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—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 U.S.C. 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6628 (55 FR 23189, June 7, 1990), AD 90–12–12, with the following new airworthiness directive:

SAAB–Scania: Applies to Model SF–340A series airplanes, Serial Numbers 004 through 138, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the horizontal stabilizer, accomplish the following:

A. Prior to the accumulation of 16,000 landings or within 90 days after July 13, 1990 (the effective date of AD 90–12–12, Amendment 39–6628), whichever occurs later, accomplish the following:

1. Perform an eddy current inspection to detect cracks in the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340–55–013, dated December 1, 1989. If cracks are detected, repair prior to further flight, in accordance with the service bulletin.

2. Reinforce the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340–55–013, dated December 1, 1989.

B. Prior to the accumulation of 16,000 landings, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the following in accordance with the Accomplishment Instructions in SAAB-Scania Service Bulletin 340–55–027, dated June 28, 1990, or Revision 1, October 10, 1990.

1. Remove the left and right drag angles and associated shims.

2. Perform a visual and dye penetrant inspections of the drag angle attaching holes; if cracks are found, repair prior to further flight.

3. Install new drag angles and associated shims.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Produce Support, S-581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–6628, AD 90–12–12.

This amendment becomes effective January 16, 1991.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28952 Filed 12–10–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Administrative Functions, Practices, and Procedures

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations concerning administrative inspections which set forth the Drug Enforcement Administration's (DEA) authority to include the recently acquired authority to inspect any person who manufactures, distributes, imports or exports listed chemicals, tableting machines or encapsulating machines. This amendment addresses the DEA's authority regarding the Chemical Diversion and Trafficking Act of 1988 (CDTA).

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret A. Brophy, Deputy Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On October 4, 1989, a notice of proposed rulemaking was published in the **Federal Register** (54 FR 40888). The Administrator of the DEA proposed to amend the regulations concerning administrative inspections to include the authority to inspect persons regulated under the CDTA. The proposed rule provided the opportunity for interested parties to submit comments and objections. One party submitted comments to the proposed rule.

The comments addressed two areas: (1) The DEA has exceeded its inspection authority, and (2) the definition of controlled premises needed clarification. The comments stated that the DEA has attempted to exceed the authority granted by Congress under the CDTA, and recommended revision of the proposed rule and clarification of the definition of controlled premises.

The CDTA establishes a system which requires certain regulated persons to maintain records of specified transactions which involve chemicals listed in the CDTA and transactions with tableting and encapsulating machines. Section 6052 of the CDTA (21 U.S.C. 830 and 21 CFR parts 1310 and 1313) describes the responsibilities of a regulated person to keep and provide records and states that such records "shall be available for inspection and copying by the Attorney General." Similar language is found in the Controlled Substances Act (CSA), which incorporates the CDTA, for persons who handle controlled substances and are registered under 21 U.S.C. 823. Title 21 U.S.C. 827(b) states that a registrant shall keep and make available records for inspection and copying by officers and employees authorized by the Attorney General. Since the language in the CSA pertaining to controlled substances and the language in the CDTA pertaining to chemicals and machines are identical, it is apparent that Congress applied the DEA's existing inspection authority under the CSA to chemicals and machines.

The CSA provides a mechanism for the Attorney General and his designees to conduct administrative inspections of premises where records required to be kept under the CSA are located. This mechanism is outlined in 21 U.S.C. 880. This section authorizes the Attorney General to conduct administrative inspections of controlled premises to ensure the correctness of records. Under the scope of an administrative inspection, 21 U.S.C. 880(b), an inspector can inspect, copy and verify the correctness of required documents to facilitate the carrying out of the Attorney General's functions. With an inspection warrant, the inspector also has the authority to inspect controlled premises, equipment, other substances or materials, containers, labels, and all other things therein, appropriate for verification of documents. To achieve the DEA's objective it is vital that verification be a part of the investigative process. Investigation without verification would nullify the CDTA.

In regard to the second comment, the definition of controlled premises is divided into two areas: 21 U.S.C. 880(a)(1) defines controlled premises as places where records required under the Act are kept or required to be kept. This definition, therefore, includes places where records required under the CDTA are kept or required to be kept, which is the regulated person's place of business where the transaction occurred. Title 21 U.S.C. 880(a)(2) defines controlled premises and pertains to persons registered under 21 U.S.C. 823 to handle controlled substances. This subsection is not applicable to persons regulated under the CDTA. The foregoing explanation fulfills the request that this definition be further clarified.

After reviewing the comments, the DEA has decided to maintain section 1316.03(a) as originally proposed as it has been determined that the original language is quite clear and does not cause confusion on which records are subject to the CDTA requirements.

The Acting Administrator of the Drug Enforcement Administration hereby certifies that this Final Rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the Rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeitures.

For reasons set out in the preamble, part 1316, chapter II, title 21, Code of Federal Regulations is amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316, subpart A, continues to read as follows:

Authority: 21 U.S.C. 822(f), 830(a)(2), 871(b), 880, 958(f), 965.

2. Section 1316.03 is amended by revising paragraph (a) as follows:

§ 1316.03 Authority to make inspections.

* * * * *

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to part 1304 of this chapter, order form records required to be kept pursuant to part 1305 of this chapter, prescription and distribution records required to be kept pursuant to part 1306 of this chapter, records of listed chemicals, tableting machines, and encapsulating machines required to be kept pursuant to part 1310 of this chapter, import/export records of listed chemicals required to be kept pursuant to part 1313 of this chapter, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

* * * * *

Dated: October 16, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-28922 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8322]

RIN 1545-AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to denial of deductions and credits to nonresident alien individuals and foreign corporations that do not file true and accurate income tax returns by the time limits set forth in the final regulations. These regulations are necessary so that the income tax returns will be filed in a timely manner.

EFFECTIVE DATE: The amendments are effective July 31, 1990, for taxable years ending after July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R(INTL-74-86) (202-566-3452, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations at §§ 1.874-1 and 1.882-4 have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545-0089 and 1545-0126. This information is required by the Internal Revenue Service to allow it to properly determine the taxable income of and tax owed by nonresident alien individuals and foreign corporations. The likely respondents are nonresident alien individuals and foreign corporations. The burdens on the nonresident alien individuals and foreign corporations are the burdens associated with Forms 1040NR and 1120F.

Comments concerning those burdens and suggestions for reducing those burdens should be directed to the Office of Management and Budget, Paperwork Reduction Project (1545-0089 and 1545-0126), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, WAshington, DC 20224.

Background

On July 31, 1989, (54 FR 31545) the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 874 and 882 of the Internal Revenue Code. Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The comments and revisions are discussed below.

Explanation of Provisions

The proposed regulations at § 1.874-1(b) with regard to nonresident alien individuals and § 1.882-4(a)(3) with regard to foreign corporations provided that under sections 874(a) and 882(c)(2) otherwise allowable deductions and credits will be allowed only if a return is filed by the time limits as set forth in those regulations.

Under the proposed regulations, whether a return has been filed on a timely basis for purposes of section 874(a) or 882(c)(2) is dependent upon whether the nonresident alien individual or foreign corporation has filed a return for the taxable year immediately preceding the taxable year for which deductions or credits are claimed. If a return was filed for the immediately preceding taxable year, a return for the current taxable year must be filed within one year of the extended due date, as set forth in sections 6072 and 6081, for filing that return. If a return has not been filed for the immediately preceding taxable year, or if the current year is the first year for which a return is required under section 874(a) or 882(c)(2), the current year's return must have been filed no later than the earlier of the date which is one year after the extended due date, as set forth in sections 6072 and 6081, for filing that return or the date the Internal Revenue Service mails a notice informing the taxpayer that a tax return has not been filed and that no deductions or credits may be claimed.

Commenters questioned the validity of the filing deadlines as set forth in the proposed regulations. The filing deadlines were not eliminated in the final regulations, however, since the statute clearly provides for the denial of deductions and credits if returns are not filed in a timely manner. This requirement is justified because of different administrative and compliance concerns with regard to nonresident alien individuals and foreign corporations.

In response to a commenter's suggestion, the final regulations modify the filing deadline for the first taxable year for which a return is required to be filed. Under the final regulations, the filing deadline for those returns will be the same as if a return was filed for the immediately preceding taxable year.

A new § 1.882–4(a)(3)(v) provides that in order to be eligible for any deductions and credits for purposes of computing the accumulated earnings tax of section 531, a foreign corporation must file a true and accurate return, on a timely basis, in the manner as set forth in paragraphs (a) (2) and (3) of that section.

In response to commenters' suggestions, several provisions of the proposed regulations have been clarified. The references to the filing deadlines have been clarified so as to set forth a specific number of months (i.e., 16 months for nonresident alien individuals and 18 months for foreign corporations) rather than referring, as in the proposed regulations, to one year after the extended due date. Paragraph (b)(3) of § 1.874–1 clarifies that the filing deadlines of that paragraph apply to a nonresident alien individual who has a permanent establishment or fixed base in the United States. Likewise, as provided in § 1.882–4(a)(3)(iii), the filing deadlines also apply to a foreign corporation which has a permanent establishment in the United States. Sections 1.874–1(b)(4) and 1.882–4(a)(3)(iv) have been clarified to provide that neither deductions nor credits need be reported on the protective returns filed pursuant to those sections.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business. The collections of information contained in this document, for which no substantive changes were proposed, are currently approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB Control Nos. 1545–0089 and 1545–0126).

List of Subjects in 26 CFR §§ 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The heading and text for § 1.874–1 are revised to read as follows:

§ 1.874–1 Allowance of deductions and credits to nonresident alien individuals.

(a) *Return required.* A nonresident alien individual shall receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, only if the nonresident alien individual timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of the income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States by the nonresident alien individual. No provision of this section (other than paragraph (c)(2)) shall be construed, however, to deny the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii). In addition, notwithstanding the requirement that a nonresident alien must file a timely return in order to receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, the nonresident alien individual may, for purposes of determining the amount of tax to be withheld under section 1441 from remuneration paid for labor or personal services performed within the United States, receive the benefit of the deduction for personal exemptions provided in section 151, to the extent allowable under section 873(b)(3) and paragraph (c)(3) of § 1.873–1, or in any applicable tax convention, by filing a claim therefor with the withholding agent. The amount of the deduction for the personal exemptions and the amount of the tax to be withheld under those circumstances shall be determined in accordance with paragraph (e)(2) of § 1.1441–3. The deductions and credits allowed such a nonresident alien individual electing under a tax convention to be subject to tax on a net basis may be obtained by filing a return of income in the manner prescribed in the regulations (if any) under the tax convention or under any other guidance issued by the Commissioner.

(b) *Filing deadline for return*—(1) *General rule.* As provided in paragraph (a) of this section, for purposes of computing the nonresident alien individual's taxable income for any taxable year, otherwise allowable deductions and credits will be allowed only if a true and accurate return for that taxable year is filed by the nonresident alien individual on a timely basis. For taxable years of a nonresident alien individual ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the nonresident alien individual filed a return for the taxable year immediately preceding the current taxable year. If a return was filed for that immediately preceding taxable year, or if the current taxable year is the first taxable year of the nonresident alien individual for which a return is required to be filed, the required return for the current taxable year must be filed within 16 months of the due date, as set forth in section 6072 and the regulations under that section, for filing the return for the current taxable year. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the nonresident alien individual for which a return is required to be filed) must have been filed no later than the earlier of the date which is 16 months after the due date, as set forth in section 6072, for filing the return for the current taxable year or the date the Internal Revenue Service mails a notice to the nonresident alien individual advising the nonresident alien individual that the current year tax return has not been filed and that no deductions or credits (other than those provided in sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) may be claimed by the nonresident alien individual.

(2) *Waiver.* The filing deadlines set forth in paragraph (b)(1) of this section may be waived by the District Director or Assistant Commissioner (International) in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the nonresident alien individual.

(3) *Income tax treaties.* A nonresident alien individual who has a permanent establishment or fixed base, as defined in an income tax treaty between the United States and the country of residence of the nonresident alien individual, in the United States is subject to the filing deadlines as set forth in paragraph (b)(1) of this section.

(4) *Protective return.* If a nonresident alien individual conducts limited activities in the United States in a taxable year which the nonresident alien individual determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in sections 871(b) and 864 (b) and (c) and the regulations under those sections, the nonresident alien individual may nonetheless file a return for that taxable year on a timely basis under paragraph (b)(1) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the nonresident alien individual is not required to report any gross income as effectively connected with a United States trade or business or any deductions or credits but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (b)(4). If the nonresident alien individual determines that part of the activities which he or she conducts in the United States in a taxable year gives rise to gross income which is effectively connected with the conduct of a trade or business and part does not, the nonresident alien individual must timely file a return for that taxable year to report the gross income determined to be effectively connected, or treated as effectively connected, with the conduct of that trade or business within the United States and the deductions and credits attributable to the gross income. In addition, the nonresident alien individual should attach to that return the statement described in this paragraph (b)(4) with regard to the other activities. The nonresident alien individual may follow the same procedure if the nonresident alien individual determines initially that he or she has no United States tax liability under the provisions of an applicable income tax treaty. In the event the nonresident alien individual relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax to which that income is subject, disclosure may be required pursuant to section 6114

(c) *Allowed deductions and credits*—(1) *In general.* Except for losses of property located within the United States, charitable contributions and personal exemptions (see section 873(b)), deductions are allowed to a nonresident alien individual only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of the nonresident alien individual's trade or business in the United States. Other than credits allowed by sections 31, 32, 33, 34, and 852(b)(3)(D)(ii), the nonresident alien individual is entitled to credits only if they are attributable to effectively connected income. See paragraph (a) of this section for the requirement that a return be timely filed. Except as provided by section 906, a nonresident alien individual shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(2) *Verification.* At the request of the Internal Revenue Service, a nonresident alien individual claiming deductions from gross income which is effectively connected or treated as effectively connected, with the conduct of a trade or business in the United States and credits attributable to that income must furnish at the place designated pursuant to § 301.7605-1(a) information sufficient to establish that the nonresident alien individual is entitled to the deductions and credits in the amounts claimed. All information must be furnished in a form suitable to permit verification of the claimed deductions and credits. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a nonresident alien individual fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions and credits in full or in part.

(d) *Return by Internal Revenue Service.* If a nonresident alien individual has various sources of income within the United States, so that from any one source, or from all sources combined, the amount of income shall call for the assessment of a tax greater than that withheld at the source in the case of that individual, and a return of income has not been filed in the manner prescribed by subtitle F, including the filing deadlines set forth in paragraph (b)(1) of this section, the Internal Revenue Service shall:

(1) Cause a return of income to be made,

(2) Include on the return the income described in §§ 1.871-7 or § 1.871-8 of that individual from all sources concerning which it has information, and

(3) *Assess the tax.* If the nonresident alien individual is not engaged in, or does not receive income that is treated as being effectively connected with, a United States trade or business and § 1.871-7 is applicable, the tax shall be assessed on the basis of gross income without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more sources of income within the United States. If the nonresident alien individual is engaged in a United States trade or business or is treated as having effectively connected income and § 1.871-8 applies, the tax on the income of the nonresident alien individual that is not effectively connected, or treated as effectively connected with the

conduct of a United States trade or business shall be assessed on the basis of gross income, determined in accordance with the rules of § 1.871–7, without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States. Tax on income that is effectively connected, or treated as effectively connected, with the conduct of a United States trade or business shall be assessed in accordance with either section 1, 55 or 402(e)(1) without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States.

(e) *Alien resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands during the entire taxable year. *See* section 876 and § 1.876–1.

Par. 3. The heading and text for § 1.882–4 are revised to read as follows:

§ 1.882–4 Allowance of deductions and credits to foreign corporations.

(a) *Foreign corporations*—(1) *In general.* A foreign corporation that is engaged in, or receives income treated as effectively connected with, a trade or business within the United States is allowed the deductions which are properly allocated and apportioned to the foreign corporation's gross income which is effectively connected, or treated as effectively connected, with its conduct of a trade or business within the United States. The foreign corporation is entitled to credits which are attributable to that effectively connected income. No provision of this section (other than paragraph (b)(2)) shall be construed to deny the credits provided by sections 33, 34 and 852(b)(3)(D)(ii) or the deduction allowed by section 170.

(2) *Return necessary.* A foreign corporation shall receive the benefit of the deductions and credits otherwise allowed to it with respect to the income tax, only if it timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of its taxable income which is effectively connected, or treated as effectively connected, for the taxable year with the conduct of a trade or business in the United States by that corporation. The deductions and credits allowed such a corporation electing under a tax convention to be subject to tax on a net basis may be obtained by filing a return of income in the manner prescribed in the regulations (if any) under the tax convention or under any other guidance issued by the Commissioner.

(3) *Filing deadline for return.* (i) As provided in paragraph (a)(2) of this section, for purposes of computing the foreign corporation's taxable income for any taxable year, otherwise allowable deductions (other than that allowed by section 170) and credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)) will be allowed only if a return for that taxable year is filed by the foreign corporation on a timely basis. For taxable years of a foreign corporation ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the foreign corporation filed a return for the taxable year immediately preceding the current taxable year. If a return was filed for that immediately preceding taxable year, or if the current taxable year is the first taxable year of the foreign corporation for which a return is required to be filed, the required return for the current taxable year must be filed within 18 months of the due date as set forth in section 6072 and the regulations under that section, for filing the return for the current taxable year. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the foreign corporation for which a return is required to be filed) must have been filed no later than the earlier of the date which is 18 months after the due date, as set forth in section 6072, for filing the return for the current taxable year or the date the Internal Revenue Service mails a notice to the foreign corporation advising the corporation that the current year tax return has not been filed and that no deductions (other than that allowed under section 170) or credits (other than those allowed under sections 33, 34 and 852(b)(3)(D)(ii)) may be claimed by the taxpayer.

(ii) The filing deadlines set forth in paragraph (a)(3)(i) of this section may be waived by the District Director or Assistant Commissioner (International), in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the foreign corporation.

(iii) A foreign corporation which has a permanent establishment, as defined in an income tax treaty between the United States and the foreign corporation's country of residence, in the United States is subject to the filing deadlines set forth in paragraph (a)(3)(i) of this section.

(iv) If a foreign corporation conducts limited activities in the United States in a taxable year which the foreign corporation determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in sections 882(b) and 864 (b) and (c) and the regulations under those sections, the foreign corporation may nonetheless file a return for that taxable year on a timely basis under paragraph (a)(3)(i) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the foreign corporation is not required to report any gross income as effectively connected with a United States trade or business or any deductions or credits but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (a)(3). If the foreign corporation determines that part of the activities which it conducts in the United States in a taxable year gives rise to gross income which is effectively connected with the conduct of a trade or business and part does not, the foreign corporation must timely file a return for that taxable year to report the gross income determined to be effectively connected, or treated as effectively connected, with the conduct of the trade or business within the United States and the deductions and credits attributable to the gross income. In addition, the foreign corporation should attach to that return the statement described in this paragraph (b)(3) with regard to the other activities. The foreign corporation may follow the same procedure if it determines initially that it has no United States tax liability under the provisions of an applicable income tax treaty. In the event the foreign corporation relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax, disclosure may be required pursuant to section 6114.

(v) In order to be eligible for any deductions and credits for purposes of computing the accumulated earnings tax of section 531, a foreign corporation must file a true and accurate return, on a timely basis, in the manner as set forth in paragraph (a) (2) and (3) of this section.

(4) *Return by Internal Revenue Service.* If a foreign corporation has various sources of income within the United States and a return of income has not been filed, in the manner prescribed by subtitle F, including the filing deadlines set forth in paragraph (a)(3) of this section, the Internal Revenue Service shall:

(i) Cause a return of income to be made,

(ii) Include on the return the income described in § 1.882–1 of that corporation from all sources concerning which it has information, and

(iii) Assess the tax and collect it from one or more of those sources of income within the United States, without allowance for any deductions (other than that allowed by section 170) or credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

If the income of the corporation is not effectively connected with, or if the corporation did not receive income that is treated as being effectively connected with, the conduct of a United States trade or business, the tax will be assessed under § 1.882–1(b)(1) on a gross basis, without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)). If the income is effectively connected, or treated as effectively connected, with the conduct of a United States trade on business, tax will be assessed in accordance with either section 11, 55 or 1201(a) without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

(b) *Allowed deductions and credits*—(1) *In general.* Except for the deduction allowed under section 170 for charitable contributions and gifts (see section 882(c)(1)(B)), deductions are allowed to a foreign corporation only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States. Deductible expenses (other than interest expense) are properly allocated and apportioned to effectively connected gross income in accordance with the rules of § 1.861–8. For the method of determining the interest deduction allowed to a foreign corporation, see § 1.882–5. Other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii), the foreign corporation is entitled to credits only if they are attributable to effectively connected income. See paragraph (a)(2) of this section for the requirement that a return be filed. Except as provided by section 906, a foreign corporation shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(2) *Verification.* At the request of the Internal Revenue Service, a foreign corporation claiming deductions from gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States or credits which are attributable to that income must furnish at the place designated pursuant to § 301.7605–1(a) information sufficient to establish that the corporation is entitled to the deductions and credits in the amounts claimed. All information must be furnished in a form suitable to permit verification of claimed deductions and credits. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a foreign corporation fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions and credits in full or in part. For additional filing requirements and for penalties for failure to provide information, see also section 6038A.

Dated: November 13, 1990.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–28772 Filed 12–10–90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD-670-FC]

Medicare Program; Hospice Care Amendments: Medicare

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

ACTION: Final rule with comment period.

SUMMARY: These rules amend the hospice care provisions on physician certification of terminal illness—

- To allow up to 8 days to obtain written certification of terminal illness, provided oral certification is obtained within 2 days after the initial period of care begins; and
- To modify the certification statement which, in its previous form, was shown to discourage physicians from certifying terminal illness and thereby discourage hospice participation in Medicare.

These changes are necessary—

- To conform HCFA rules to amendments made by section 6005(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89); and
- To carry out the recommendations of the General Accounting Office (GAO), aimed at encouraging greater participation of hospices in the Medicare program.

These rules also simplify and clarify other hospice policies, remove outdated content, and correct cross-references.

DATES: *Effective date:* Except for § 418.22, which requires OMB approval before it becomes effective, the rules are effective January 10, 1991.

Comment date: We will consider comments received by February 11, 1991.

ADDRESSES: Please address written comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-670-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If your prefer, you may deliver your comments to: Room 309—Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC. or Room 132, East High Rise Building, 6325 Security Blvd., Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept fascimile (FAX) copies of comments.

In commenting, please refer to file code BPD-670-FC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks from today, in Room 309G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday from 8:30 a.m. to 5 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: John J. Thomas (301) 966-4623.

SUPPLEMENTARY INFORMATION:

I. Background

Hospice care is an alternative way of treating individuals who are terminally ill. The emphasis in hospice care is on controlling pain and providing services that enable the patient to remain at home as long as possible and to continue normal activities to the extent feasible. Hospices provide social and psychological, as well as medical services. Hospice staff work with the family—helping them to deal with the illness and the anticipated death of the patient. Hospices afford those who are caring for a patient occasional brief periods of respite by providing inpatient care for the beneficiary.

Hospice care emerged in this country around 1975. Medicare coverage of hospice care was established by section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, commonly referred to as "TEFRA"). Since 1983, Medicare beneficiaries certified as terminally ill have had the option of electing hospice care in lieu of most other Medicare-covered services.

A. Statutory Amendment

Section 6005(b) of OBRA '89 (Pub. L. 101-239) amends section 1814(a)(7)(A)(i) of the Act, effective for services furnished on or after January 1, 1990—

- To require that the initial physician certifications of terminal illness be in writing; and
- To allow up to 8 days for the written certifications, provided oral certifications are made within 2 days after the first 90-day period of care begins.

B. Results of GAO Study

After a comprehensive study of the Medicare hospice benefit, GAO found that many physicians were concerned about the statement that they were required to use to certify terminal illness. That statement seemed to require certainty of prognosis, whereas the establishment of long term prognoses always involves some uncertainty. The GAO suggested that physician reluctance to provide certification could be overcome by modifying the statement to incorporate the concept that the certification is based on general knowledge of the normal course of the illness and not on certain knowledge of the patient's prognosis.

II. Changes in the Regulations

1. We have revised § 418.22 of the Medicare rules to reflect both the statutory change and the recommendation that grew out of the GAO study. Specifically—

- Revised paragraph (a) allows up to 8 days after the initial period of care begins for the hospice to obtain written certifications of terminal illness, provided the hospice obtains oral certification within 2 days.
- Paragraph (b) sets forth the revised certification statement.
- Revised paragraph (c) clarifies which physicians must provide certification for the initial and subsequent periods of care.
- Paragraph (d) requires that hospice staff make appropriate entries in the patient's medical record as soon as they receive oral certifications, and file written certification in that record.

2. We have taken advantage of this opportunity to clarify and simplify the hospice provisions through the following non-substantive changes:

- Undesignated center headings are converted to subpart headings to facilitate references, and several section headings are revised to reflect more accurately the content of the sections.
- Four definitions are removed as unnecessary in these rules. "Carrier" and "Intermediary" are already in the basic definitions at the beginning of the HCFA rules. "Election period" is a matter of rules rather than definition, and this is provided in the new § 418.21. "Freestanding hospice" was used only in § 418.100 and has been removed as erroneous and misleading, since the requirements of that section apply to all hospices.
- Three definitions have been revised. The previous definition of "Hospice" limited the term to facilities that met all the conditions in part 418. We need a broader definition, since the term is also used in these rules for facilities that do not yet—or no longer—meet all those conditions. The revision of "Representative" is purely editorial, to provide better word order. The revision of "Terminally ill" conforms it to the change made in the required certification statement.
- A new § 418.21 is inserted to substitute for the definition of "Election period" and to set forth the rules for the three periods of hospice care that are available.
- Sections 418.24 and 418.28 are revised to improve readability and combine like requirements within sections.
- Section 418.26 is removed and its content is incorporated in § 418.24.
- Section 418.32 is removed as outdated, and outdated content is removed from §§ 418.98 and 418.204(b)(3).
- Several sections are amended to refer to the newly designated or redesignated subparts.

III. Waiver of Proposed Rulemaking

We ordinarily provide notice and opportunity for public comment before issuing final regulations. The notice of proposed rulemaking (NPRM) identifies the legal authority or the administrative necessity for the proposed rule. It also discusses the substance of, and the reasons for, the particular provisions being proposed. This procedure can be waived when an agency finds that it is impracticable, unnecessary, or contrary to the public interest, and incorporates in a final rule a finding of good cause for waiver.

In this particular case, we find that there is good cause to waive NPRM as unnecessary and contrary to the public interest.

We find that notice and opportunity for comment are unnecessary because—

- The statutory amendment is so clear and specific as to leave no room for alternative interpretations.
- Previous rules already require that certifications be in writing; therefore, implementation of the new law actually eases requirements rather than imposing new ones.
- The simplification and clarification of several sections involve no substantive changes.

We also find that it would be contrary to the public interest (as well as the interest of the program) to delay modification of a certification statement that has been shown to discourage the necessary physician certification, and thereby to discourage the participation of hospices in the Medicare program.

Although this rule is final, we will consider any comments received within the time frames specified under "DATES", above. Because of the large number of comments we receive in response to **Federal Register** publication, we cannot respond to them individually. However, if we revise these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, a rule likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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 export markets.

Since this rule does not meet any of the E.O. 12291 criteria, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act (RFA)

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider hospices to be small entities.

This final rule extends from 2 to 8 the number of days within which hospices must obtain physician certification of terminal illness, provided the hospice obtains an oral certification within 2 days after the initial period of care begins. This extension should ease the burden on hospices and physicians.

Currently, if a hospice is unable to obtain a written certification within 2 days, the intermediary denies payment for all days of service from the day of admission to the date of certification. With the extension provided under the revised rules (which reflects recommendations made during the GAO survey, as well as the change in the law), hospices should be able to ensure full payment for services furnished to Medicare beneficiaries. This will more than compensate for the very small impact that may result from the requirement that hospice staff note the oral certifications in the patient's medical record.

The GAO report indicated that, as of September, 1989, there were 1,700 hospices in the United States, of which only 35 percent were participating in Medicare. We believe that—

- The extension of time for obtaining written certification of terminal illness will have a favorable economic impact on participating hospices and thus ensure that they will continue to furnish services to Medicare beneficiaries; and
- The cited economic advantage, plus the revised certification statement, which makes it easier to obtain the required physician certifications, will encourage additional hospices to participate in the Medicare program.

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. Since this rule applies only to hospices, we have determined and the Secretary certifies that the rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Paperwork Reduction Act

Sections 418.22 and 418.24 of these rules contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The cited sections had been approved under OMB control number 0938–0246.

Since the certification statement set forth in § 418.22 has been revised, it is again subject to OBM review. When OMB approves the revised statement, we will publish a **Federal Register** notice to that effect.

If you comment on the revised certification statement, please send a copy of that comment 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, Desk Officer for HCFA.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

PART 418—(AMENDED)

In 42 CFR chapter IV, part 418 is amended as set forth below:

A.1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1815(e), 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395g(e), 1395x–1395cc, and 1395hh).

2. The table of contents is revised to read as follows:

PART 418—HOSPICE CARE

3. Subparts D, E, and F are redesignated as subparts F, G, and H, respectively.

B. Subpart A is amended as follows:

Subpart A—General Provisions and Definitions

§ 418.3 [Amended]

In § 418.3, the definitions of "*Carrier*", "*Election period*", "*Freestanding hospice*", and "*Intermediary*" are removed and the definitions of "*Hospice*", "*Representative*", and "*Terminally ill*" are revised to read as follows:

Hospice means a public agency or private organization or subdivision of either of these that—is primarily engaged in providing care to terminally ill individuals.

* * * * *

Representative means an individual who has been authorized under State law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

* * * * *

Terminally ill means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.

C. Subpart B is amended as follows:

Subpart B—Eligibility, Election and Duration of Benefits

1. A new § 418.21 is added, to read as follows:

§ 418.21 Duration of hospice care coverage—Election periods.

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

(1) An initial 90-day period.

(2) A subsequent 90-day period.

(3) A subsequent 30-day period.

(b) The periods of care are available in the order listed and may be elected separately at different times.

§ 418.22 [Amended]

2. Section 418.22 is revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) *Timing of certification*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in § 418.21, even if a single election continues in effect for two or three periods, as provided in § 418.24(c).

(2) *Basic requirement.* Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification no later than two calendar days after the period begins.

(3) *Exception.* For the initial 90-day period, if the hospice cannot obtain the written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

(b) *Content of certification.* The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.

(c) *Sources of certification.* (1) For the initial 90-day period, the hospice must obtain written certification statements (and oral certification statements if required under paragraph (a)(3) of this section) from—

(i) The medical director of the hospice or the physician member of the hospice interdisciplinary group; and

(ii) The individual's attending physician if the individual has an attending physician.

(2) For subsequent periods, the only requirement is certification by one of the physicians listed in paragraph (c)(1)(i) of this section.

(d) *Maintenance of records.* Hospice staff must—

(1) Make an appropriate entry in the patient's medical record as soon as they receive an oral certification; and

(2) File written certifications in the medical record.

§ 418.24 [Amended]

3. Section 418.24 is revised to read as follows:

§ 418.24 Election of hospice care.

(a) *Filing an election statement.* An individual who meets the eligibility requirement of § 418.20 may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative (as defined in § 418.3) may file the election statement.

(b) *Content of election statement.* The election statement must include the following:

(1) Identification of the particular hospice that will provide care to the individual.

(2) The individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness.

(3) Acknowledgement that certain Medicare services, as set forth in paragraph (d) of this section, are waived by the election.

(4) The effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement.

(5) The signature of the individual or representative.

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice; and

(2) Does not revoke the election under the provisions of § 418.28.

(d) *Waiver of other benefits.* For the duration of an election of hospice care, an individual waives all rights to Medicare payments for the following services:

(1) Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice).

(2) Any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or that are equivalent to hospice care except for services—

(i) Provided by the designated hospice;

(ii) Provided by another hospice under arrangements made by the designated hospice; and

(iii) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

(e) *Re-election of hospice benefits.* If an election has been revoked in accordance with § 418.28, the individual (or his or her representative if the individual is mentally or physically incapacitated) may at any time file an election, in accordance with this section, for any other election period that is still available to the individual.

§ 418.26 [Removed]

4. Section 418.26 is removed.

§ 418.32 [Removed]

5. Section 418.32 is removed.

D. Subpart C is amended as set forth below:

1. The subpart heading is revised and § 418.50(a) is revised, to read as follows:

Subpart C—Conditions of Participation—General Provisions and Administration

§ 418.50 Condition of participation—General provisions.

(a) *Standard: Compliance.* A hospice must maintain compliance with the conditions of this subpart and subparts D and E of this part.

* * * * *

2. The undesignated center heading "Administration" is removed.

3. The undesignated center heading "Core Services" is revised to read:

Subpart D—Conditions of Participation: Core Services

§ 418.80 [Amended]

4. In § 418.80, the following changes are made:

a. The section heading is revised to read:

§ 418.80 Condition of participation: Furnishing of core services.

b. The phrase "§§ 418.82 through 418.88", wherever it appears, is changed to "this subpart".

5. The undesignated center heading "Other Services" is revised to read:

Subpart E—Conditions of Participation: Other Services

§ 418.90 [Amended]

6. In § 418.90, the following changes are made:

a. The section heading is revised to read:

§ 418.90 Condition of participation: Furnishing of other services.

b. The phrase "§§ 418.92 to 418.98" is changed to "this subpart".

§ 418.94 [Amended]

7. In § 418.94, the following changes are made:

a. In the introductory text to the section, "§ 405.1227" is changed to "§ 484.36".

b. In paragraph (b), "§ 405.1227(a)" is changed to "§ 484.36(c)".

§ 418.98 [Amended]

8. In § 418.98, the following changes are made:

a. In paragraphs (a)(2) and (b)(2), "(f)" is changed to "(e)".

b. Paragraph (c) is revised to read as follows:

(c) *Standard: Inpatient care limitation.* The total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in any 12-month period preceding a certification survey in a particular hospice may not exceed 20 percent of the total number of hospice days for this group of beneficiaries.

9. The undesignated center heading "Freestanding Hospice with Inpatient Unit" is removed.

§ 418.100 [Amended]

10. In § 418.100, the following changes are made:

a. The section heading is revised to read:

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

b. The word "freestanding" is removed from the introductory text.

E. Newly redesignated subpart F is amended as follows:

§ 418.202 [Amended]

1. In § 418.202, in paragraph (e), "§ 418.100 (a) and (f)" is changed to "§ 418.202 (a) and (e)".

§ 418.204 [Amended]

2. Section 418.204 is amended by revising paragraph (b)(2) and removing paragraph (b)(3), to read as follows:

§ 418.204 Special coverage requirements.

* * * * *

(b) *Respite care.* (1) Respite care is short-term inpatient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

(2) Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time.

* * * * *

F. Newly redesignated subpart G is amended by revising the subpart heading to read as follows:

Subpart G—Payment for Hospice Care

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance)

Dated: June 5, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-28756 Filed 12-10-90; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 90930-0301]

RIN 0648-AD72

Endangered and Threatened Species: Indus River Dolphin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS has determined that the Indus River dolphin is endangered and should be added to the U.S. List of Endangered and Threatened Wildlife. Scientists estimate the population, which is found mainly in the lower Indus River in Pakistan, at about 500.

In a separate rule published in the Federal Register, the U.S. Fish and Wildlife Service, which is responsible for maintaining the List of Endangered and Threatened Species, is adding the Indus River dolphin to the list.

EFFECTIVE DATE: January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Based on a review of the status of the Indus River dolphin (*Platanista minor*), NMFS determined that this species is endangered and should be added to the U.S. List of Threatened and Endangered Species under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et. seq.* NMFS published its initial determination in a proposed rule on November 9, 1989 (54 FR 47094). In April 1987, NMFS notified the public of its intent to review the status of this species, and also included the Indus River dolphin in its list of candidate species (August 31, 1988; 53 FR 33516).

The status of the Indus River dolphin was reviewed by NMFS and Fish and Wildlife Service scientists, and the determination that the species is endangered was made using the best scientific information available. The status review concludes that the species is endangered because of the present destruction, modification, and curtailment of its habitat, overutilization of the species for commercial purposes, and inadequate existing regulatory mechanisms.

Notification of the Government of Pakistan

NMFS notified the Government of Pakistan of its intention to add this species to the U.S. List of Endangered and Threatened Wildlife. The Government of Pakistan forwarded extracts from two publications on the Indus River dolphin, but did not express any opinion regarding the listing of this species.

Public Comments

The only comment received on the proposed rule was from the Connecticut Cetacean Society International which