Class 1–D–E: Exemption of Certain Members of a Reserve Component or Student Taking Military Training.

Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.

Class 1–W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.

Class 4–T: Treaty Alien.

Class 4–F: Registrant Not Acceptable for Military Service.

Class 1–H: Registrant Not Subject of Processing for Induction.

PART 1648—CLASSIFICATION BY LOCAL BOARD

13. The authority citation for Part 1648 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

14. Section 1648.3(c) is revised to read as follows:

§ 1648.3 Opportunity for personal appearances.

* * * * *

(c) Any registrant who has filed a claim for classification in Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 4–B, 4–C, 4–F, 4–C, 4–T or 4–W and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

PART 1656—ALTERNATIVE SERVICE

15. The authority citation for Part 1656 continues to read:

Authority: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

16. Section 1656.2 is revised to read:

§1656.2 Order to perform alternative service.

(a) The local board of jurisdiction shall order any registrant who has been classified in Class 1–O or 1–O–S to perform alternative service at a time and place to be specified by the Director.

(b) When the local board orders a registrant to perform alternative service, it shall be the duty of the registrant to report for and perform alternative service at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for alternative service is postponed, it shall be the continuing duty of the registrant to report for and perform alternative service at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for and perform alternative service when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and perform alternative service at the place specified in the order to report for and perform alternative service.

(c) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the order to perform alternative service has been issued, may postpone for a specific time and date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the order to perform alternative service. When necessary, the Director may grant one further postponement but the total postponement shall not exceed 90 days from the reporting date on the order to perform alternative service.

(d) The Director may authorize a postponement of the reporting date to perform alternative service when the registrant qualifies and is scheduled for a State or National examinaion in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation.

(e) The Director shall issue to each registrant whose reporting date to perform alternative service is postponed a written notice thereof.

(f) A postponement of reporting date to perform alternative service shall not render invalid and order to report for alternative service which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new order to report for alternative service.

(g) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for alternative service at the place to which he was originally ordered.

§1656.5 [Amended]

17. Section 1656.5(e) is revised to read:

* * * * *

(e) A registrant classified in Class 1–O or Class 1–O–S may seek his own alternative service work by identifying a job with an employer he believes would be appropriate for Alternative Service assignments and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with § 1656.5(a).

[FR Doc. 86–27683 Filed 12–9–86; 8:45 am]

BILLING CODE 8015–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300153; FRL–3125–6]

Revocation of Tolerances for Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances established for residues of 20 pesticide chemicals in or on certain raw agricultural commodities. This proposed regulatory action is being initiated by the EPA to revoke tolerances for those pesticides which have no registered food uses. Either these pesticides never were registered for food uses or, if they were registered, the registrations were subsequently cancelled.

DATES: Written comments, identified by the document control number [OPP–300153], must be received on or before February 9, 1987.

ADDRESSES: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Rosalind Gross, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA initiated a Data Call-In (DCI) Program in January 1981, notice of which was published in the **Federal Register** of October 7, 1980 (45 FR 66736), to require those pesticide registrants with active registrations for food uses to provide the Agency with needed studies under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such studies, including chronic toxicology, product chemistry, residue and environmental fate data, are an integral part of the data base used to reassess each chemical during the reregistration process. The purpose of a DCI is to assure that these data are available or under development before the pesticide chemical is reassessed for reregistration under FIFRA section 3(g).

During the DCI Program, the Agency determined that tolerances existed for 20 pesticide chemicals which had no current food use registrations. These 20 chemicals are: Aramite (2-(*p-tert*butylphenoxy)-isopropyl-2-chloroethyl sulfite); sulphenone (*p*-chlorophenyl phenyl sulfone); ovex (*p*-chlorobenzyl *p*-chlorobenzenesulfonate); chlorbenside (*p*-chlorobenzyl *p*-chlorophenyl sulfide); copper arsenate; magnesium arsenate; sodium arsenate; chloropropylate (isopropyl 4,4'-dichlorobenzilate); neodecanoic acid; *p*-chlorophenyl-2,4,5-trichlorophenyl sulfide; *O,O*-diethyl *O*-2-pyrazinyl phosphorothioate and its oxygen analog (diethyl 2-pyrazinyl phosphate); benzadox (benzamidooxyacetic acid); chlorbromuron (3-(4-bromo-3-chlorophenyl)-1-methoxy-1-methylurea); 1-chloro-2-nitropropane; fluorodifen (*p*-nitrophenyl-2-nitro-4-(trifluoromethyl)phenylether); secbumeton (2-(*sec*-butylamino)-4-ethylamino-6-methoxy-*s*-triazine); potassium arsenite; ethiolate (*S*-ethyl diethylthiocarbamate); glyphosine (*N,N*-bis-(phosphonomethyl)glycine); and 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (pirimicarb). Registrations for food uses of these pesticide chemicals were either never issued following the establishment of the related tolerance or, for various reasons, were cancelled subsequent to registration. Registration of a food or feed use pesticide subsequent to the establishment of a tolerance may not occur for a variety of reasons, such as a lack of a prospective registrant, or a loss of interest on the part of the prospective registrant. Similarly, cancellations may occur when a registrant no longer has an interest in marketing the pesticide in the United States. Since there were no registrants for these chemicals to whom DCI notices could be directed, the specific data gaps, which are usually identified at the beginning of the DCI process, have not been identified for these 20 chemicals.

EPA issued a "Policy Statement on Revocation of Tolerances for Cancelled Pesticides," published in the **Federal Register** of September 29, 1982 (47 FR 42956). This statement, with which the Food and Drug Administration (FDA), the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS) of USDA agreed, discusses the revocation of formal tolerances for residues of cancelled pesticides and the consequent need to determine whether replacement action levels should be set for these pesticides at the time the tolerances are revoked. These action levels would cover unavoidable residues occurring in the U.S. food supply as a result of environmental contamination from prior legal usage of the pesticides. Crops grown in previously treated fields may contain detectable residues of the persistent pesticides for years after the application of the cancelled pesticide has ceased. For pesticides which degrade rapidly in the environment, however, revoking a tolerance would not necessitate setting a replacement action level because residues from past use would not be expected to be present in food commodities at detectable levels.

Based on the fact that there are no current food use registrations for any of the subject 20 pesticide chemicals, EPA has decided to revoke the tolerances for these pesticide chemicals on the basis that a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food uses. As noted herein, the Agency is not recommending the establishment of action levels in place of these tolerances. Since there are no registrations of these products and hence no legal use in the United States, and since most of these pesticides are not persistent, residues should not appear in any domestically produced commodities. The Agency also does not expect residues to be present in imported commodities. However, EPA is soliciting comments on whether there is a need to modify the proposal to address residues in imported commodities.

EPA now proposes to revoke the existing tolerances for residues in or on raw agricultural commodities for 20 pesticide chemicals listed in 40 CFR Part 180. The tolerances listed in 40 CFR Part 180 being proposed for revocation are as follows:

§ 180.107—Aramite (2-(*p-tert*-butylphenoxy)-isopropyl-2-chloroethyl sulfite).
§ 180.112—Sulphenone (*p*-chlorophenyl phenyl sulfone).
§ 180.134—Ovex (*p*-chlorophenyl-*p*-chlorobenzenesulfonate).
§ 180.168—Chlorbenside (*p*-chlorobenzyl *p*-chlorophenyl sulfide).
§ 180.193—Copper arsenate (see also "§ 180.319" below).
§ 180.195—Magnesium arsenate.
§ 180.196—Sodium arsenate.
§ 180.218—Chloropropylate (isopropyl 4,4'-dichlorobenzilate).
§ 180.248—Neodecanoic acid.
§ 180.256—*p*-Chlorophenyl-2,4,5-trichlorophenyl sulfide.
§ 180.264—*O,O*-Diethyl *O*-2-pyrazinyl phosphorothioate and its oxygen analog (diethyl 2-pyrazinyl phosphate).
§ 180.270—Benzadox (benzamidooxyacetic acid).
§ 180.279—Chlorbromuron (3-(4-bromo-3-chlorophenyl)-1-methoxy-1-methylurea).
§ 180.286—1-Chloro-2-nitropropane.
§ 180.290—Fluorodifen (*p*-nitrophenyl-2-nitro-4-(trifluoromethyl)phenylether).
§ 180.319—Interim tolerances (Copper arsenate).
§ 180.323—Secbumeton (2-(*sec*-butylamino)-4-ethylamino-6-methoxy-*s*-triazine).
§ 180.334—Potassium arsenite.
§ 180.343—Ethiolate (*S*-ethyl diethylthiocarbamate).
§ 180.354—Glyphosine (*N,N*-bis(phosphonomethyl)glycine).
§ 180.365—2-(Dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (pirimicarb).

Simultaneously with this proposal EPA is informing the members of the Codex Alimentarius Commission and other countries of its intended revocation action so that those who might be affected are afforded the opportunity to comment on the action and to submit information on potential trade problems which could be created by the revocation action.

Any person who has registered or who has submitted an application under FIFRA, as amended, for the registration of a pesticide which contains any of these 20 chemicals may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA). Interested persons are invited to submit written

comments on this proposal to revoke tolerances for residues of the 20 chemicals discussed. Should the Agency receive a request for maintenance of any of these tolerances, the Agency will require the proponent of tolerance continuation to submit data to support the tolerance. This is consistent with Agency practice concerning support of tolerances for domestically registered pesticides. The Agency will identify the specific data requirements necessary to maintain the tolerance following receipt of a request to maintain the tolerance. Any person who wishes to retain the tolerance of 1 or more of these 20 chemicals must then commit to provide the data identified by the Agency as necessary to support tolerance continuation within a timeframe set by the Agency, and to furnish progress reports. Failure to commit, to take any required interim steps, or to submit satisfactory data within the designated timeframe will result in tolerance revocation. Comments must bear a notation indicating the document control number [OPP-300153]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

Currently, there is no legal usage of any of these chemicals for food uses in the United States. This eliminates the possibility of direct domestic impacts, apart from possible residues due to past usage. Background residues are likely to be small, if any, due to lack of recent usage for most of the chemicals and the low volume presumed to be involved.

There is, however, some foreign production of ovex (*p*-chlorophenyl-*p*-chlorobenzenesulfonate) and pirimicarb (2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate). Ovex is produced in Japan and pirimicarb in the United Kingdom. Both chemicals have been used for food crops in the past and there is a possibility that United States imports of food products could contain residues. Commodities which could contain residues of these two chemicals include fruits, nuts, cereals, sugar beets, potatoes and vegetables.

An impact on imported commodities is less likely for chlorbromuron and glyphosine. There are, however, reports of renewed United States production of chlorbromuron for export. Chlorbromuron was historically used on soybeans, potatoes and wheat. Glyphosine is a growth regulator used on sugarcane. It is believed that production was discontinued in the United States in 1984, but stocks may still be available. The United States imports about 20 percent of its yearly consumption of beet and cane sugar. However, no recent findings of residues have been reported in imported commodities by FDA/USDA for these four pesticides.

For the remaining chemicals, it is believed that there is no current production or usage worldwide. This would indicate that no impacts are likely from tolerance revocation for these chemicals, provided there are no residues present from past usage.

Thus, for the majority of the chemicals, there would be no impact from revoking the tolerances. For ovex, pirimicarb, chlorbromuron, and glyphosine, EPA's information does indicate possible, but unlikely, significant impacts.

This proposed regulatory action has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. However, based on limited information, there is the possibility that revocation of tolerances for residues of the four chemicals previously mentioned could, but are not likely to, have significant impacts as defined by Executive Order 12291 and the Regulatory Flexibility Act.

As this proposed regulatory action is intended to prevent the sale of commodities containing residues of any of these pesticides primarily where the subject pesticides have been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this proposed regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 26, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.107 [Removed]

2. Section 180.107 is removed.

§ 180.112 [Removed]

3. Section 180.112 is removed.

§ 180.134 [Removed]

4. Section 180.134 is removed.

§ 180.168 [Removed]

5. Section 180.168 is removed.

§ 180.193 [Removed]

6. Section 180.193 is removed.

§ 180.195 [Removed]

7. Section 180.195 is removed.

§ 180.196 [Removed]

8. Section 180.196 is removed.

§ 180.218 [Removed]

9. Section 180.218 is removed.

§ 180.248 [Removed]

10. Section 180.248 is removed.

§ 180.256 [Removed]

11. Section 180.256 is removed.

§ 180.264 [Removed]

12. Section 180.264 is removed.

§ 180.270 [Removed]

13. Section 180.270 is removed.

§ 180.279 [Removed]

14. Section 180.279 is removed.

§ 180.286 [Removed]

15. Section 180.286 is removed.

§ 180.290 [Removed]

16. Section 180.290 is removed.

§ 180.319 [Amended]

17. By amending § 180.319 to remove the entry Copper arsenate from the list.

§ 180.323 [Removed]

18. Section 180.323 is removed.

§ 180.334 [Removed]

19. Section 180.334 is removed.

§ 180.343 [Removed]

20. Section 180.343 is removed.

§ 180.354 [Removed]

21. Section 180.354 is removed.

§ 180.365 [Removed]

22. Section 180.365 is removed.

[FR Doc. 86-27656 Filed 12-9-86; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 455

Medicaid Program; Fraud and Abuse, Withholding of Medicaid Payments to Providers Under Criminal Investigation

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Proposed rule.

SUMMARY: This proposed rule would specifically encourage State Medicaid agencies to withhold program payments without first granting administrative review to providers where (a) there is an ongoing criminal investigation against that provider, or (b) the State agency has reliable evidence of fraudulent activity by the provider. These changes would serve both to reinforce and strengthen existing State Medicaid agency responsibilities in the withholding of program funds, and to make Medicaid program policy consistent with existing Medicare regulations in this area.

DATES: To assure consideration, comments should be mailed by February 9, 1987.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR-5-P, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5643, 330 Independence Avenue SW., Washington, DC. In commenting, please refer to file code LRR-5-P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5643, 330 Independence Avenue SW., Washington, DC 20201, on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. (202) 472-5270.

FOR FURTHER INFORMATION CONTACT: Clarke Bowie, (301) 594-1827.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1977, program instructions were issued to State Medicaid Agencies (Action Transmittal 77-105) advising them to establish administrative mechanisms to remedy abusive situations and handle the recovery of Medicaid program overpayments. While this document included specific procedures for administrative review, the covering memorandum to the action transmittal indicated that it was the Department's position that hearings were not necessary prior to termination or suspension action, or for the suspension of offsetting the payment of claims. However, many States now provide for a pre-termination administrative hearing.

Recently, the Department has been advised of problems in several States involving the withholding of Medicaid program payments to providers where overpayments have been made as a result of potential fraud. In each instance, the requirements for administrative review appear to have caused significant problems where criminal investigations are being conducted by either OIG's Office of Investigations or by the State's Medicaid Fraud Control Unit. Where States have such administrative review requirements in place, we believe there exists a major problem in the State agency's ability to withhold Medicaid payments to providers under criminal investigation. It appears that criminal investigators may be reluctant to allow any withholding action against providers since their case could be jeopardized if a hearing was held. This inability to stop the flow of money has, in turn, resulted in the potential for additional overpayments and has hampered efforts already undertaken by the State Medicaid agency to recover overpayments.

Current Medicare Regulations

For years it has been a standard procedure to withhold payments to Medicare providers at the point when reliable evidence of fraud or misrepresentation has been gathered without the initiation of administrative review procedures. As presently promulgated, the regulations at 42 CFR 401.371(b) state that prior administrative review should *not* be provided where there is reliable evidence that the circumstances giving rise to the need for suspension of payments involve fraud or willful misrepresentation. A withholding action taken under this provision is for a temporary period, pending resolution of the issues raised, and is only taken with the approval of the investigative or prosecuting authority that may be involved.

In accordance with our general rulemaking authority set forth in section 1102 of the Social Security Act, we believe specific Medicaid regulations, similar to those at 42 CFR 405.371(b) for Medicare, would further encourage State Medicaid agencies who retain such authorities to pursue these actions and withhold payments when necessary to protect the integrity of the Medicaid program. As with the current Medicare regulations, in an instance where there is reliable evidence of fraud or misrepresentation, we believe State agencies should be permitted to withhold payments without first granting an administrative review or hearing. We believe these proposed regulations will serve to provide the Federal encouragement and acquiescence needed to have States take appropriate actions on the withholding of program reimbursements.

II. Provisions of the Proposed Regulations

These proposed regulations specifically would encourage Medicaid agencies to withhold all Medicaid payments to any provider if the State agency has reliable evidence that the provider has committed fraud against the program, or the provider is presently under criminal investigation. Under these provisions, State Medicaid agencies would not be required to institute administrative hearings prior to the withholding of payments since such review may adversely affect or compromise any criminal or civil fraud proceedings already initiated. However, the provider may still be granted an administrative review in those instances where such rights are so established and required by State law. The withholding of Medicaid payments would remain in effect until such time as (a) the State agency or prosecuting authrities conclude that fraud has not been committed by the provider, or (b) all

legal proceedings are concluded against the provider.

Withholding of payments under these regulations would not deprive Medicaid providers of program funds indefinitely. The provider would continue to be credited for services furnished, even though payments would be temporarily withheld. Because withholding is not a final action, we believe that concurrent, rather than advance, notice to providers would be sufficient.

It is expected that the State Medicaid agency will confer with and rceive the concurrence of investigative or prosecuting authorities conducting the criminal investigation before imposing withholding actions.

These provisions are intended to make Medicaid policy consistent with existing Medicare policy, and further clarify State agency responsibility in their withholding of Medicaid program payments. This rule should serve both to stimulate withholding actions by State authorities and reiterate Federal regulatory requirements in this area.

III. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

- Has an annual effect on the national economy of $100 million or more;
- Results in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic regions; or
- Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or import markets.

We have determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12991 and that an initial regulatory impact analysis is not required. As indicated, the intent of this proposed rule is to encourage State agencies to withhold payments to Medicaid providers under criminal investigation, and to make clear that State agencies will not offer an administrative review if such review would adversely affect investigations or proceedings already initiated. The amount of program payments withheld to providers is not expected to exceed the $100 million threshold in any one fiscal year.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 93–354), we prepare and make available for public comment a regulatory flexibility analysis, unless the Secretary certifies that the regulation would not have a "significant impact on a substantial number of small entities." The analysis is intended to explain the effect the rulemaking action by the agency would have on the small businesses and other small entities, and to develop lower cost or burden alternatives. While these proposed regulations could have an adverse impact on some small providers, we believe that the criminal investigation or nature of the suspected fraud, rather than the size of the provider, would be the determining factor in withholding payments. Because of this reason, we believe a regulatory flexibility analysis is not required.

IV. Other Required Information

A. Response to Comments

Because of the large number of comments received with respect to Departmental rulemaking, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to major points raised in the comments in the preamble of that document.

B. List of Subjects in 42 CFR Part 455

Abuse, Administrative practice and procedure, Claim, Conviction, Convicted, Exclusion, Fraud, Grant-in-Aid program-health, Health care, Health facilities, Health professions, Information (Disclosure), Investigations, Medicaid, Medicaid Fraud Control Units, Medicaid personnel, Penalties, Reporting requirements, Suspension.

Title 42—Public Health

42 CFR Part 455, Subpart A would be amended as follows:

PART 455—PROGRAM INTEGRITY: MEDICAID

1. The authority citation for Part 455 continues to read a follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Subpart A would be amended by adding a new § 455.23 as follows:

Subpart A—Medicaid Agency Fraud Detection and Investigation Program

* * * * *

§ 455.23 Withholding of payments in cases of fraud or criminal investigation.

3. In Subpart A, § 455.12 would be revised to read as follows:

§ 455.12 State plan requirement.

A State plan must meet the requirements of §§ 455.13 through 455.23.

4. In Subpart A, a new § 455.23 would be added to read as follows:

§ 455.23 Withholding of payments in cases of fraud or criminal investigation.

(a) *Basis for withholding.* The State Medicaid agency may withhold Medicaid payments, in whole or in part, to a provider immediately upon receipt of reliable evidence that:

(1) The circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation, or

(2) The provider is under criminal investigation for an offense related to participation in the Medicaid program.

The State Medicaid agency may withhold payments without first notifying the provider of its intention to withhold such payments. A provider may request, and must be granted, administrative review where State law so provides.

(b) *Notice of withholding.* The State agency must send notice of the withholding within 5 days of taking such action. The notice need not disclose any specific information concerning its ongoing investigation. The notice must:

(1) State that payments are being withheld in accordance with this provision;

(2) State that the withholding is for a temporary period, as stated in paragraph (c) of this section, and cite the circumstances under which withholding will be terminated;

(3) Specify that withholding is effective for all Medicaid claims; and

(4) Inform the provider of the right to submit written evidence for consideration by the agency.

(c) *Duration of withholding* . All withholding of payment actions under this section will be temporary and will not continue after:

(1) The agency or the prosecuting authorities complete an investigation and determine that there is insufficient evidence of fraud or misrepresentation by the provider; or

(2) Legal proceedings related to the provider's participation in Medicaid are completed.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: August 15, 1986.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: October 17, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-27742 Filed 12-9-86; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 86-01; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision to grant exemption from average fuel economy standards and to establish alternative standards.

SUMMARY: This notice is issued in response to a petition filed by Ferrari, S.p.A. (Ferrari) requesting that it be exempted from the generally applicable average fuel economy standard of 26.0 miles per gallon (mpg) for 1985–1988 model year passenger automobiles, and that lower alternative standards be established for Ferrari in each of those model years. This notice proposes to grant the requested exemptions for all three model years, and to establish alternative standards for Ferrari of 16.0 mpg for the 1986 model year, 16.2 mpg for the 1987 model year, and 16.6 mpg for Ferrari in the 1988 model year.

DATES: Comments on this notice must be received by this agency on or before January 26, 1987.

ADDRESS: Comments on this notice must refer to Docket No. LVM 86-01; Notice 1 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4802).

SUPPLEMENTARY INFORMATION: Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures fewer than 10,000 passenger automobles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

Selection of the type of alternative standard. The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

For model years 1986–1988, NHTSA believes it is apropriate to establish a separate standard for Ferrari. NHTSA has only reached a final decision on one petition filed by a low volume manufacturer for the 1986 through 1988 model years, that being Rolls-Royce; *see* 50 FR 32424, August 12, 1985, and 51 FR 12855, April 16, 1986. Accordingly, the agency cannot use the second or third approaches described above.

Background information about Ferrari. Ferrari is a well-known manufacturer of expensive, high-performance sports car. By itself, Ferrari would qualify as a low volume manufacturer under section 502(c) of the Act, since it manufactures fewer than 4,000 passenger cars worldwide in any model year. However, section 503(c) of the Act specifies that any reference to automobiles manufactured by a manufacturer "shall be deemed to include all automobiles manufactured by persons who control . . . such manufacturer." Fiat Motors, which produces many more than 10,000 automobiles in each model year, owns 50 percent of Ferrari. When Ferrari originally applied for a low volume exemption under section 502(c) in 1977, NHTSA found that 50 percent ownership of Ferrari by Fiat was conclusive evidence that Fiat controlled Ferrari for purposes of section 503(c) of the Act. Accordingly, the productions of Fiat and Ferrari were combined for the purposes of Title V of the Act, pursuant to section 503(c). When the combined production of Fiat and Ferrari were considered together, Ferrari was not eligible to apply for a low volume exemption under section 502(c).

This situation was unchanged until Fiat withdrew from the U.S. market at the end of the 1982 model year. Fiat has not exported any of its vehicles to the United States since that date. In response to this changed situation, Ferrari asked NHTSA in November, 1984 to change its previous opinion that Ferrari's production would be combined with Fiat's. This request was based on the language of section 501(9) of the Act. That section reads as follows: "The term 'manufacture' (except for purposes of section 502(c)) means to produce or assemble in the customs territory of the United States, or to import." Ferrari argued that since Fiat did not produce or assemble any vehicles in the customs territory of the United States or import any vehicles into the United States, it did not "manufacture" any vehicles for the purposes of section 503(c). Accordingly, Ferrari urged that it should now be eligible to apply for a low volume exemption under section 502(c) of the Act. NHTSA sent an interpretation to Ferrari in February, 1985, stating that the agency agreed that Ferrari was now eligible to apply for a low volume exemption, for the reasons set forth in Ferrari's letter. Accordingly, Ferrari filed a petition requesting exemption from the 1986–1988 passenger automobile average fuel economy standards.

Timeliness of Ferrari's Petition

49 CFR Part 525 sets forth the required contents of and procedures for processing petitions for exemption from the generally applicable passenger automobile average fuel economy standards. 49 CFR 525.6(b) specifies that each petition for exemption must be filed "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown; . . ." The stated reasons for including this provision in § 525.6 was to facilitate the low volume manufacturers' planning to comply with the alternative