am directing that transportation alternatives be considered along with targeted social service and job training programs as part of the support necessary to create a one-stop, metropolitan area-wide fair housing opportunity pilot program that will effectively offer Federally assisted housing, Federally insured housing, and private market housing within a metropolitan area to all residents of the area. The pilot

program should call upon realtors, mortgage lenders, housing providers, and local governments, among others, to assist in expanding housing choices.

To address the findings of recent studies, I hereby direct the Secretary of Housing and Urban Development and the Attorney General and, where appropriate, the heads of the Federal banking agencies to exercise national leadership to end discrimination in mortgage lending, the secondary mortgage market, and property insurance practices. The Secretary is directed to issue regulations to define discriminatory practices in these areas and the Secretary and the Attorney General are directed to aggressively enforce the laws prohibiting these practices.

In each of these areas, I direct the Secretary of Housing and Urban Development to take the lead with the other Federal agencies in working to gain the voluntary cooperation, participation, and expertise of all of those in private industry, the States and localities who can assist in achieving the Nation's fair housing goals.

The Secretary of Housing and Urban Development is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 17, 1994.

[FR Doc. 94–4136
Filed 2–18–94; 10:53 am]
Billing code 4210–01–M

Editorial note: For the text of Executive Order 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," see issue Jan. 20, p. 2939 of the **Federal Register**. See also the *Weekly Compilation of Presidential Documents* (vol. 30, p. 110).

Reader Aids

Federal Register

Vol. 59, No. 35

Tuesday, February 22, 1994

INFORMATION AND ASSISTANCE

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1303/P.L. 103–212

To designate the Federal Building and United States Courthouse located at 402 East State Street in Trenton, New Jersey, as the "Clarkson S. Fisher Federal Building and United States Courthouse". (Feb. 16, 1994; 108 Stat. 43; 1 page)

H.R. 2223/P.L. 103–213

To designate the Federal building located at 525 Griffin Street in Dallas, Texas, as the "A. Maceo Smith Federal Building". (Feb. 16, 1994; 108 Stat. 44; 1 page)

H.R. 2555/P.L. 103–214

To designate the Federal building located at 100 East Fifth Street in Cincinnati, Ohio, as the "Potter Stewart United States Courthouse". (Feb. 16, 1994; 108 Stat. 45; 1 page)

H.R. 3186/P.L. 103–215

To designate the United States courthouse located in Houma, Louisiana, as the "George Arceneaux, Jr., United States Courthouse". (Feb. 16, 1994; 108 Stat. 46; 1 page)

H.R. 3356/P.L. 103–216

To designate the United States courthouse under construction at 611 Broad Street, in Lake Charles, Louisiana, as the "Edwin Ford Hunter, Jr., United States Courthouse". (Feb. 16, 1994; 108 Stat. 47; 1 page)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
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101	(869-019-00157-3)	30.00	July 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

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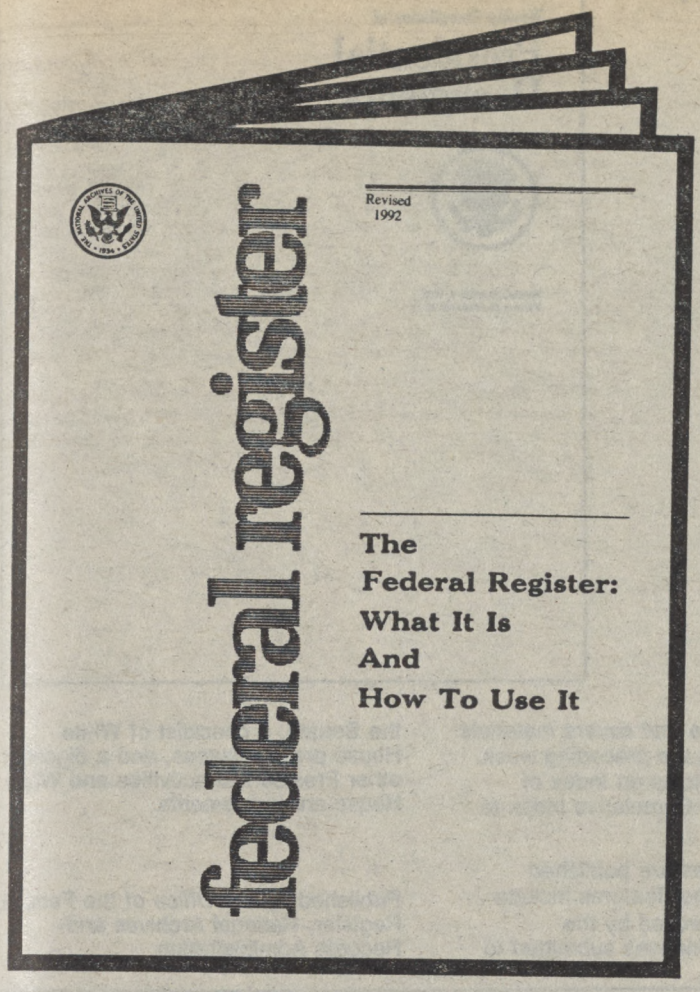

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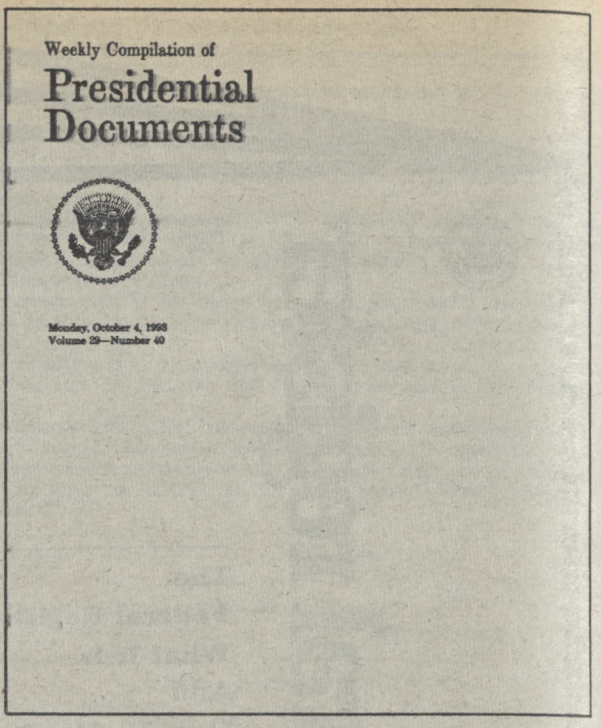

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