[FR Doc. 93–30966 Filed 12–20–93; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

RIN 0905–AC87

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

SUMMARY: This rule amends existing regulations governing the Health Education Assistance Loan (HEAL) program to require lenders to report a borrower's HEAL indebtedness to one or more national credit bureaus after the loan has been fully disbursed; to include hearing procedures prior to termination from the program for lenders, holders, and schools; and to provide authority for schools to withhold services from defaulted HEAL borrowers.

EFFECTIVE DATE: This regulation is effective December 21, 1993.

FOR FURTHER INFORMATION CONTACT: James W. Farrington, D.M.D., Deputy Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–1173.

SUPPLEMENTARY INFORMATION: On October 1, 1990, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the **Federal Register**, (55 FR 40140), a Notice of Proposed Rulemaking (NPRM) to establish performance standards against which school, lender, and holder default rates would be measured and to amend the HEAL regulations to require lenders to report a borrower's HEAL indebtedness to one or more national credit bureaus after the loan has been fully disbursed; to include hearing procedures prior to termination from the program for lenders, holders, and schools; and to provide authority for schools to withhold services from defaulted HEAL borrowers. The public comment period on the proposed regulations closed on November 30, 1990. The Department received 121 public comments on this NPRM from 105 school officials, 10 professional associations, and 6 lenders and holders. The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) established specific performance standards for schools, therefore school performance standards will not be addressed in this final regulation. Performance standards for lenders and holders will be addressed in a separate action. The comments received on the proposed rule and the Department's responses to the comments are discussed below according to the subparts, section numbers, and headings of the HEAL regulations affected.

Subpart D—The Lender and Holder

Section 60.33 Making a HEAL Loan

Twelve respondents opposed paragraph (h) of this section, which would require the lender to report a borrower's HEAL indebtedness to one or more credit bureaus at the time the loan is made. These respondents were concerned about potential problems that could arise due to credit bureaus' unfamiliarity with student loans, and believed that it would be necessary to educate credit bureaus regarding student loans if this provision were to work effectively. For example, respondents indicated that this requirement could lead to a credit report indicating a negative credit rating as a result of a HEAL loan on which no payments were made, when actually the borrower was in a deferment status or was otherwise not expected to be making payments. Thus, the terms and conditions of educational loans would need to be made known to credit bureaus to avoid improper negative credit ratings during grace periods and deferments. While the Department shares this concern, it also believes that the benefits of this proposal, in terms of making creditors fully aware of a borrower's indebtedness and thus helping to prevent overborrowing, are compelling enough to warrant its immediate implementation.

There was also concern regarding the possibility that a borrower's credit rating might be adversely affected by a "technical" default, which occurs when a borrower who qualifies for deferment is placed in default. To distinguish between a "technical" and "true" default, respondents indicated that it would be necessary to have a reliable and user-friendly system of tracking and encouraging borrowers to file deferment forms. In response, the Department notes that it is continuing to pursue approaches for simplifying the deferment notification process to avoid "technical" defaults. However, it must also be noted that the responsibility for notifying the lender or holder of deferment activities continues to rest with the borrower, and thus it is ultimately the borrower's responsibility if he or she is placed in default due to failure to notify the lender or holder of deferment eligibility. A so-called "technical" default is, in truth, a legal default in that the borrower has breached the contractual requirement to either begin repayment or request a deferment by mailing the appropriate forms. In these instances, the borrower generally can resolve the default in a satisfactorily manner by providing the proper deferment documentation to the lender or holder.

Numerous respondents stated that the proposal does not indicate whether reporting to credit bureaus is to occur after the initial or final loan disbursement and offered various suggestions in this regard. Two commenters suggested that reporting should occur within 120 days after the loan is fully disbursed rather than when the loan is initially made, since borrowers may reduce the original loan amount or return the second disbursement. This approach would minimize the reporting of erroneous data, spare borrowers the problems and hardships of incorrect reports, and save lenders the expense of costly manual corrections. Other suggestions were to report no sooner than the beginning of the grace period or closer to the time repayment is to begin. The Department agrees that it would be appropriate to delay reporting until after the loan is fully disbursed, and believes that 120 days is an adequate amount of time to allow for this reporting to be done. However, the Department does not favor delaying reporting until the beginning of the grace period or repayment period, since it is likely that a borrower may incur consumer debt during this time that should be granted by a creditor with full knowledge of the borrower's HEAL indebtedness. Accordingly, the provision in paragraph (h) of this section has been modified to clarify that reporting must occur no later than 120 days after the date that the lender makes the final disbursement on each loan.

One respondent stated that the requirement should specify that the reporting must be to national, rather than local, credit bureaus. The Department agrees and has amended this provision in paragraph (h) of this section as well.

Section 60.43 Limitation, Suspension, or Termination of the Eligibility of a HEAL Lender or Holder

Five respondents opposed this section, which would revise the procedures for limiting, suspending, or terminating the eligibility of a HEAL lender or holder. Of these, three respondents indicated that it seemed unnecessarily harsh for a hearing to be denied at the discretion of the Secretary, and that the right to a hearing should not be contingent upon a determination by the Secretary that a hearing is justified. This concern focused on a belief that the provision was proposing to eliminate due process. One respondent stated that the existing procedures followed by the Department of Education (ED) for the Federal Stafford Loan program were better suited to HEAL. In response, the Department clarifies that these procedures do not eliminate due process, but merely assure that the hearing process is limited to cases where there are factual issues in dispute. If such issues cannot be presented, there is no basis for conducting a hearing.

Three respondents suggested that a mechanism such as a registered letter or certified mail with a return receipt be used in the notification process to assure that the document is received, especially given the short time period within which a reply is required. The Department notes that, although this was not specifically stated in the proposed provision, certified mail is routinely used in other departmental student aid programs when termination is pending, and will be used for the HEAL program as well. However, because of the concerns expressed, the provision in the introductory text of paragraph (b) of this section, has been amended to state that certified mail will be used to notify a lender or holder when termination is pending. (A similar amendment has been made to § 60.60(b) relative to notifying any school subject to termination.)

One respondent stated that the timeliness and location of the hearing should be studied further. In response, the Department has found that these timeframes have worked effectively in the past. With regard to location, the Department's resources do not permit it to hold hearings outside the Washington, DC, metropolitan area. However, in some cases an Administrative Law Judge may be able to try a case without oral argument or through telephone conferences.

One respondent asked whether schools would be notified of a lender's pending termination, to provide them with time to seek alternative lenders and to review the lender's handling of their accounts as it relates to the default issue. The Department notes that schools can obtain information on a lender's status at any time by contacting the Division of Student Assistance.

Section 60.60 Limitation, Suspension, or Termination of the Eligibility of a HEAL School

Six respondents opposed this section, which would revise the procedures for limiting, suspending or terminating the eligibility of a HEAL school. Many of the concerns expressed were similar to those discussed and addressed under § 60.43 (see above), which proposed a similar provision for lenders and holders. Most concerns focused on a perception that this provision gives the Department too much control over the hearing process. Respondents suggested, for example, that schools (rather than the Department) should determine whether a hearing is appropriate, or that any party which submits a request and summary or arguments should be granted a hearing. The Department clarifies that the provision is not designed to arbitrarily allow the Department to deny a hearing, but merely assures when a hearing is granted that there are substantive and relevant issues in dispute that warrant a hearing.

One respondent stated that schools should be allowed to comment on the procedures to be followed in the hearing process. In response, the Department clarifies that the hearing would be handled in accordance with existing standard procedures for the Health Professions Student Loan and Nursing Student Loan programs and are not being established specifically for the HEAL program.

Two respondents requested that the Department provide schools with information regarding their HEAL borrowers, with one asking for quarterly status reports, and the other insisting that the Department provide schools with a report which shows the accounts used in calculating the default rates, so that the school can verify that the default rate is accurate. The Department notes that it currently provides schools with reports listing the status of their HEAL borrowers on a regular basis, and will work with schools to assure that they have appropriate data on their HEAL borrowers. It also provides schools on an annual basis a list of all loans that comprise their annual default rate and the calculation used to determine their default rate.

As an alternative to termination, one respondent suggested that schools that fail to meet the standard be given the option of higher interest rates, penalties or increased premiums. In response, the Department notes that the Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) established school performance standards, which include different levels of risk and penalties and higher insurance premiums. Termination procedures are addressed in this final regulation.

One respondent questioned what effect a previous HEAL audit would have on a hearing if, for example, the school had complied with all findings. The Department notes that, while audit results could be used by the school as an indication of the effectiveness of its management activities, it would still be necessary for the school to demonstrate compliance with the HEAL regulations to avoid the penalties of non-compliance.

Section 60.61 Responsibilities of a HEAL School

Fifty-one respondents opposed paragraph (d) of this section, which would require that a school withhold services, including, but not limited to, academic transcripts, financial aid transcripts, and alumni services, from a defaulted HEAL borrower, except in instances where the borrower has filed for bankruptcy.

Nine respondents asserted that withholding academic transcripts would be counterproductive, in that it would make it more difficult for a defaulted graduate to secure gainful employment from which repayments could be initiated, or to obtain residencies, staff positions, or continuing education. Others indicated that this proposal was not feasible, explaining that State schools have limited control over the release of academic transcripts and that withholding such could violate a defaulter's property rights as guaranteed by the Constitution. Commenters also stated that the withholding of services should be an institutional prerogative rather than a Federal mandate.

Nine respondents questioned their ability, as financial aid office staff, to monitor or withhold alumni services. It was noted that in some cases, part of the alumni services is to offer counseling to student loan borrowers, and that withholding this service could be counterproductive. Some respondents also indicated that the alumni association is sometimes a separate legal entity which does not fall under the control of the school, and that it was beyond the scope of the Department's

authority to suggest withholding such services. Other concerns were as follows: (1) Withholding services on behalf of another entity (i.e., the HEAL lender or holder) exceeds the ordinary fiduciary responsibilities of the school; (2) withholding services based on third party information presents a great risk to the school, which would need indemnification protection holding them harmless in legal action for damages relating to withholding services when the action resulted from incorrect, misleading, or untimely information; and (3) this would not have much impact in reducing defaults, while creating an added burden for schools.

Some respondents suggested that (1) more guidance was needed on specific services to be withheld and penalties of noncompliance, and (2) the provision should be flexible enough to allow for negotiation with the student, since this could drastically affect a borrower's ability to practice.

The Department wants to provide schools with the authority necessary to assist in improving their school default rates and encourage payments on defaulted loans. Withholding services, such as the type of measures which have been proposed, from a HEAL borrower who has defaulted on a HEAL loan received while enrolled in that school, may encourage that borrower to begin repayment on the defaulted loan. However, since schools may determine that there are situations when withholding services would hinder the borrower's ability to repay a HEAL loan, the Department has amended this provision to authorize, rather than require, schools to withhold services from defaulted HEAL borrowers. This will allow each school to determine how to implement this provision in a manner that will be most beneficial to its efforts to reduce HEAL defaults. The Department clarifies that, prior to this regulation the HEAL regulations were silent on this issue, thereby necessitating the school to depend upon State law. Schools interested in withholding services of the type proposed had to consult their own legal counsel to determine what actions, if any, were permissible under State law. Since Federal regulations supersede State law, this should no longer be necessary.

Respondents suggested that once the borrower makes satisfactory repayment arrangements, services should be restored, so that borrowers would have incentive to remedy the default. The Department agrees that services should be restored once the borrower provides evidence to the school that a default has been satisfactorily resolved. The provision has been amended to reflect this.

Eleven respondents stated that the requirement to withhold financial aid transcripts conflicted with ED prohibition against withholding a financial aid transcript from a student. Under the ED requirements, the financial aid transcript must be released but must indicate that the student is in default. Other respondents were concerned that some State licensing boards require a copy of the academic transcript to take State boards, and schools should be permitted to release the transcript for this purpose, with a statement on the transcript indicating the borrower's default status. In response to these comments, the Department has deleted the requirement to withhold financial aid transcripts and has made the withholding of academic transcripts optional. In addition, the Department concurs that academic and financial aid transcripts, when released, must indicate the default status of the borrower. The provision has been amended accordingly.

Two respondents stated that this would be an administrative nightmare to police, since the school is not normally the lender and does not receive timely notification of a borrower's default status. Another respondent suggested that the Department must assure that schools are notified of defaults in a timely manner. In response to concerns regarding timely notification of defaults, the Department notes that schools are sent copies of the Department's second preclaims letter, which informs them that a borrower is in default. In addition, the Department will continue to work on improving communication with schools to assure timely notification of the status of HEAL borrowers. Nevertheless, it will be the defaulted borrower's responsibility to provide the school with documentation from the lender, holder, or Department when a default has been resolved.

Six respondents requested specific guidance regarding whether this provision is consistent with or preempts existing collection standards established under the Fair Debt Collection Practices Act (FDCPA). The Department notes that this activity is not under the purview of the Fair Debt Collection Practices Act.

Five respondents indicated that the Department needed to clarify how "technical" defaults were to be treated under this provision, and were concerned that "technical" defaults would be placed in jeopardy along with real defaults. In response, the Department notes that it is continuing to pursue approaches for simplifying the deferment notification process to avoid "technical" defaults. However, as stated previously, it must also be noted that the responsibility for notifying the lender or holder of deferment activities continues to rest with the borrower, and thus it is ultimately the borrower's responsibility if he or she is placed in default due to failure to notify the lender or holder of deferment eligibility. A so-called "technical" default is, in truth, a legal default in that the borrower has breached the contractual requirement to either being repayment or request a deferment by mailing the appropriate forms. In these instances, the borrower generally can resolve the default in a satisfactory manner by providing the proper deferment documentation to the lender or holder.

Another respondent was concerned that a school must have access to accurate information on when the borrower has filed for bankruptcy. The Department concurs, however it is the borrower's responsibility to provide court documentation that verifies the filing for bankruptcy upon the request of the school.

Several respondents indicated that the Department should clarify whether the school would be expected to withhold services only for defaulted borrowers who received funds from that school, or from any student who defaulted on a HEAL loan at any school. In response, the Department clarifies that schools would only be expected to withhold services from borrowers who defaulted on loans received while enrolled at that school.

One respondent suggested that residency programs could withhold services which would be more meaningful to the borrower. The Department notes that in the administration of the HEAL program there is no formal linkage with residency programs. As a result, it is not possible to require residency programs to withhold services from defaulted HEAL borrowers.

Regulatory Flexibility Act and Executive Order 12291

The Department expects that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of HEAL schools, lenders, and holders. Under these regulations, lenders are required to report a borrower's HEAL indebtedness to one or more national credit bureaus no later than 120 days after the loan has been fully disbursed; lender, holder, and school hearing procedures would be required prior to termination from the

program; and authority would be provided for schools to withhold services from defaulted HEAL borrowers. These regulations should not require significant additional resources for the majority of schools, lenders, and holders. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL schools, lenders, and holders.

The Department has also determined that this rule does not meet the criteria for a major rule as defined by section (b) of Executive Order 12291. In addition, costs will not exceed the threshold criteria of $100 million for major rules, therefore a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This final rule contains information collections which have been approved by OMB under the Paperwork Reduction Act of 1980 and assigned control number 0915–0144. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Education Assistance Loan (HEAL) Program: Withholding Services and Credit Reporting.

Description: Lenders and holders must report new HEAL loans to national credit bureaus. Lenders, holders, and schools requesting a hearing prior to termination must submit a statement of material issues in dispute. Schools are authorized to withhold services from defaulted HEAL borrowers.

Description of Respondents: Non-profit institutions and businesses or other for profit.

Estimated Annual Reporting Burden:

Section	Number of respond.	Responses per respond.	Total annual response	Hours per response	Total burden hours
60.33(h)	23	1,246	28,660 (borrowers)	1 min. (.02 hrs.)	477
60.43(b)	10	1	10	3 hrs.	30
60.60(b)	10	1	10	3 hrs.	30
Total Burden Hours					537

We received no public comments on the estimated public reporting burden. After implementing the performance standard provisions of Public Law 102–408 the estimate of the annual number of respondents has been revised downward from the proposed rule.

List of Subjects in 42 CFR Part 60

Educational study programs, Medical and dental schools, Health professions, Reporting requirements, Loan programs—education, Student aid, Loan programs—health.

Dated: September 30, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: November 18, 1993.

Donna E. Shalala,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

Accordingly, 42 CFR part 60 is amended to read as follows:

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR part 60 is revised to read as follows:

Authority: Sec. 215, of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739A of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532, 102 Stat. 3122–3125 (42 U.S.C. 294–294*l*–1); renumbered as secs. 702–720, as amended by 106 Stat. 1994–2011 (42 U.S.C. 292–292p).

2. Section 60.33, in subpart D, is amended by revising the parenthetical phrase at the end of the section text; and by adding a new paragraph (h) to read as follows:

Subpart D—The Lender and Holder

§ 60.33 Making a HEAL loan.

* * * * *

(h) The lender must report a borrower's HEAL indebtedness to one or more national credit bureaus within 120 days of the date the final disbursement on the loan is made. (Approved by the Office of Management and Budget under control numbers 0915–0043, 0915–0108, and 0915–0144)

3. Section 60.43 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraph (a); by adding a new paragraph (b); and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 60.43 Limitation, suspension, or termination of the eligibility of a HEAL lender or holder.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender or holder that violates or fails to comply with any provision of title VII, part A, subpart I of the Act as amended (42 U.S.C. 292–292p), these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a lender or holder's participation in the program, the Secretary will provide the entity an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b) The Secretary will provide any lender or holder subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the lender or holder's participation in the program and stating that the entity may request, within 30 days of the receipt of this notice, a formal hearing. if the entity requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The lender or holder does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the lender or holder setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the lender or holder will be terminated from participation in the program. An entity will be permitted to reapply for participation in the program

when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0144)

4. Section 60.60, in subpart E, is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraph (a); by adding a new paragraph (b); and by adding a parenthetical phrase at the end of the section text to read as follows:

Subpart E—The School

§ 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible school that violates or fails to comply with any provision of title VII, part A, subpart I of the Act as amended (42 U.S.C. 292–292p), these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a school's participation in the program, the Secretary will provide the school an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b) The Secretary will provide any school subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program. A school will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0144)

5. Section 60.61, in subpart E, is amended by adding a new paragraph (d) to read as follows:

§ 60.61 Responsibilities of a HEAL school.

* * * * *

(d) A school is authorized to withhold services from a HEAL borrower who is in default on a HEAL loan received while enrolled in that school, except in instances where the borrower has filed for bankruptcy. Such services may include, but are not limited to academic transcripts and alumni services. Defaulted HEAL borrowers who have filed for bankruptcy shall provide court documentation that verifies the filing for bankruptcy upon the request of the school. Schools will also supply this information to the Secretary upon request. All academic and financial aid transcripts that are released on a defaulted HEAL borrower must indicate on the transcript that the borrower is in default on a HEAL loan. It is the responsibility of the borrower to provide the school with documentation from the lender, holder, or Department when a default has been satisfactorily resolved, in order to obtain access to services that are being withheld, or to have the reference to default removed from the academic and financial aid transcripts.

[FR Doc. 93–31064 Filed 12–20–93; 8:45 am]
BILLING CODE 4160–15–M

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD–771–CN]

RIN 0938–AG23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates; Correction

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

ACTION: Final rule; correction.

SUMMARY: In the September 1, 1993, issue of the **Federal Register** (FR Doc 93–21026) (58 FR 46270), we revised the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. Additionally, in the addendum to that final rule, we announced the prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs applicable to discharges occurring on or after October 1, 1993, and set forth update factors for the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems. This notice corrects errors made in that document.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966–4529.

SUPPLEMENTARY INFORMATION: In the addendum to the September 1, 1993 final rule with comment, in Table 6D—Revised Diagnosis Code Titles, we published revised titles for the following diabetes codes, 250.10, 250.20, 250.30, 250.40, 250.50, 250.60, 250.70, 250.80, 250.90. Although we indicated in Table 6D that these codes would no longer be considered complications or comorbid conditions (CCs), we did not make the appropriate corresponding changes to Table 6F—Additions to the CC Exclusions List and Table 6G—Deletions to the CC Exclusions List. The above diabetes codes should have appeared throughout Table 6G as deletions to the CC exclusion list; however, they incorrectly appeared in Table 6F. We are republishing corrected Tables 6F and 6G in their entirety to correct this error.

The final rule also contained other technical and typographical errors. Therefore, we are making the following corrections to the September 1, 1993 final rule (58 FR 46270):

§ 412.108 [Corrected]

1. On page 46339, in the first column, in § 412.108, in paragraph (c)(2)(i) in the sixth line and paragraph (c)(2)(ii) in the sixth line, the word "exceeds" is corrected to read "is exceeded by".

2. On page 46383, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, for the Johnstown, PA area, the wage index value is corrected from 0.8784 to 0.8786 and the GAF is corrected from 0.9150 to 0.9152.

3. On page 46384, in Table 4A, for the Philadelphia, PA–NJ area, the wage index value is corrected from 1.1265 to 1.1254, and the GAF is corrected from 1.0850 to 1.0843.

4. On page 46385, in Table 4A, for the San Diego, CA area, the wage index value is corrected from 1.1908 to 1.2040 and the GAF is corrected from 1.1270 to 1.1356. For the St. Louis, MO–IL area, the wage index value is corrected from 0.9192 to 0.9182 and the GAF is corrected from 0.9439 to 0.9432.

5. On page 46387, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas, for the rural Pennsylvania area, the wage index value is corrected from 0.8784 to 0.8786 and the GAF is corrected from 0.9150 to 0.9152. The wage index value for rural Indiana is corrected from 0.7693 to 0.7720 and the GAF is corrected from 0.8356 to 0.8376.

6. On page 46387, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, the wage index value for hospitals reclassified to the Dutchess County, NY area is corrected from 0.0623 to 1.0623.

7. On page 46388, in Table 4C, the wage index value for hospitals reclassified to the Newark, NJ area is corrected from 1.1145 to 1.1008 and the GAF is corrected from 1.0771 to 1.0680; the wage index value for hospitals reclassified to the Philadelphia, PA–NJ area is corrected from 1.1160 to 1.1151 and the GAF is corrected from 1.0781 to 1.0775; and the wage index value for hospitals reclassified to the St. Louis, MO–IL area is corrected from 0.9192 to 0.9182 and the GAF is corrected from 0.9439 to 0.9432.

8. On page 46389, in Table 4D—Average Hourly Wage for Urban Areas, for the Philadelphia, PA–NJ urban area, the average hourly wage is corrected from 19.4459 to 19.4273; and the average hourly wage for the San Diego, CA area is corrected from 20.5556 to 20.7829.

9. On page 46390, in Table 4E—Average Hourly Wage for Rural Areas, for the rural Pennsylvania area, the average hourly wage is corrected from 15.0077 to 15.0080.

10. As discussed above, Table 6F—Additions to the CC Exclusions List and Table 6G—Deletions to the CC Exclusions List, which were set forth in the final rule on pages 46406–46424, are corrected and republished below in their entirety:

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST
PAGE 1 OF 15 PAGES

[CCs that are added to the list are in Table 6f—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis]

*0700	05609	07030	07051	0720	07279	25013	25072
78003	05671	07031	07052	0721	0728	25021	25073
*0701	05679	07041	07053	0722	*1144	25022	25081
78003	0568	07042	07059	0723	1140	25023	25082
*07020	07020	07043	0706	07271	*1145	25031	25083
78003	07021	07049	0709	07272	1140	25032	25091
*07021	07030	07051	0720	07279	*25000	25033	25092
78003	07031	07052	0721	0728	25002	25041	25093
*07030	07041	07053	0722	*07999	25003	25042	2510
78003	07042	07059	0723	0520	25012	25043	2513
*07031	07043	0706	07271	0521	25013	25051	2580
78003	07049	0709	07272	0527	25022	25052	2581
*07041	07051	0720	07279	0528	25023	25053	2588
78003	07052	0721	0728	0529	25032	25061	2589
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TABLE 6G—DELETIONS TO THE CC EXCLUSIONS LIST

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[CCs that are deleted from the list are in Table 6g—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*0798	0530	25020	25080	25040	25060	4331	*2599
0520	05310	25030	25090	25050	25070	4332	25010
0521	05311	25040	*25031	25060	25080	4333	25020
0527	05312	25050	25010	25070	25090	4340	25030
0528	05313	25060	25020	25080	4330	4341	25040
0529	05319	25070	25030	25090	4331	4349	25050
0530	05379	25080	25040	*25061	4332	*2510	25060
05310	0538	25090	25050	25010	4333	25010	25070
05311	05479	*25010	25060	25020	4340	25020	25080
05312	0548	25010	25070	25030	4341	25030	25090
05313	0550	25020	25080	25040	4349	25040	*27411
05319	0551	25030	25090	25050	*25081	25050	7882
05379	0552	25040	*25040	25060	25010	25060	*2800
0538	05571	25050	25010	25070	25020	25070	2831
05479	05579	25060	25020	25080	25030	25080	*2801
0548	0558	25070	25030	25090	25040	25090	2831
0550	05600	25080	25040	*25070	25050	*2511	*2808
0551	05601	25090	25050	25010	25060	25010	2831
0552	05609	*25011	25060	25020	25070	25020	*2809
05571	05671	25010	25070	25030	25080	25030	2831
05579	05679	25020	25080	25040	25090	25040	*2810
0558	0568	25030	25090	25050	4330	25050	2831
05600	07020	25040	*25041	25060	4331	25060	*2811
05601	07021	25050	25010	25070	4332	25070	2831
05609	07030	25060	25020	25080	4333	25080	*2812
05671	07031	25070	25030	25090	4340	25090	2831
05679	07041	25080	25040	4330	4341	*2512	*2813
0568	07042	25090	25050	4331	4349	25010	2831
07020	07043	*25020	25060	4332	*25090	25020	*2814
07021	07049	25010	25070	4333	25010	25030	2831
07030	07051	25020	25080	4340	25020	25040	*2818
07031	07052	25030	25090	4341	25030	25050	2831
07041	07053	25040	*25050	4349	25040	25060	*2819
07042	07059	25050	25010	*25071	25050	25070	2831
07043	0706	25060	25020	25010	25060	25080	*2820
07049	0709	25070	25030	25020	25070	25090	2831
07051	0720	25080	25040	25030	25080	*2513	*2821
07052	0721	25090	25050	25040	25090	25010	2831
07053	0722	*25021	25060	25050	4330	25020	*2822
07059	0723	25010	25070	25060	4331	25030	2831
0706	07271	25020	25080	25070	4332	25040	*2823
0709	07272	25030	25090	25080	4333	25050	2831
0720	07279	25040	*25051	25090	4340	25060	*2824
0721	0728	25050	25010	4330	4341	25070	2831
0722	*25000	25060	25020	4331	4349	25080	*2825
0723	25010	25070	25030	4332	*25091	25090	2831
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07272	25030	25090	25050	4340	25020	25010	2831
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*7534	80031	80101	80171	80306	80376	80446	85109
7882	80032	80102	80172	80309	80379	80449	85110
*7535	80033	80103	80173	80310	80380	80450	85111
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*7809	80045	80115	80185	80322	80392	80462	85123
7882	80046	80116	80186	80323	80393	80463	85124
*7882	80049	80119	80189	80324	80394	80464	85125
7882	80050	80120	80190	80325	80395	80465	85126
*7886	80051	80121	80191	80326	80396	80466	85129
7882	80052	80122	80192	80329	80399	80469	85130
*7889	80053	80123	80193	80330	80400	80470	85131
7882	80054	80124	80194	80331	80401	80471	85132
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*7998	80059	80129	80199	80334	80404	80474	85135
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*8739	80063	80133	80222	80340	80410	80480	85141
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925	80066	80136	80225	80343	80413	80483	85144
*925	80069	80139	80226	80344	80414	80484	85145
80000	80070	80140	80227	80345	80415	80485	85146
80001	80071	80141	80228	80346	80416	80486	85149
80002	80072	80142	80229	80349	80419	80489	85150
80003	80073	80143	80230	80350	80420	80490	85151
80004	80074	80144	80231	80351	80421	80491	85152
80005	80075	80145	80232	80352	80422	80492	85153
80006	80076	80146	80233	80353	80423	80493	85154
80009	80079	80149	80234	80354	80424	80494	85155
80010	80080	80150	80235	80355	80425	80495	85156
80011	80081	80151	80236	80356	80426	80496	85159
80012	80082	80152	80237	80359	80429	80499	85160
80013	80083	80153	80238	80360	80430	8500	85161
80014	80084	80154	80239	80361	80431	8501	85162
80015	80085	80155	8024	80362	80432	8502	85163
80016	80086	80156	8025	80363	80433	8503	85164
80019	80089	80159	8026	80364	80434	8504	85165
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80022	80092	80162	8029	80369	80439	85100	85170
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80029	80099	80169	80304	80374	80444	85105	85175
80030	80100	80170	80305	80375	80445	85106	85176

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: December 10, 1993.

Thomas F. Joyce,

Acting Deputy Secretary for Information Resources Management.

[FR Doc. 93–30936 Filed 12–20–93; 8:45 am]

BILLING CODE 4120–01–P–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 392

[FHWA Docket No. MC–90–14]

RIN 2125–AC69

Radar Detectors in Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending 49 CFR parts 390 and 392 to ban the use of radar detectors in all commercial motor vehicles (CMVs) as defined in 49 CFR 390.5. This final rule completes an action initiated in response to the Congressional mandate set forth in section 342 of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Pub. L. 102–143) and responds to a petition filed

jointly on July 18, 1990, by the Insurance Institute for Highway Safety and seven other organizations.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Driver Standards Division, Office of Motor Carrier Standards, (202) 366–4001, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

This final rule completes action initiated under Public Law 102–143 (signed October 28, 1991). Section 342 of that public law required the Secretary of Transportation to publish a notice of proposed rulemaking to amend the Federal Motor Carrier Safety Regulations to prohibit the use of radar detectors in operating commercial motor vehicles.

This final rule also responds to a July 18, 1990, petition jointly filed by the following organizations:

(1) Advocates for Highway and Auto Safety;
(2) American Automobile Association;
(3) American Trucking Associations;
(4) Insurance Institute for Highway Safety;
(5) International Association of Chiefs of Police;
(6) National Association of Governors' Highway Safety Representatives;
(7) National Safety Council; and
(8) Public Citizen.

In the 1992 DOT Appropriations Act, the Congress directed the Secretary of Transportation to initiate rulemaking proposing a national ban on the use of radar detectors in CMVs (Pub. L. 102–143, section 342 (Oct. 28, 1991)). On January 24, 1992, at 57 FR 2885 the FHWA published a notice of proposed rulemaking (NPRM) proposing to ban the use of radar detectors in CMVs that are under the FHWA's jurisdiction. The comment period closed on May 26, 1992.

Based on comments received to the docket, the FHWA acknowledges that traffic engineering experts, various sectors of the transportation industry, enforcement authorities, other organizations, drivers of CMVs and automobiles, and the general public hold widely divergent views on the rationale for, and efficacy of, banning the use of radar detectors in CMVs. Moreover, the FHWA recognizes that scientific proof unequivocally establishing a direct causative linkage between radar detector use and CMV accidents may not exist. Nevertheless, the FHWA believes that sufficient safety rationale and justification exist to support banning the use of radar detectors in CMVs as discussed more fully below. The FHWA is aware that the Senate report accompanying the 1994 Department of Transportation Appropriations Bill (S. Rpt. 103–150 at 111) directed the FHWA to further study the effects of radar detector use by CMVs on highway safety. The FHWA intends to carefully monitor the effects of the radar detector ban on CMV operations and safety.

The final regulatory evaluation for this rulemaking, which is contained in the public docket, has been completed and summarizes data on the relationships between radar detector use and speeding, and between speeding and accident severity, including additional statistical data provided by commenters to the January 24, 1992, NPRM (57 FR 2885).

Discussion of Petition

On July 18, 1990, the FHWA received from the Insurance Institute for Highway Safety and 7 other organizations a petition for rulemaking to ban the use of radar detectors in CMVs regulated by the FHWA. In support of the petition, evidence was submitted that (1) radar detector use correlates with speeding, (2) drivers of tractor/trailer combinations use radar detectors more frequently than drivers of any other vehicle types and (3) drivers of tractor/trailer combinations using radar detectors are 2 to 3 times more inclined to speed than those without.

Petitioners' data consist mostly of observations made in Maryland and Virginia and five other eastern States. One study shows that of tractor/trailer combinations observed to be speeding in Maryland (856) and Virginia (943), those operating with radar detectors were 3 times as likely in Maryland and 2 times as likely in Virginia to exceed 65 mph than CMVs without radar detectors. The study also showed that approximately 40 percent of all CMVs were operated with radar detectors. The petitioners concluded that an FHWA ban on the use of radar detector devices in CMVs is warranted and justified. The FHWA agrees, even though the petitioners' studies were not necessarily applicable to all motor carrier operations and there is no established direct linkage between radar detector use and highway accidents. Based on petitioners' information and comments received to the docket, the FHWA has determined that the societal benefits to be derived from unhampered speed law enforcement overwhelmingly outweigh the anticipated marginal benefits associated with individual radar detector utilization in CMVs.

Discussion of the NPRM Docket Comments

Prior to taking final action on this rulemaking, the FHWA considered a total of 26,454 comments which were received to the docket. The following table displays the comments by respondent class:

TABLE 1.—RESPONDENTS TO THE NOTICE OF PROPOSED RULEMAKING BY CATEGORY

Departments of State, Transportation and Motor Vehicles	24
Police Agencies	442
Safety Interest Groups	50
Radar Detector Industry	23
Legal Profession	97
Motor Carriers and Drivers	458
Trucking and Motorcoach Associations	7
Other Organizations	378
General Public	313
Form Letters and Petitions (total signatures)	24,667
Total Respondents	26,459

Departments of State, Transportation and Motor Vehicles

All of the 24 Departments of State, transportation, or motor vehicles and the American Association of Motor Vehicle Administrators voiced strong support for banning the use of radar detectors in CMVs. For example, the Illinois Department of State concluded, based on findings from its Safe Trucking Task Force, created in 1991, that the only reason for using a radar detector is to evade the law. The Virginia DMV, in its pilot program, observed over 30,000 radar detectors in use since July of 1990. Of all CMVs observed, 40 percent were using radar detectors.

Police Agencies

The International Association of Chiefs of Police (IACP), the Commercial Vehicle Safety Alliance (CVSA) and over 400 State and local police provided comments to the docket. All but one of these agencies emphatically supported banning the use of radar detectors in CMVs. The Maine State Police was the lone dissenter. They believed a ban on radar detectors would not have the desired effect and would actually present a new set of problems for enforcement personnel.

Conversely, the Missouri Highway Patrol reports that speed is one of the

major contributing factors to accidents in the State, especially in those cases resulting in death and personal injury. In all 1989 fatal traffic accidents occurring in Missouri, 42.3 percent involved speed as a contributing factor. For high speed violations, the proportion of arrested drivers having radar detectors in their vehicles also increased. The Missouri Highway Patrol found that of those drivers driving up to 10 mph over the posted speed limit, 26.4 percent had radar detector devices in use. For those travelling between 11 and 20 mph over the posted speed limit, 28.1 percent had radar detectors in use and for those vehicles travelling 21 mph or more over the posted speed limit, 38.1 percent were using such devices.

The New Jersey Department of Law and Public Safety also reported a positive correlation between radar detector use and excessive speed (speed limit presumed to be 55 mph). They observed that 90 percent of radar detector users exceeded speeds of 60 mph and 40 percent exceeded speeds of 65 mph. By comparison, 70 percent of the non-detector users exceeded 60 mph and less than 20 percent exceeded 65 mph.

The Arizona Department of Public Safety reported that their survey conducted during the FHWA-sponsored "Roadcheck '91," found that 60 percent of all CMVs checked for radar detectors in a 72-hour period were equipped with such devices.

Safety Interest Groups

Over 45 comments were received from various safety interest groups. Comments in support of the proposal were unanimous. For example, the National Association of Governor's Highway Safety Representatives, Public Citizen and Advocates for Highway and Auto Safety rely on petitioners' data and various National Highway Traffic Safety Administration studies to argue in favor of the ban. These organizations believe that the only purpose for a radar detector is to permit a driver to speed; and therefore allow drivers to break the law. These organizations strongly encourage the FHWA to ban radar detectors in CMVs.

Radar Detector Industry

Of the seven radar detector manufacturers that commented, all voiced strong opposition to the FHWA's proposal to ban the use of radar detectors in CMVs. For example, the President of Valentine Research, Inc., commented that his customers (users of radar detector devices) are practicing "Jeffersonian democracy" in using his product. He argues that his customers should be free to travel at speeds that they consider safe, especially since the speed limits across the country have been under-posted by as much as 15 mph. However, the manufacturer also readily admits that the primary purpose of radar detectors is to permit drivers to speed, which he refers to as "voting with their accelerators." Other representatives argue that radar units frequently malfunction and give inaccurate speed readings, resulting in State enforcement which they claim borders on harassment of innocent drivers.

RADAR, Inc.'s comments point out the FHWA's and petitioners' inability to cite research establishing a linkage between radar detector usage and excessive speeds. It contends that in those States which have banned such devices, there has been no significant impact in reducing radar detector usage or vehicle speeds. Also, it argues that should the FHWA ban become final, approximately 8,400 jobs in the radar detector industry will be adversely affected.

Legal Profession

Of the 97 comments received from the legal profession, 28 commenters supported the ban as proposed, asserting that these devices serve no legal purpose. Those commenters opposing the proposal question the necessity of such governmental intervention by raising legal and constitutional issues concerning search and seizure.

Motor Carriers and Drivers

Of the more than 400 trucking representatives/companies that commented, an overwhelming number (over 95 percent) voiced strong opposition to the FHWA proposal. Most of the trucking representatives viewed the action as an infringement upon individual rights. For example, one trucker from Ohio brings up the legal comparison of banning radar detectors to cable companies trying to ban satellite dishes. He asserts that Congress decided that "airwaves were free out in the air and free to anyone who wanted to receive them." Others cited a Maryland court case where Government Employees' Insurance Company (GEICO) cancelled an insurance policy because the policy holder used a radar detector. Apparently, GEICO's action was overturned by a Maryland court on the grounds that it was an unfair discriminatory practice. Moreover, drivers contend that they are being unfairly treated by some police organizations through unwarranted speed enforcement. Thus, they argue, they will be losing a valuable protection against such abuse, i.e., because of the inaccuracy of speed detection devices, their possession of radar detectors serves a justifiable purpose.

Trucking and Motorcoach Associations

The American Trucking Associations (ATA), the National Private Truck Council (NPTC), the American Bus Association (ABA) and the Motor Vehicle Manufacturers Association support the proposal. The ATA stated that the majority of motor carriers have policies prohibiting the use of radar detectors. Those carriers that do not have such policies believe that Federal action is necessary in order that they may legally maintain an enforceable policy. The NPTC and the ABA believe previous research demonstrates that use of radar detectors is linked to increased travel speeds and thus the FHWA should ban radar detectors and any other future speed measurement detection technology.

Additionally, ABA asserts that if the proposal is adopted the States should be required to pass legislation to ban radar detectors as a condition of receiving Motor Carrier Safety Assistance Program (MCSAP) funds. On the other hand, the Owner-Operator Independent Drivers Association (OOIDA) commented that the FHWA's proposal is an infringement upon States' rights since speed enforcement on interstate highways is a function of State law, policy and practice.

Other Organizations

Over 350 comments were received from various insurance organizations, private businesses, and health care professionals. Comments in support of the proposal were nearly unanimous. These organizations endorsed the proposition that the only use for radar detectors was to help break the law.

General Public

Of the more than 300 comments received from the general public, approximately 55 percent voiced strong opposition to the ban for a variety of reasons, including the fear that a ban in CMVs will lead to a ban in all vehicles; that there is a constitutional right to send and receive signals through the air waves; that the ban discriminates against CMV drivers; and that there is no evidence to support the ban.

Form Letters and Signature Petitions

In addition to the comments discussed above, the FHWA received many form letters and petitions containing numerous signatures.

Approximately 19,000 opposed the ban and 5,500 were in favor of it.

Enforcement Policy

In the NPRM, the FHWA proposed enforcement of the ban to be accomplished under the provisions of 49 CFR 392.5. By amending this section, drivers and companies may be cited for possession or use of all devices defined as radar detectors and, consequently, subject to the penalty provision of 49 U.S.C. 521 or a corresponding State penalty provision. Several commenters suggested that the FHWA should require States to adopt legislation to ban radar detectors in CMVs as a condition for receiving MCSAP funds. The FHWA will consider this issue in the future. In the meanwhile, given the overwhelming support from law enforcement agencies, the FHWA expects that the States will adopt the provision as they adopt changes to the FMCSRs. In addition to highway enforcement, the FHWA also expects States to enforce the ban as part of the routine roadside inspection process conducted under the MCSAP. Thus, the FHWA believes that it is not critical for purposes of this rulemaking to address the issue of making adoption of the ban by States as a condition for receiving MCSAP funds at this time.

Discussion of Questions

The NPRM requested comment to the docket on three questions concerning specific provisions of the rulemaking (Questions 1 to 3).

Question 1: Should the definition of "radar detector" be expanded to anticipate and include devices that may allow drivers to detect advanced speed limit enforcement technology such as laser beams?

The overwhelming majority of the respondents who addressed this question, which included 26 State law enforcement agencies, 6 State departments of transportation/ departments of motor vehicles and the Commercial Vehicle Safety Alliance (CVSA), were in favor of expanding the definition of "radar detector" to include other detection devices such as laser detectors. The FHWA agrees. The FHWA is, therefore, expanding the definition to include other detection devices as more fully discussed in the section-by-section analysis.

Question 2(a): How widespread are permanently or semipermanently installed radar detectors in CMVs nationwide?

The majority of the respondents who addressed this question, which included 20 State law enforcement agencies and 3 of the petitioners, provided no specific information. Other commenters indicated a range from 35 percent to 75 percent use in CMVs. Notwithstanding the uncertainty concerning the extent of actual nationwide use, the FHWA believes that detector use is sufficiently widespread to require a ban on its use in CMVs.

Question 2(b): What would be the impacts of dealing with such installed devices as vehicle appurtenances under Parts 393 and/or 396?

Most of the respondents who addressed this question, which included 22 State law enforcement agencies and 2 State departments of transportation/ departments of motor vehicles, either did not have an opinion on the impact or offered very general comments on effectiveness without specifically addressing Parts 393 and/or 396. The FHWA has, therefore, decided not to address radar detectors under Parts 393 or 396 in this rulemaking.

Question 2(c): Should discovery of such a device upon inspection be grounds for a vehicle out-of-service order under § 396.9?

The overwhelming majority of the respondents who addressed this question, which included 23 State law enforcement agencies and 5 State departments of transportation/ departments of motor vehicles, were against making the discovery of such a device being grounds for a vehicle out-of-service order under section 396 because such possession or use would not constitute an imminent hazard as defined in the out-of-service criteria. The FHWA agrees and will not address radar detectors under section 396 in this rulemaking. Discovery of such a device will not be grounds for a CMV out-of-service order.

Question 2(d): If not, what should the consequences of discovery of such a device be?

The overwhelming majority of the respondents who addressed this question, which included 21 State law enforcement agencies, believed that the consequences should include a citation and fine, confiscation of the device, or both. The FHWA agrees that a citation and fine should be imposed, but not confiscation because we do not believe it is within our present authority to seize property summarily and, therefore, do not intend to impose such a requirement on States. If a State has independent authority to seize such property and elects to exercise this authority, this rule does not prohibit such an enforcement practice.

Question 3: How would State enforcement programs and procedures be affected by the adoption of this proposal?

The majority of the respondents who addressed this question, which included 20 State law enforcement agencies and 2 of the petitioners, believed that the ban on the use of radar detectors in CMVs should either supplement existing State enforcement policies or should be included in States' statutes to support enforcement policies. The FHWA realizes that the final rule will encourage States to enforce the ban on radar detectors in CMVs engaged in intrastate as well as interstate commerce as part of the MCSAP. There will be a positive effect on State speed enforcement programs and procedures resulting in an improvement in overall highway safety.

In addition to the above questions, the NPRM requested comments on several other issues, including the operation and maintenance of equipment designed to enforce the ban (Questions 6 to 10). While most of the docket respondents did not directly comment on these specific issues, the general subject matter was covered by many of the respondents. The few respondents who did comment specifically on the issues did not refute or add to the data submitted by the petitioners with respect to radar detector detection technologies. The FHWA is satisfied that existing technology is reasonably available to detect the use of radar detectors which will facilitate enforcement of the ban.

Section-by-Section Analysis

Definition of Radar Detector

History has demonstrated that as radar equipment used by law enforcement agencies is upgraded and becomes more sophisticated, the radar detection industry has quickly responded with its own upgraded and more sophisticated equipment. As a means of combatting this situation, law enforcement agencies are starting to look at other technologies to help them in speed limit enforcement, such as aerial and VASCAR strategies and new technologies, such as laser beams. Although the FHWA believes that fewer than 400 laser units are currently in use around the country, due to their current cost of approximately 3 times that of a radar detector unit, law enforcement agencies are gradually adding this highly effective technology to their speed enforcement program.

As the CVSA stated in its docket response to Question 1, "A broader definition will accommodate the changes we are likely to see in years to come." The overwhelming majority of the respondents to Question 1 echoed that same thought. The FHWA is,

therefore, expanding the definition to include any device that detects radio microwaves, laser beams or any other future speed measurement technology used by law enforcement agencies on highways for enforcement purposes as a means of preventing the compromise of new, more effective enforcement tools.

Applicability

This final rule changes portions of 49 CFR parts 390 and 392 to directly affect drivers of CMVs as defined in part 390, which include vehicles used in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

(2) Is designed to transport 16 or more passengers, including the driver; or

(3) Is used to transport hazardous materials in quantities that require placarding.

Vehicles that meet the above definition and are used exclusively in intrastate commerce also may be indirectly affected. Under the MCSAP, most States adopt the Federal Motor Carrier Safety Regulations and enforce the requirements with respect to both interstate and intrastate drivers and carriers. Section 390.5 defines "radar detector" as any device or mechanism that detects radio microwaves, laser beams or any other future speed limit measurement technology used by enforcement officials to measure the speed of CMVs upon public roads and highways for enforcement purposes.

The definition would specifically exclude detectors that are:

(1) Transported outside the driver's compartment of the vehicle; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver.

Under item number (1) above, since the driver and passenger areas of a bus constitute a single compartment, the final rule notes that the "driver's compartment" of a passenger-carrying CMV includes all space designed to accommodate the driver and passengers alike.

If both of the above conditions are met, a radar detection device would be excluded from the definition of "radar detectors" and its transportation in a CMV would be permitted. This will allow a driver apprehended with a radar detector to continue legally operating the CMV by disengaging the device and storing it outside the cab.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest and controversy involving the use of radar detectors. A regulatory evaluation addressing regulatory impacts has been prepared and is available for inspection in the Docket Room 4232 of the FHWA, 400 Seventh Street SW., Washington, DC 20590. The FHWA regulatory evaluation presents the agency's evaluation of the economic and other impacts of this final rule. This evaluation finds the benefits of this action are five times larger than the cost. The agency's methodology and calculations used to derive this estimate are contained in Appendix A to the Regulatory Evaluation.

Regulatory Flexibility Act

Based on information available to the FHWA and under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has determined that this action will not have a significant economic impact on a substantial number of small entities. This regulation does not ban the production of radar detectors, and manufacturers would still be allowed to sell the devices to automobile drivers and foreign markets. The FHWA believes that the manufacturers' core business is passenger vehicle drivers and given the relative sizes of the heavy vehicle and passenger vehicle populations, any potential economic impact should not be significant.

Executive Order 12612 (Federalism Assessment)

The final rule will impact the policy-making discretion of the States. The FHWA has reviewed the ban on radar detectors in light of the purposes of the underlying legislation and the Executive Order on Federalism (Executive Order 12612, October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles while formulating and implementing policies. These policies have been taken fully into account in the development of this regulation.

In 1988, the FHWA received a similar petition from five of the organizations that signed the 1990 petition. On November 8, 1988, the FHWA denied that petition on the grounds that a Federal ban on radar detectors would violate the principles of federalism because the situation "is common to the States and not truly national in scope." The FHWA continues to recognize that the enforcement of speed limit laws on the highways is a function of State law, policy and practice. Nevertheless, the FHWA is empowered with long-standing authority to regulate the safety of operators interstate motor carriers of passengers and property under 49 U.S.C. 3102. In particular, the Motor Carrier Safety Act of 1984 (1984 Act) (Pub. L. 98–554, 98 Stat. 2832) also provides ample authority for this rulemaking. In addition, Public Law 102–143 specifically directs the Department of Transportation to publish a rulemaking addressing this issue. The Senate Committee report on Public Law 102–143 stated that, "while the general prohibition of radar detectors is properly left to the States, the use of radar detectors in vehicles in interstate commerce is an appropriate arena for the Federal Government to regulate."[1] Consistent with federalism principles, the final rule provides for a Federal ban, but provides significant discretion for States in their enforcement.

It is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order. The FHWA has determined that this action accords fully with the Federalism Executive Order.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

[1] S. Rep. No. 148, 102d Cong., 1st Sess. 90 (1991).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 392

Commercial motor vehicles, Highways and roads, Motor vehicle safety, Radar detectors.

Issued on: December 14, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as set forth below.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL [AMENDED]

1. The authority citation for 49 CFR Part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by adding one definition, placing it in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the vehicle. For this purpose, the *driver's compartment* of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the vehicle.

* * * * *

PART 392—DRIVING OF MOTOR VEHICLES [AMENDED]

3. The authority citation for 49 CFR part 392 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

4. Section 392.71 is added to subpart G, as follows:

§ 392.71 Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

[FR Doc. 93–30892 Filed 12–17–93; 5:00 pm]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 58, No. 243
Tuesday, December 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD23

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22 & 23), Dark Air-Cured (Types 35 & 36), Virginia Sun-Cured (Type 37), Cigar-Filler (Type 46), and Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture (the Secretary) is required by the Agricultural Adjustment Act of 1938 (the Act), as amended, to proclaim by March 1, 1994, national marketing quotas for fire-cured (types 21–23) and dark air-cured (types 35 & 36) tobaccos for the 1994–95, 1995–96, and 1996–97 marketing years (MY's) and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), cigar-filler (type 46), and cigar-filler and cigar-binder (types 42–44 & 53–55) kinds of tobacco for the 1994–95 MY. The public is invited to submit written comments, views, and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referenda, and other related matters which are discussed in this proposed rule.

DATES: Comments must be received on or before February 4, 1994, in order to be assured consideration.

ADDRESSES: Send comments to the Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3090, South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays, in room 3739, South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, ASCS, room 3739, South Building, P.O. Box 2415, Washington, DC 20013–2415, on 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this proposed rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Robert L. Tarczy.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since ASCS is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 723 set forth in this proposed rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR part 723 have been approved through August 31, 1995, by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35, and assigned OMB No. 0560–0058. Public reporting burden for these collections is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paper Reduction Project (OMB No. 0560–0058), Washington, DC 20503.

Statutory Background

Section 312(b) of the Act provides that the Secretary shall determine and announce, not later than March 1, 1994, with respect to kinds of tobacco specified in this proposed rule, the amount of the national marketing quota which will be in effect for MY 1994 in terms of the total quantity of tobacco which may be marketed that will allow a supply of each kind of tobacco equal to the reserve supply level.

Section 312(c) of the Act requires that the Secretary conduct, within 30 days after proclamation of national marketing quotas for fire-cured (types 21–23) and dark air-cured (types 35 & 36) tobaccos, referenda of farmers engaged in the 1993 production of each kind of tobacco to determine whether they favor or oppose marketing quotas for MY's 1994, 1995, and 1996. This referendum is required because MY 1993 is the last year of the three consecutive MY's for which marketing quotas previously proclaimed for these two kinds of tobacco will be in effect.

If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, the results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not become effective, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion, through county committees, the national acreage allotment to tobacco producing farms, less a reserve not to exceed 1 percent thereof for new farms, to make corrections and adjust inequities in old farm allotments, through the national factor. The national factor is determined by dividing the preliminary quota (the sum of quotas for old farms) into the quota determined for the MY in question (less the reserve). Procedures will continue unchanged for (1) converting marketing quotas into acreage allotments; (2) apportioning allotments among old farms; (3) apportioning reserves for use in (a) establishing allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments; and (4) holding referenda.

Request for Comments

This rule proposes to amend 7 CFR part 723, subpart A to include 1994-crop national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), cigar-filler (type 46), and cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos. These six kinds of tobacco account for about 3 percent of total U.S. tobacco production. Accordingly, comments are requested concerning the proposed establishment of the national marketing quotas for the subject tobaccos at the following levels:

(1) Fire-Cured (Type 21) Tobacco

The 1994-crop national marketing quota for fire-cured (type 21) tobacco will range from 2.0 to 2.4 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.2.

(2) Fire-Cured (Types 22 & 23) Tobacco

The 1994-crop national marketing quota for fire-cured (types 22 & 23) tobacco will range from 30 to 38 million pounds. This range reflects the assumption that the national acreage factor will range from 0.80 to 1.0.

(3) Dark Air-Cured (Types 35 & 36) Tobacco

The 1994-crop national marketing quota for dark air-cured (types 35 & 36) tobacco will range from 8.9 to 11.1 million pounds. This range reflects the assumption that the national acreage factor will range from 0.80 to 1.0.

(4) Virginia Sun-Cured (Type 37) Tobacco

The 1994-crop national marketing quota for Virginia sun-cured (type 37) tobacco will range from 115,000 to 128,000 pounds. This range reflects the assumption that the national acreage factor will range from 0.90 to 1.1.

(5) Cigar-Filler (Type 46) Tobacco

The 1994-crop national marketing quota for cigar-filler (type 46) tobacco will be zero.

Accordingly, the national acreage factor will be zero.

(6) Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

The 1994-crop national marketing quota for cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos will range from 11.2 to 14.0 million pounds. This range reflects the assumption that the national acreage factor will range from 0.80 to 1.0.

List of Subjects in 7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, it is proposed that 7 CFR part 723, subpart A be amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Sections 723.113 through 723.118 are revised to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

The 1994-crop national marketing quota will range from 2.0 to 2.4 million pounds.

§ 723.114 Fire-cured (types 22 & 23) tobacco.

The 1994-crop national marketing quota will range from 30 to 38 million pounds.

§ 723.115 Dark air-cured (types 35 & 36) tobacco.

The 1994-crop national marketing quota will range from 8.9 to 11.1 million pounds.

§ 723.116 Sun-cured (type 37) tobacco.

The 1994-crop national marketing quota will range from 115,000 to 128,000 pounds.

§ 723.117 Cigar-filler and cigar-binder (types 42–44 & 53–55) tobacco.

The 1994-crop national marketing quota will range from 11.2 to 14.0 million pounds.

§ 723.118 Cigar-filler (type 46) tobacco.

The 1994-crop national marketing quota will be 0.0 pounds.

Signed at Washington, DC December 14, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–31028 Filed 12–20–93; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 985

[FV93–985–2PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1994–95 marketing year. This action would be taken to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This action was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West.

DATES: Comments must be received by January 20, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; or Christian D. Nissen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, saleable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which begins on June 1, 1994. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately eight spearmint oil handlers subject to regulation under the order and approximately 259 producers of spearmint oil in the regulated production area. Of the 259 producers, 157 producers hold "Class 1" (Scotch) oil allotment base, and 144 producers hold "Class 3" (Native) oil allotment base. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1994–95 marketing year at its October 6, 1993, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 spearmint oil in a vote of 6 in favor and 2 opposed. The members voting in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 spearmint oil in an unanimous vote.

This proposed rule would establish a salable quantity of 723,326 pounds and an allotment percentage of 41 percent for Scotch oil, and a salable quantity of 897,388 pounds and an allotment percentage of 46 percent for Native oil. This action would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which begins on June 1, 1994. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1994–95 marketing year is based upon the Committee's recommendation and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—122,187 pounds. This number is derived by subtracting the estimated 1993–94 marketing year trade demand of 814,589 pounds from the 1993–94 marketing year total available supply of 936,776 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—830,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 regulated production—707,813 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Scotch oil for the 1994–95 marketing year—1,764,209 pounds.

(E) Computed allotment percentage—40.12 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—41 percent.

(G) The Committee's recommended salable quantity 723,326 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—0 pounds. This number is derived by subtracting the estimated 1993–94 marketing year trade demand of 914,715 pounds from the 1993–94 marketing year total available supply of 914,715 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—944,513 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 production—944,513 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Native oil—1,950,843 pounds.

(E) Computed allotment percentage—48.42 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—46 percent.

(G) The Committee's recommended salable quantity 897,388 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantity of 723,326 pounds and allotment percentage of 41 percent for Class 1 spearmint oil is based on anticipated 1994–95 marketing year supply and trade demand.

The Committee's recommended salable quantity of 897,388 pounds and allotment percentage of 46 percent for Class 3 spearmint oil is less than the Committee's estimated 1994–95 marketing year trade demand of 944,513 pounds and computed allotment percentage of 48.42 percent. The 1994–95 marketing year estimated trade demand represents an average of the trade demand over the last 13 years. During the past several years, sales of Native spearmint oil have fluctuated. The Committee reduced the salable quantity and allotment percentage to allow for the possibility of below average sales during the 1994–95 marketing year. This action was taken to prevent wide fluctuations in salable quantities and allotment percentages established in subsequent years. Wide fluctuations in yearly established salable quantities and allotment percentages could make it difficult for producers to plan farming operations.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantity. Alternatively, the Committee may offer to sell spearmint oil from the Class 1 and Class 3 reserve pools to meet any increased market demand. The estimated reserve pools for Class 1 and Class 3 spearmint oil currently stand at 950,000 pounds and 1,400,000 pounds, respectively. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1993–94 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.213 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.213 Salable quantities and allotment percentages—1994–95 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1994, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 723,326 pounds and an allotment percentage of 41 percent.

(b) "Class 3" (Native) oil—a salable quantity of 897,388 pounds and an allotment percentage of 46 percent.

Dated: December 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–31031 Filed 12–20–93; 8:45 am]

BILLING CODE 3410–02–P