Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, With the U.S. Securities and Exchange Commission

How and Where To File

File Form BD and its schedules in triplicate with the Securities and Exchange Commission, Washington, D.C. 20549. Manually sign and notorize all three copies on the execution page. Keep a copy. Duplicated copies may be filed if manually signed. Copies must be made on standard size white paper, in the same size as the original.

Form BD Initial Filings—Required Statements

Rule 15b1–2 requires filing with each initial Form BD application two copies of special statements on financial condition, capital contribution, facilities, and first-year funding. (See Securities Exchange Act Release No. 9594, May 12, 1972.)

Successor Registration

A successor broker-dealer succeeds to and continues the business of a predecessor broker-dealer. Rule 15b1–3 requires a successor broker-dealer to amend the predecessor broker-dealer's Form BD within 30 days. The amendment must indicate on page 2 of the form that the applicant is a successor and must contain the statement on financial condition required by Rule 15b1–2 for Form BD initial filings. (See Securities Exchange Act Release No. 34–22468, Sept. 26, 1985.)

Prohibited Broker-Dealer Names

United States Code Title 18 section 709 makes a criminal offense of using the words "national," "Federal," "United States," "reserve," or "Deposit Insurance" in the name of a person or organization in the brokerage business, unless otherwise allowed by Federal law. If these words are used in the applicant's name, include an opinion of counsel with the Form BD explaining why the words are permitted.

[FR Doc. 85–24221 Filed 10–15–85; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Participation in Contract Claim Awards and Settlements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the existing contract claim regulation found in 23 CFR 635.120. The rule provides more specific and clarifying guidance concerning the extent to which Federal-aid highway funds may participate in awards and settlements of Federal-aid highway contract claims brought by private contractors against State highway agencies (SHA's). The revised regulation will make participation determinations more consistent from State to State and will clarify what is necessary for the SHA to provide to the FHWA in support of its request for participation.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Chief Construction and Maintenance Division, (202) 426–0392, or Mr. Hugh T. O'Reilly, Office of the Chief Council, (202) 426–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the Federal-aid highway program, 23 U.S.C. 101 et seq., construction of Federal-aid highways is generally performed by State highway agencies through private contractors. The FHWA reimburses the States for a statutory pro rata share of the construction costs that are incurred. In the course of construction, disputes between the contractor and the State's administering agency may occur. The contractors may allege that unanticipated costs were or must be incurred, and attribute the cause to matters that were under State control. For example, contractors may argue that agency administrators required them to perform work that was not contemplated by the plans and specifications, or that subsurface conditions were encountered which materially differed from those represented in the contract. Often, such disputes are resolved informally at the project level. Where the SHA initially denies liability, State law generally provides a forum for resolution of these claims. State courts, administrative boards, arbitration panels, or other tribunals may hear and decide them, or they may be settled by the parties in lieu of such proceedings.

Under a project agreement with the SHA, entered into under 23 U.S.C. 110, the FHWA agrees to reimburse the State for the estimated Federal share of the construction costs incurred, based upon a prescribed statutory rate, see 23 U.S.C. 120. State highway agencies will often request the FHWA to reimburse them for a portion of the contract claim payments they must make to a contractor, on the basis that such payments reflect a cost of construction.

It has been recognized that the FHWA has no inherent contractual obligation to participate in any and all contract claim settlements, "Louisiana Department of Highways v. United States," 604 F.2d 1339 (Ct.Cl., 1979). In "Commonwealth of Pennsylvania, Department of Transportation v. United States," 643 F.2d 758 (Ct.Cl., 1981), the former United States Court of Claims further found "proper" FHWA's requirement that unbudgeted settlements costs must be "reasonable" in order to be eligible for Federal participation. That court also concluded that the ultimate burden of demonstrating that the actual costs involved were "reasonable" resides with the State.

The regulation currently governing the participation of the FHWA in contract claim awards and settlements is 23 CFR 635.120. This provides in full as follows:

> The eligibility for, and extent of, Federal-aid participation in claim awards made by the State to Federal-aid contractors on the basis of arbitration board awards or State court judgments shall be determined on a case-by-case basis. Generally, the criteria for establishing Federal-aid participation in claims and resultant settlements is the extent to which such settlements are grounded in contract provisions and specifications and actual costs incurred. Where legal issues arise in the course of resolving a claim, any data submitted for consideration shall include a brief from the legal counsel for the State setting forth the basis for determining the extent of the State's liability for the claim under local law.

This regulation, published in 1974, restates a policy of FHWA that has remained consistent over the years. It essentially adopts language of uncodified policy directives dating back to 1964 which indicate that the policy on eligibility incorporated therein was one that has been followed, at least informally, prior to that time.

Although this policy has been in place for a long time, questions of interpretation have been prompted by the literal language of the regulation, particularly that of how "grounded in contract provisions and specifications" should be construed. In the "Louisiana Department of Highways" case, the Court of Claims described this key eligibility language as being "far from clear," 604 F.2d at 1340, and suggested that it be clarified. This thought was again echoed in the "Pennsylvania Department of Transportation" case, 643 F.2d at 765. In 1981, the American Road and Transportation Builders Association

argued that eligibility issues could best be resolved by making Federal-aid participation automatic in any case where a settlement is approved by the SHA's chief administrative officer and the State's Attorney General.

While the FHWA maintains its right to exercise separate and independent judgment on claim reimbursement eligibility questions, a clearer statement of criteria was sought through the rulemaking process. On March 27, 1984, the FHWA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. Comments were to be received on or before May 29, 1984. A subsequent request for extension of the comment period from the American Association of State Highway and Transportation Officials (AASHTO) was granted and a revised ending date of July 30, 1984, was established (49 FR 23663).

Written comments were received from 34 agencies and private organizations. Of these, 28 were from SHA's or State Attorneys General, four were from highway organizations or trade agencies, and two were from private sources. A total of 31 different items concerning the proposed contract claim regulation were raised by the commenters.

The issue most frequently mentioned concerned the eligibility of interests costs as a participating item. The earlier position taken by the FHWA was that interest should be denied as this would reflect conformity with the general principle that interest is not recoverable against the United States unless specifically provided for by contract or statute. However, based upon the information received in this rulemaking process, the FHWA feels that interest costs should be included as a generally reimbursable item. In order for these costs to be eligible, they must not result from delays caused by dilatory action of the SHA or the contractor. For example, where State processing of claims is unjustifiably slow, the FHWA may decide not to participate in interest payments. Further the payments to the contractor for these interest charges must be allowable by State statute or specification. The applicable interest rates must not exceed the rates provided for by the State statute or specifications. Paragraph (f) of § 635.120 is being added to include interest as an eligible item.

Another subject frequently brought up concerned the feelings that the proposed rule would encourage adverse relationships among the parties to the issues by giving the FHWA the power to second-guess decisions made by those more intimately involved with the claim. Related comments pointed to the need for the FHWA to be objective and uniform in its decisions and for the FHWA to seek to prevent and avoid claim by getting involved earlier when the claims arises. The FHWA agrees that uniform and objective decisions should be made. The objective of this rulemaking is to clarify the existing policy so that those decisions can be more easily made. The agency believes that to foster a better Federal-State relationship, both parties (FHWA and SHA) should work to agree on resolution of contract claims at an early stage. In this way, the SHA may be apprised of an FHWA position before it continues with its course of action. In this regard, the FHWA should be made aware of claim issues as they arise so that they will be able to make informed decisions which will help the SHA determine the proper course of action to pursue. General statements requiring coordination of efforts are being included in the revised regulation. However, it is felt that more specific criteria concerning coordination activities should not be included in the regulation. It is preferred that more specific implementation procedures be jointly developed by each SHA and the FHWA that would respond to the circumstances in the particular State.

Some concern was raised regarding the use of terms which are incapable of accurate definition and application, such as "reasonable." The FHWA agrees that some of the terms being used could be replaced with more objective words. Most easily understood terms or phrases have been substituted in the final rule, where possible.

Several commenters suggested that the FHWA mandate the use of standardized construction contract language clauses for changes dealing with differing site conditions and suspension of work. This idea has been brought up several times over the last several years. It has been the FHWA's concern that mandating contract language, except where necessitated by statutory requirements, usurps responsibility that rightfully belongs to the SHA. It is felt that it would be more advantageous to cooperate with the SHA in revising the contract language in order to eliminate the ambiguities that cause contract claims. The FHWA does recognize and promote the use of the AASHTO *Guide Specifications for Highway Construction* [1] which currently contains language similar to what was suggested by the commenters.

Comments were received that suggested that Federal-aid participation should be automatic where the settlement is approved by the Chief Administrative Officer of the SHA, by the State's Attorney General, or by law boards, panels, or courts. The FHWA cannot concur in this approach. Just as the FWHA has discretion to review State court judgments or arbitration panel decision concerning contract claims, it follows that the FHWA has discretion to review negotiated settlements. The FHWA believes it to be in the best interest of the Federal-aid highway program to continue the case-by-case determination approach for participation eligibility.

Comments on payment of contractor's attorney fees awarded by the courts were also frequent. However, in the absence of any Federal statute that specifically requires payment, the FHWA has determined that contractor's attorney fees should be non-reimbursable. Accordingly, the final rule still contains an exclusion on the eligibility of such fees.

Five commenters suggested that the reference to Federal nonparticipation when SHA employees act unreasonably in project design and plan preparation be deleted because the FHWA approves plans prior to bid lettings. As an alternative, it was suggested that the FHWA should share the cost of claims related to design/plan errors if they approve the plans. The FHWA does not agree with these comments. While the FHWA review can detect improper conduct on some occasions, it does not relieve the State of responsibility. Therefore, the provisions of § 635.120(e) of the regulations would apply to those cases where the State has acted improperly, regardless of the FHWA's prior approval of the plans, specifications and estimates of the projects.

In a related issue, it was suggested that more descriptive terms of how SHA personnel must act in order to deny participation should be included. The FHWA feels that those acts related to gross negligence, intentional acts or omissions, fraud, or other acts not accepted within the standards of the profession should not be allowed and those claims arising from these acts should be considered ineligible. This may also include, in certain extreme cases, improper management relating to numbers of personnel assigned to design and construction work. The final rule contains language to clarify this issue.

[1] The *Guide Specifications for Highway Construction*, 1984, is published by an available for purchase from the American Association of State Highway Transportation Officials, Suite 225, 444 North Capitol Street, NW Washington, DC 20001.

Four commenters felt that the proposed rule did not contain definitive guidelines concerning what criteria will be used to determine eligibility for participation as a result of arbitration, administrative hearing, or civil court judgment. The proposed rule gave general criteria for participation eligibility; i.e., the claim has to be supportable, have a basis in terms of the contract and applicable State law, and be in accord with prevailing principles of public contract law. Providing more definitive specifics would tend to reduce any flexibility of the regulation. It would also be difficult to cover all aspects due to the variety of differing circumstances.

It was also brought up that many judgments are beyond the control of the SHA. It was felt that the proposed rule did not give fair weight in those circumstances, such as when an adverse decision is rendered by a court in an amount more than can be justified by the SHA. Other commenters suggested that State law should control, and the FHWA should accept court decisions providing that are not arbitrary, capricious, or not supported by evidence. The FHWA does not wish to "punish" the SHA in these instances. Although the FHWA will look at the merits of each case, participation in judgments by outside authorities will be eligible provided the FHWA was consulted and concurred in the proposed course of action and providing that all avenues of appeal have been considered. It is also assumed that the SHA attorneys will pursue the case diligently and in a professional manner. The final rule addresses this issue.

Still another related item concerns the necessity of putting the burden of proof on the SHA to support the claim. Several commenters felt that a properly documented contract adjustment should be assumed to be reasonable and acceptable without the need for further review by the FHWA. In responding to this, the FHWA feels that the SHA has prime responsibility in responding to contract claims, and is in the best position to provide information concerning the reasonableness of the claim. The FHWA concurs that a properly documented claim founded in the contract should be considered eligible for participation. The FHWA responsibility, as in any case, is to assure that the general criteria concerning participation have been followed. Participation will not be denied if that has been accomplished. The FHWA will provide explanations in those cases where claims or portions of claims have been rejected.

The confidentiality of legal opinions to be provided by the SHA to the FHWA was an issue brought up by three commenters. It is possible that an SHA case could be compromised if the FHWA was forced to release this information. It is understood that legal opinions of this nature that are furnished by the SHA to the FHWA for review are offered in confidence. The FHWA recognizes this confidentiality and will take all reasonable steps to prevent disclosure. However, it would be impracticable to guarantee confidentiality in the regulation.

Two commenters requested that the rule be modified to distinguish between negotiated settlements and judgments rendered by the court. The FHWA does not feel that detailed criteria should be included in the proposed rule. Each claim will be examined based upon its own merits and how it follows the general criteria. However, the FHWA feel that negotiated settlements, such as between a contractor and a resident engineer or a district construction engineer, or any other less formalized methods, that fall short of arbitration, court judgment, or administrative board review, should be handled under regular change order procedures for Federal-aid projects.

The clarification of when an audit is required, the circumstances under which it is feasible, and to what extent it should be conducted was also requested by commenters. A revision to this section has been made, but specific criteria have not been included. The FHWA feels that audit criteria could be developed based upon general accounting procedures and agreed to between the SHA and FHWA division office in the State. The FHWA Division Administrator would be in the best position to determine whether further information to support a claim is necessary. It is also felt that providing more specific audit criteria could have the effect of requiring more audits than needed.

An item mentioned by one commenter pertained to whether or not the FHWA Division Administrators are sufficiently trained to make legal judgments concerning claims. While Division Administrators are not specifically trained in legal matters, most have a great deal of experience dealing with claims. As is normally the case, matters outside their "expertise" are referred to legal counsel or to others in the FHWA regional offices or to the FHWA Washington Headquarters. At the State level, the Division Administrator is the most qualified person and is in the best position to review claim characteristics. No change is anticipated in this responsibility for review of contract claims.

Another item mentioned by one commenter, was the issue of payment for anticipated profits. As the term implies, anticipation profits are those which a contractor feels would have been made given normal operating practices. If the contractor feels that the SHA adversely affected work progress, profits that were anticipated may have been lessened. Because it is improbable, if not impossible, to verify whether or not these profits would occur, there is no acceptable way to document it as a project cost. This is considered to fall under the realm of contractor risk. Accordingly, participation in claims for anticipated profits will not be accepted.

A few commenters brought up the point that discretionary judgment by the FHWA in contract claims was in conflict with Title 23, U.S.C. They felt that there was no statutory provision to permit withholding of participation and, therefore, the participation in contract claims should be mandatory. In a related issue, there was a few commenters that felt that the funds apportioned to and obligated by the State became State funds and should no longer be under control by the Federal Government. Both of these points are based on erroneous assumptions. A recent court case concerning reimbursement to the Federal Government when SHA's recovered project related funds employed the theory of restitution, and held that it would be an unjust enrichment for the States to retain such funds, since they were plainly not "outright gifts" to the States, "Tennessee v. Dole." No. 83-5499 (6th Cir. 1984) [1984-2 CCH Trade Cas. (CCH) ¶ 66318). Also, as previously cited, it has been recognized that the FHWA has no inherent contractual obligation to participate in any and all contract claim settlements, "Louisiana Department of Highways vs. United States," 604 F.2d 1339 (Ct.Cl., 1979).

A request was made to define the difference between "informal resolution" and "claim settlement in lieu of formal proceedings." For purposes of this rule, the FHWA feels these terms are synonymous. All forms of informal resolution of claims between the SHA and the contractor would be included in this category.

A commenter also felt that the proposed regulations should make provisions for the FHWA to reimburse the SHA for its administrative, legal, or other costs required to recover funds. Although not included in this regulation.

recovery of SHA costs is provided for under 23 CFR Part 140, Subpart E.

Therefore, based on a further review and with consideration given to the comments submitted to the public docket, the revisions as proposed and further modified to the extent discussed above are adopted in this final rule.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. As the changes being proposed constitute only a clarification of existing guidance, the FHWA has determined that the change reflected in this action will have only minimal impact on the affected States and public. No new requirements are imposed. In fact, the changes being proposed may have some positive effect on the States. Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entities and that the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing and under the authority of 23 U.S.C. 110, 120, 315, and 49 CFR 1.48(b), the FHWA hereby amends Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations, by revising § 635.120 to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—Transportation, Highways and Roads, Claims and Claim Awards.

Issued on: October 9, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 635—[AMENDED]

The FHWA hereby amends Part 635, Subpart A to Chapter 1 of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128 and 315; 42 U.S.C. 3334, 4231–4233, 4601 *et seq.*; 49 CFR 1.48(b).

2. Section 635.210 is revised to read as follows:

§ 635.210 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration proceeding, administrative board determination, or court judgement, or a contract claim settlement entered into in lieu of such proceedings, shall be determined on a case-by-case basis. However, Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. Claims arising on projects handled under Certification Acceptance (C.A.) procedures should also be brought to the attention of the FHWA in those cases where the type of claim is unusual, controversial, or is not covered by C.A. procedures approved in the State.

(c) When requesting Federal participation, the SHA shall set forth in writing the legal and contractural basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submissions a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the SHA receives an adverse decision in an amount more than can be justified by the SHA, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that, (1) the FHWA was consulted and concurred in the proposed course of action, (2) all avenues of appeal have been considered, and (3) the SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate, (1) if it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not accepted within the standards of the profession in project design, plan prepation, contract administration or other activities which gave rise to the claim; (2) in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and (3) in tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rates provided for by the State statute or specification.

(g) In cases where SHAs affirmatively recover compensatory damages through contract claims, cross-claims, or counterclaims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

[FR Doc. 85-24526 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42031A; FRL-2871-5]

Toxic Substances; Biphenyl; Test Rule

Correction

In FR Doc. 85-21811 beginning on page 37182 in the issue of Thursday, September 12, 1985, make the following corrections:

1. On page 37183, in the first column, in the fourth line of the third paragraph from the bottom of the page, "(<1 to 15)" should read "(≤1 to 15)".

2. On the same page, in the third column, in the ninth line from the top of the page "(<1 to 5)" should read "(≤1 to 5)".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ-108-CN]

42 CFR Parts 400, 405, 412, 420, 433, 462, 466, 473, 474 and 476

Medicare and Medicaid Programs; Utilization and Quality Control Peer Review Organization (PRO); Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rules.

SUMMARY: This document corrects technical errors that appeared in four final rules, published April 17, 1985, that implemented portions of the Peer Review Improvement Act of 1982.

FOR FURTHER INFORMATION CONTACT: Marc Thomas (301) 594-9778.

SUPPLEMENTARY INFORMATION:

I. In document 85-9000, beginning on 50 FR 15312, the following corrections are made.

§ 400.200 [Corrected]

A. Page 15326: (1) In § 400.200 in column one: line two of the definition of "Area" is corrected by inserting a comma after "State" to read "State,"; line three is corrected by inserting a comma after "jurisdiction" to read "jurisdiction,"; and line four is corrected by replacing "constitution" with "constituting".

§ 405.330 [Corrected]

(2) In column one, the section number "§ 405.300" is corrected to read "§ 405.330".

(3) In column one, § 405.330(b), third line, the comma in "post-hospital, SNF care" is deleted, so that the phrase is corrected to read "post-hospital SNF care".

(4) In column two, § 405.330(b)(2), the second line is corrected by deleting the comma after "services," to read "the services has been determined under".

§ 412.44 [Corrected]

(5) In column two, the authority citation for Part 412 is corrected by adding sections "1866(a)(1)(F)" and "1395cc(a)(1)(F)" to read as follows: "Secs. 1102, 1866(a)(1)(F), 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395cc(a)(1)(F), 1395hh, 1395ww)."

(6) In column three, the section number, "§ 142.44" is corrected to read "§ 412.44".

B. Page 15327: (1) In column one, the authority citation for Part 433 is corrected by deleting a parenthesis in the last line between the "6" and the "k" "1396(k)", to read "1396k)".

§ 462.12 [Corrected]

(2) In column three, the title of § 462.12 in the Table of Contents for Part 462 is corrected to read "Involuntary termination or nonrenewal of grants".

C. Page 15328, column one, the third line of the authority citation for Part 462 is corrected by insertng ", 42" before "U.S.C.". The last line of the authority citation for Part 462 is corrected by inserting "42" before "U.S.C.", by inserting a "-1" in "1320c" and inserting "c" in "1320-2" to read "42 U.S.C. 1320c-1 and 1320c-2.".

D. Page 15329, column two: (1) In lines three and four, 466.92 is removed from the Table of Contents for Subpart C of Part 466.

(2) In the fifth line of the authority citation for Part 466, "1868(a)" is corrected to read "1866(a)" and "c" is inserted in "1320c-1320-12" to read "1320c-1320c-12".

§ 466.3 [Corrected]

(3) In the amendatory language designated as "C", in the second line, "§ 466.3" is corrected to read "§ 466.2", correcting the amendatory language to read as follows: "C. Section 466.1 is redesignated as § 466.2 and § 466.2 is redesignated as § 466.1".

§ 466.1 [Corrected]

(4) In § 466.1, five stars are inserted in the line after the section heading, denoting that the existing introductory language remains unchanged.

§ 466.80 [Corrected]

E. Page 15332, column one: (1) In § 466.80(b)(1)(ii), line three is corrected by deleting the dash in the middle of the line, inserting a comma after the word "reconsideration", and deleting the word "and" and replacing it with the phrase "or reopening". Line five is corrected by inserting a comma after the word "review". As a result, lines three through five are corrected to read "result of reconsideration, or reopening all approvals and denials with respect to cases subject to preadmission review,".

(2) In the fourth line from the bottom, the word "and" is inserted between "intermediaries" and "carriers", and the phrase "and if an" is corrected to read "or if an".

§ 466.86 [Corrected]

(F) Page 15333, column one. In the second complete paragraph (§ 466.86(c)(1)), on the sixth line, the word "care." is added after "patient".

§ 466.102 [Corrected]

(G) Page 15335, column one. In the third line of § 466.102(a)(1), "under review of the PRO review care" is corrected to read "under review if the PRO reviews care".

II. In document 85-9001, beginning on 50 FR 15335, the following corrections are made.

PART 420—[CORRECTED]

(A) Page 15343, column three: The correct authority citation for Part 420, Subpart B is "Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395y(d), 1395y(e), 139i5cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396a(i)(2))."

§ 474.0 [Corrected]

(B) Page 15344, column three, in § 474.0 delete the definitions "PRO area" and "PSRO area". Since "Area" is defined in 42 CFR 400.200, these definitions are not necessary and should not have been included in the Federal Register.

III. In document 85-9002, beginning on 50 FR 15347, the following corrections are made.

§ 476.101 [Corrected]

(A) Page 15359: (1) In column two, § 476.101(b), in the sixth line of the definition of "Patient representative", "or (2) and individual" is corrected to read "or (2) an individual".

(2) In column three, § 476.101(b), in the definition for "Sanction report", in line four, the word "PROs" is corrected to read "PRO's".

§ 476.103 [Corrected]

(B) Page 15360: (1) In column one, in § 476.103(b)(6), in the second to the last line, a comma is added after "geographical"; in the last line, the word "institution" is corrected to read "institutional".

§ 476.105 [Corrected]

(2) In column two, the title § 476.105 is corrected to read "§ 476.105 Notice of disclosures made by a PRO."

(3) In column two, in § 476.105(b), in the third line from the bottom, "requirements and expections" is corrected to read "requirements and exceptions".

§ 476.107 [Corrected]

(C) Page 15361: (1) In column one, § 476.107(k), in the second line, the word "out" is inserted between "carry" and "its", so that the line is corrected to read

"Inspector General to carry out its statutory".

§ 476.109 [Corrected]

(2) In column one, § 476.109, "21 U.S.S. 1175" is corrected to read "42 U.S.C. 290dd–3 and 290ee–3".

§ 476.111 [Corrected]

(3) In column two, the fifth line from the top of the page, in § 476.111(c), the phrase "who are not covered under a private review contract held by a PRO" is deleted to make this section consistent with § 466.88(b)(2). Disclosure for the purpose of conducting review under a private review contract is already addressed at §§ 466.88(b)(1) and 476.111(b).

§ 476.120 [Corrected]

(D) Page 15362.

(1) In column one, the second line from the top of the page, "—" is inserted after the word "disclose" and paragraph "a" begins on the next line.

§ 476.132 [Corrected]

(2) In column two, § 476.132(b)(1)(ii), in the last line of the paragraph, "§ 473.28" is corrected to "§ 473.24".

§ 476.134 [Corrected]

E. Page 15363: (1) In column one, § 476.134(c), line three, a comma is inserted after the first word, "request", so that the line is corrected to read "request, reasons for the request, and the".

§ 476.138 [Corrected]

(2) In column three, in § 476.138(a)(3), line three is corrected by deleting the comma after the word "PRO", so that the line is corrected to read "PRO are not subject to subpoena or".

IV. In document 85–9003, beginning on 50 FR 15364, the following corrections are made.

§ 473.10 [Corrected]

A. Page 15372: (1) In column one, § 473.10(a), in the fourth line, the word "denial" is inserted between "initial" and "determination" and the word "or" is changed to "of".

§ 473.14 [Corrected]

(2) In column two, § 473.14(a)(2) is corrected to read "Medical necessity of services".

(3) In column two, § 473.14(c)(2), the fifteenth line is corrected by inserting "should be read to" before the word "mean". The line is corrected to read "should be read to mean initial and reconsidered".

§ 473.15 [Corrected]

(4) In column two, § 473.15(b), the two lines at the bottom of the page are corrected to read "(b) *Procedures.* Procedures described in §§ 473.18 through 473.36,".

§ 473.38 [Corrected]

B. Page 15374, column one.

1. In § 473.38(a), the second and third lines are corrected to read "accordance with § 473.40 and a final decision rendered; or".

§ 473.40 [Corrected]

(2) In § 473.40(c), line eight is corrected by changing the comma after "subpart" to a period.

(Secs. 1102 of the Social Security Act; 42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Programs No. 13773, Medicare—Hospital Insurance Program, and No. 13774, Medicare—Supplementary Medical Insurance Program)

Dated: October 9, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–24667 Filed 10–15–85; 8:45 am]

BILLING CODE 4120–01–M

Office of Child Support Enforcement

45 CFR Parts 302, 304, 305, and 306

Child Support Enforcement Program; Medical Support Enforcement

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This regulation amends the Child Support Enforcement program regulations governing medical support enforcement activities and responds to comments made on the proposed regulations published in the Federal Register on August 4, 1983 (48 FR 35468). The regulation also implements section 16 of Pub. L. 98–378.

Under this regulation, the IV–D agency must obtain basic medical support information and provide this information to the State Medicaid agency. Also, if the custodial parent does not have satisfactory health insurance coverage, the IV–D agency must petition the court or administrative authority to include medical support in new or modified support orders and inform the State Medicaid agency of any new or modified support orders that include a medical support obligation. Finally, the IV–D agency must take steps to enforce medical support which has been ordered by a court or administrative process under State law by assuring that coverage is acquired as ordered. These activities increase the use of available third party resources in the form of private health insurance, thus increasing medical cost savings to State and Federal governments under the Medicaid program. Federal funding is available to IV–D agencies for required medical support activities. Prior to these regulations, medical support activities were pursued by IV–D agencies only under optional cooperative agreements with Medicaid agencies.

We also are amending Child Support Enforcement program final audit regulations (see 50 FR 40120, published October 1, 1985) to add State plan-related audit criteria for medical support enforcement. Sections 305.20(c) and 305.56 are being published as interim final regulations with a comment period.

DATES:

Comment period: Consideration will be given to comments received on the audit criteria in §§ 305.20(c) and 305.56 by December 16, 1985 and changes will be made to the regulations if necessary in response to these comments.

Effective: These regulations are effective December 2, 1985 except for §§ 305.20(c) and 305.56, which are effective October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, Policy Branch, OCSE, (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Background

The Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95–142) added section 1912 to title XIX of the Social Security Act (the Act). This section of the Act permits the State Medicaid agency to establish a medical support enforcement program. The Conference Committee Report (H.Rep. 95–673, September 22, 1977) states that the Medicaid agency may use the IV–D agency to assist in the enforcement of medical support rights due from or through an absent parent, since it was not intended that the Medicaid agency establish a separate system for the enforcement of medical support obligations.

On February 11, 1980, OCSE and the Health Care Financing Administration (HCFA) published joint regulations to implement section 1912 of the Act through optional cooperative agreements between the State Medicaid agency and the State IV–D agency. (See 45 CFR 306.0 through 306.40 for OCSE regulations and 42 CFR 433.151 through 433.154 for HCFA regulations.) Under these agreements, the Medicaid agency reimburses the IV–D agency for medical support enforcement activities