published at 59 FR 1452 on January 11, 1994, is adopted as a final rule without change.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94-6139 Filed 3-15-94; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 985

[FV93-985-2FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes 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. These quantities are established in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This rule 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.

EFFECTIVE DATE: June 1, 1994, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: 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 or 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.

SUPPLEMENTARY INFORMATION: This final 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 rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes 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 action 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 service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers 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 sections 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 ana 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 final rule establishes 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 limits 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 salable quantity and allotment percentage for each class of spearmint oil for the 1994-95 marketing year are 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 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 regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from improved returns.

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

A proposed rule on this issue was published in the **Federal Register** on December 21, 1993 [58 FR 67378]. That proposed rule provided a 30-day comment period which ended January 20, 1994. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

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

After consideration of the Committee's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

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 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 section 985.213 is added to read as follows: Section 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: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6138 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[Docket No. FV93-989-4FIR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenditures and established an assessment rate under Marketing Order No. 989 for the 1993–94 fiscal period. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are 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 rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1993–94 crop year, from August 1, 1993, through July 31, 1994. This 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 requesting a modification of the order or to be exempted therefrom. Such 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 the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 the 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 5,000 producers of California raisins under this marketing order, and approximately 25 handlers. 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. The majority of California raisin producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met October 5, 1993, and unanimously recommended a 1993–94 budget of $579,060, which is $11,940 less than the previous year. Increases of $9,200 for executive salaries, $1,100 for fieldman salaries, $2,500 for payroll taxes, $200 for group retirement, $4,000 for group medical insurance, $1,900 for rent, $100 for audit fees, $800 for objective measurement survey, $9,760 in reserve for contingencies, and the addition of a $2,500 category for Valley weather service will be offset by decreases of $5,000 for office salaries, $2,000 for general insurance, $2,000 for Committee meeting expenses, and $30,000 for research and study for which no funding was recommended this year, and an increase of $5,000 in the amount of income paid to the Committee by the California Raisin Advisory Board (Board).

The Board is the administrative agency for the State marketing order under which the California raisin industry conducts its marketing promotion and paid advertising. Some of the Committee's employees also perform services for the Board. Pursuant to an agreement between the Committee and Board, the Board reimburses the Committee for the services Committee employees perform for the Board.

Major expense items include $230,000 for executive salaries, $90,000 for office salaries, $42,600 for fieldmen salaries, and $75,000 for Committee travel. Also, $55,810 is budgeted for contingencies.

The Committee also unanimously recommended an assessment rate of $1.80 per ton, which is $0.20 less than last year. This rate, when applied to anticipated acquisitions of 321,700 tons, will yield $579,060 in assessment income, which will be adequate to cover anticipated expenses. Any unexpended funds from the crop year are required to be credited or refunded to the handlers from whom collected.

An interim final rule was published in the **Federal Register** on December 6, 1993 (58 FR 64107). That interim final rule added § 989.344 which authorized expenses and established the assessment rate for the Committee. That rule provided that interested persons could file comments through January 5, 1994. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 crop year began on August 1, 1993. The marketing order requires that the rate of assessment for the crop year apply to assessable raisins handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

Accordingly, the interim rule adding § 989.344 which was published at 58 FR 64107 on December 6, 1993, is adopted as a final rule without change.

Dated: March 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6137 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1250

[Docket No. PY–93–004]

RIN 0581–AA87

Amendment to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Egg Research and Promotion Rules and Regulations by changing the State composition of the six geographic areas and reapportioning the membership on the American Egg Board. The Board approved these changes and requested that the Secretary amend the Rules and Regulations accordingly. These adjustments are based on changing geographic trends in egg production.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would 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 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law; and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

Background

The Egg Research and Promotion Order (7 CFR 1250.301–1250.363) established pursuant to the Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701 *et seq.*), provides in § 1250.328(d) that any changes in representation on the American Egg Board be determined by the percentage of total U.S. egg production in each of the six geographic areas. The Board is authorized 18 members, and representation in each of the 6 areas is based on egg production in the area. The Order further provides in § 1250.328(e) that the Board or designated person or agency shall conduct periodic reviews of production by geographic area at any time, not to exceed 5 years, to assure that representation on the Board, insofar as is practicable, is fair and equal.

During the development process of the Order in 1975, the 48 contiguous States of the United States and the District of Columbia were divided into 6 geographic areas for purposes of determining proportionate representation on the Board. The areas corresponded with those used by the National Agricultural Statistics Service, USDA, for some egg industry statistics.

The Order provides in § 1250.328(d) that Board membership in each area be determined by calculating the percentage of U.S. egg production in the area, multiplying that total by 18 (total Board membership), and rounding to the nearest whole number.

In 1984, a review of 1983 production statistics revealed that production trends had changed, and area membership was adjusted accordingly.

For the 1993 review, the American Egg Board's 1992 production data were reconciled with 1992 data from USDA to verify the shifts in production trends. The review showed that the West North Central and Western areas are no longer proportionately represented on the Board. However, due to rounding off, using the formula in the Order resulted in 19 members, exceeding the Order's 18-member limit.

Because of this incongruity, the Board submitted a recommendation to the Secretary in accordance with§ 1250.328(e) of the Order to redistrict the six areas and reapportion the members and alternates. The following changes are made accordingly:

Area	State composition		Membership	
	Current	Revisions	Current	Revisions
I—North Atlantic	Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, District of Columbia.	Add Virginia, West Virginia	3	None.
II—South Atlantic	Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia.	Add Alabama, Kentucky, Tennessee; Lose Virginia, West Virginia.	3	None.
III—East North Central	Illinois, Indiana, Michigan, Ohio, Wisconsin	Lose Illinois, Wisconsin	3	None.
IV—West North Central	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.	Add Illinois, Wisconsin; Lose Kansas, Missouri.	2	Increase to 3.
V—South Central	Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas.	Add Colorado, Kansas, Missouri, New Mexico; Lose Alabama, Kentucky, Tennessee.	3	None.
VI—Western	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.	Lose Colorado, New Mexico	4	Decrease to 3.

The change in membership is based on production in the newly formed areas and application of the formula in § 1250.328(d) of the Order, as follows:

Redistricted area	Reported cases	Percent of total production	Percent of total production times 18	Revised board membership[1]
I—North Atlantic	39,052,000	17.21	3.09	3
II—South Atlantic	38,118,000	16.79	3.02	3
III—East North Central	41,201,000	18.15	3.27	3
IV—West North Central	36,508,000	16.08	2.90	3
V—South Central	36,083,000	15.89	2.86	3
VI—Western	36,011,000	15.87	2.86	3
Total U.S. production	226,973,000	99.99	18.00	18

[1] Based on rounding to the nearest whole number [§ 1250.328(d)].

Comments

A proposed rule was published in the Federal Register (58 FR 65939) on December 17, 1993. Comments on the proposed rule were solicited from interested parties until January 18, 1994. No comments were received.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 7, CFR part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

2. Section 1250.510 is revised to read as follows:

§ 1250.510 Determination of Board Membership.

(a) Pursuant to § 1250.328 (d) and (e) of the Order, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; Area 2 (South Atlantic States)—Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee; Area 3 (East North Central States)—Indiana, Michigan, and Ohio; Area 4 (West North Central States)—Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin; Area 5 (South Central States)—Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas; Area 6 (Western States)—Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(b) Board representation among the 6 geographic areas is apportioned to reflect the percentage of United States egg production in each area times 18 (total Board membership). The number of members of the Board, beginning with the 1995–96 term, are: Area 1—3, Area 2—3, Area 3—3, Area 4—3, Area 5—3, Area 6—3. Each member will have an alternate appointed from the same area.

Dated: March 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–6144 Filed 3–15–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1942

RIN 0575–AB68

Community Facility Loans and Grants

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations that are utilized by the Rural Development Administration (RDA) in

administering Community Facility Loans and Grants. This action is necessary to implement provisions of the Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the fiscal year ending September 30, 1994 (the Act). The Act provides up to $15 million in RDA grant funds for water and waste disposal (WWD) facilities in rural Alaskan villages. The WWD grant funds authorized by the Act are to be made available to remedy the dire sanitation conditions that exist in rural Alaskan villages.

DATES: This final rule is effective on March 16, 1994. Written comments must be received on or before May 16, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations and Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th St. and Independence Ave., SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

We are issuing this rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information complied by the Department, we have determined that this rule: (1) Would have an 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 or 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.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR 1942–A. The assigned OMB control number is 0575–0015. This rule does not revise or impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Background

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they are merely following the specific directions of the Act and no discretion is left with the agency as to how to use the funds appropriated for this purpose.

The Act provides up to $15,000,000 of the amount appropriated for WWD grants for projects to remedy the dire sanitation conditions that exist in rural Alaskan villages. RDA grants are directed to Alaskan villages that have a median household income that does not exceed 110 percent of the statewide nonmetropolitan median household income. The statewide nonmetropolitan median household income for Alaska is $39,804. The Act further provides that the grants are limited to 50 percent of the development cost of a project. The other 50 percent must be from a State or local contribution. The RDA grant funds can be used by rural Alaskan villages to construct or improve water or waste disposal facilities to serve the residents of these villages. New or improved water or waste disposal systems would solve a major health problem that has burdened the rural parts of Alaska, inhabited primarily Alaskan Natives. The lack of clean, running water and sanitary facilities have led to severe health problems for many of the villages residents.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.386 is added to read as follows:

§ 1942.386 Rural Alaskan villages.

(a) *General.*

(1) This section contains regulations for providing grants to remedy the dire sanitation conditions in rural Alaskan villages using funds specifically made available for this purpose.

(2) Unless specifically modified by this section, grants will be made, processed, and serviced in accordance with this subpart.

(b) *Definitions.* (1) *Dire sanitation condition.* For the purpose of this section, a dire sanitation condition exists where:

(i) Recurring instances of a waterborne communicable disease have been documented; or

(ii) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies.

(2) *Rural Alaskan village*. A rural Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(c) *Eligibility*. (1) The applicant must be a rural Alaskan village.

(2) The median household income of the village cannot exceed 110 percent of the statewide nonmetropolitan household income.

(3) A dire sanitation condition must exist in the village.

(4) The applicant must obtain 50 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under subpart A of this part.

(d) *Grant amount*. Grants will be made for up to 50 percent of the project development costs.

(e) *Use of funds*. Grant funds can be used to pay reasonable costs associated with providing potable water or waste disposal services to residents of rural Alaskan villages.

(f) *Construction*. (1) If the State of Alaska is contributing to the project costs, the project does not have to meet the construction requirements of this subpart.

(2) If a loan is made in accordance with subpart A of this part for part of the local contribution, all of the requirements of that subpart apply

Dated: February 24, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–6024 Filed 3–15–94; 8:45 am]

BILLING CODE 3410-07-U

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91–006F–TA]

RIN 0583–AB34

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Confirmation of interim rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is confirming interim regulations amending its final nutrition labeling regulations. FSIS is taking this action to improve the clarity and accuracy of the regulations, and to provide regulations that parallel the Food and Drug Administration's (FDA) nutrition labeling regulations to the maximum extent possible.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. FSIS's nutrition labeling regulations parallel, to the maximum extent possible, FDA's nutrition labeling regulations promulgated under the Nutrition Labeling and Education Act. FSIS published its final regulations on nutrition labeling simultaneously with FDA's publication.

After the publication of FSIS's final regulations on nutrition labeling, FSIS received several comments from various interested parties contending that portions of FSIS's regulations were unclear, contained technical, unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. Those portions included provisions related to: (a) Providing nutrition labeling by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches; (b) the saturated fat criterion for the "lean" definition; and (c) the use of nutrient content claims on infant and toddler foods.

After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS believed that its final regulations were inconsistent with FDA's regulations in certain areas where uniformity should exist. FSIS also determined that several provisions were inadvertently omitted in its final regulations.

Accordingly, FSIS issued an interim final rule in the **Federal Register** on September 10, 1993. The interim final rule set forth technical amendments (58 FR 47624) to the FSIS nutrition labeling regulations to provide more well-defined regulations that reflect accuracy and clarity regarding the nutrition labeling of meat and poultry products. The amendments consisted of clarifications that are essential to understanding and complying with published provisions, changes that are necessary to avoid technical, unintentional consequences in specific provisions, and additional provisions that were inadvertently omitted. FSIS announced in the interim final rule that there would be a 30-day comment period, and that the Agency would carefully consider all comments received before finalizing the interim rule.

Interim Final Rule

In its interim final rule, FSIS allowed for nutrition labeling to be provided by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches. Accordingly, FSIS added provisions at 9 CFR 317.400(d) and 381.500(d) to permit manufacturers to provide an address or telephone number on the package for consumers to write or call for nutrition information, provided that the labels for these products bear no nutrition claims or nutrition information. These provisions do not affect the exemption for individually wrapped packages of less than ½ ounce net weight.

Also, in its interim final rule, FSIS added a small business exemption provision that was inadvertently omitted from its final nutrition labeling regulations. The provision at 9 CFR 317.400(a) and 381.500(a) states that the calculation of poundage shall be based on the most recent 2-year average of business activity.

FSIS defined "insignificant amount" in the final nutrition labeling regulations as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it is an amount less than 1 gram. In its interim final rule, FSIS revised the definition of "insignificant amount" at 9 CFR 317.309(g)(1) and 381.409(g)(1) to include sugars as an amount less than 1 gram. FSIS determined that sugars is another nutrient with a caloric contribution that is consistent with that for total carbohydrate, dietary fiber, and protein. Therefore, when used in reference to the simplified format, an insignificant amount of sugars is that amount which is less than 1 gram.

FSIS made reference in the final nutrition labeling regulations to a retailer providing nutrition information on the label of single-ingredient, raw products without referring to a manufacturer. In the preamble to its final regulations, FSIS made no distinction between products packaged in official establishments and those packaged at retail level. However, to clarify any misunderstanding regarding these provisions, in its interim final rule, FSIS modified 9 CFR 317.345(a)(1) and 381.445(a)(1) to include reference to a manufacturer.

In its interim final rule, FSIS also amended table 1 of 9 CFR 317.312(b) and 381.412(b) to include product categories for plain meats and meat sticks and plain poultry and poultry sticks with reference amounts of "55 g." These product categories were inadvertently omitted from the final rule.

Also, for purposes of clarification and to more fully harmonize with FDA requirements, FSIS, in its interim final rule, amended table 2 at 9 CFR 317.312(b) and 381.412(b) by moving the lasagna examples to the category of mixed dishes measurable with a cup and also adding meat and poultry filled pasta as further examples of products in this category. FSIS also revised footnote 4 to table 2 at 9 CFR 317.312(b) and 381.412(b) by adding the following words at the end: "except for products in which both the solids and liquids are customarily consumed."

In its interim final rule, FSIS modified the "lean" definition to reflect the change in the saturated fat definition. The final regulations defined saturated fat as the sum of all fatty acids containing no double bonds. Inclusion of all fatty acids with no double bonds in the definition of saturated fat can inflate the level of saturated fat by approximately 15 percent. To offset this unintended effect, FSIS increased the saturated fat criterion for the "lean" definition from less than 4 grams to 4.5 or less grams.

In addition, in its interim final rule, FSIS clarified the provisions concerning nutrient content claims on foods for infants and children under 2 years of age by removing the language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age" from 9 CFR 317.313(a) and 381.413(a). FDS believes that the complete prohibition of nutrient content claims on foods for infants and children under 2 years of age may have been overly broad. FSIS agrees with this position.

It was FSIS's intent to allow percentage labeling of vitamins and minerals on foods intended for use by infants and children less than 2 years of age, as provided for by FDA at 21 CFR 101.13(q)(3). Therefore, in its interim final rule, FSIS amended 9 CFR 317.313(q)(3) and 381.413(q)(3) to allow percentage labeling of vitamin and minerals on such foods.

In cross-referencing FDA's final regulations, FSIS inadvertently omitted paragraphs (e) and (f) as contained in 21 CFR 101.66, Label statements relating to usefulness in reducing or maintaining body weight. Generally, for meat and poultry products, "sugar free" claims are not particularly relevant. However, to harmonize with FDA regulations, FSIS, in its interim final rule, added provisions regarding the labeling of products as "sugar free" and "no added sugar," and the use of label terms suggesting low calorie or reduced calorie foods. FSIS amended 9 CFR 317.380 and 281.480 to incorporate the provisions of 21 CFR 101.66(e) and (f).

Discussion of Comments

FSIS received no comments in response to the interim final rule. Therefore, FSIS is adopting the interim final rule as published in the **Federal Register** on September 10, 1993 (58 FR 47624).

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble:

§ 317.309, 317.312, 317.313, 317.345, 317.362, 317.380, 317.400 [Amended]

1. In part 317, the amendments to § 317.309(g)(1); Table 1 and 2 in § 317.312(b); § 317.313 (a) and (q)(3); § 317.345(a)(1); § 317.362(c)(1); § 317.380; and § 317.400 (a)(1)(iii) and (d) published on September 10, 1993 (58 FR 47624), are confirmed as final.

§ 381.409, 381.412, 381.413, 381.445, 381.426, 381.480, 381.500 [Amended]

2. In part 381, the amendments to § 381.409(g)(1); Tables 1 and 2 in § 381.412(b); § 381.413 (a) and (q)(3); § 381.445(a)(1); § 381.462(c)(1); § 381.480; and § 381.500 (a)(1)(iii) and (d) published on September 10, 1993 (58 FR 47624), are confirmed as final.

Done at Washington, DC, on March 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-6013 Filed 3-15-94; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-163-AD; Amendment 39-8857; AD 94-06-10]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8 series airplanes, that currently requires the incorporation of specific maximum brake wear limits into the maintenance inspection program. That action was prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by that AD are intended to prevent loss of braking effectiveness during a high energy RTO. This amendment requires that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

DATES: Effective April 15, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93-09-10, Amendment 39-8576 (58 FR 29347, May 20, 1993), which is applicable to all McDonnell Douglas Model DC-8 series airplanes, was published in the **Federal Register** on December 22, 1993 (58 FR 67723). That action proposed to require that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

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

All commenters support the proposed rule.

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

There are approximately 337 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry were affected by AD 93–09–10, and would continue to be affected by this supersedure of that AD. It takes approximately 80 work hours per airplane to accomplish the actions currently required by AD 93–09–10, and the average labor rate is $55 per work hour. (There are 8 brakes per airplane.) The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is approximately $5,600 per airplane. Based on these figures, the current cost impact of the AD 93–09–10 on U.S. operators is estimated to be $2,220,000, or $10,000 per airplane.

The total cost figure indicated above is presented as if no operator has yet accomplished the requirements of AD 93–09–10 (or this supersedure of that AD). However, because AD 93–09–10 was effective on June 21, 1993, and operators were given 180 days to comply with it, the FAA assumes that the majority of affected operators have already accomplished the requirements of that AD.

The only foreseeable additional costs that may be imposed by this supersedure of AD 93–09–10 would be the cost of reidentifying (permanently marking) any modified brakes that were previously marked by a color code marking. The costs associated with that procedure are expected to be minimal.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8576 (58 FR 29347, May 20, 1993), and by adding a new airworthiness directive (AD), amendment 39–8857, to read as follows:

94–06–10 McDonnell Douglas: Amendment 39–8857. Docket 93–NM–163–AD. Supersedes AD 93–09–10, Amendment 39–8576.

Applicability: All Model DC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after June 21, 1993 (the effective date of AD 93–09–10, Amendment 39–8576), inspect the main landing gear brakes having the part numbers indicated below to determine wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake that is within this limit.

Douglas brake part No.	Bendix part No.	Maximum wear limit (inches)
5610206–5001	150787–1	0.7
	150787–2	0.7
5713612–5001	151882–1	0.7
	151882–2	0.7
5773335–5001	154252–1	0.5
5773335–5501	154252–2	0.5
5759262–5001	2601412–1	0.5
	*2601412–2	0.75

*Brakes having this part number include part number 2601412–1 brakes that have been modified and permanently marked in accordance with McDonnell Douglas Service Bulletin 32–181, Revision 2, dated August 25, 1993.

(b) Within 180 days after June 21, 1993, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

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

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

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

(e) This amendment becomes effective on April 15, 1994.

Issued in Renton, Washington, on March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6069 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–AWP–21]

Modification of Class D Airspace; Mojave, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Mojave, CA. This Class D airspace reconfiguration accommodates the safe and efficient handling of various types of aircraft operating at Mojave Airport, CA, and provides a corridor of airspace for the north-south transit of visual flight rules (VFR) aircraft between the Mojave Class D airspace and Restricted Area R–2515.

EFFECTIVE DATE: 0901 U.T.C., July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D airspace at Mojave, California. The FAA proposed that the vertical limits of the airspace be raised from 4,300 feet mean sea level (MSL) to 4,800 feet MSL and the lateral limits be increased from a 3-mile radius to a 4.3-mile radius. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the Department of the Air Force commented that a ½-mile corridor should be established between R–2515 and the Mojave Class D airspace to allow for transit of VFR aircraft north and southbound along U.S. Highway 58. These aircraft would not be required to communicate with the Mojave tower. Further study revealed that, by letter of agreement between the Air Force and Mojave Tower, the ½ mile corridor has existed in practice and serves the VFR pilot well. Therefore, the FAA is further modifying the Mojave Class D airspace by excluding airspace ½-mile wide between the Class D airspace and R–2515. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; June 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class D airspace at Mojave, California, to provide controlled airspace from the surface up to and including 4,800 feet MSL within a 4.3-mile radius of the Mojave, CA Airport, excluding that airspace east of a line ½-mile west of and parallel to the R–2515 boundary.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

AWP CA D Mojave, California [Revised]

Mojave Airport, CA

(lat. 35°03′30″ N, long. 118°90′03″ W)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 4.3-mile radius of Mojave Airport, excluding that airspace east of a line ½-mile west of and parallel to Restricted Area R–2515. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on February 14, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–6101 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

30 CFR Part 250

RIN 1010–AB66

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on September 24, 1993 (58 FR 49924). The regulations related to the new Outer Continental Shelf (OCS) reporting forms used for collecting information related to oil and gas and sulphur drilling and production in the OCS.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Jo Ann Lauterbach, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published by MMS on August 25, 1993 (58 FR 44762), which addressed data and information to be made available to the public. This rule ensured that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate (MER); MMS–1867, Request for Well Maximum Production Rate (MPR); MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report, were made available for public inspection and clearly identified in the regulations.

Another final rule was published by MMS on September 24, 1993 (58 FR 49924), which amended the regulations governing the OCS reporting forms to reflect new form numbers and a change in the reporting interval for well tests of oil-well completions. This rule also amended § 250.18(d) which was published on August 25, 1993, to include the items identified on the new OCS reporting forms that would not be available for public inspection. However, the amendments to § 250.18(d) made on September 24, 1993, did not agree with the changes made in the August 25, 1993, final rule. Therefore, this rule corrects § 250.18(d) so there is no confusion as to the time periods involved or the items identified on the forms that are not to be released to the public.

Need for Correction

As published, the final regulations at § 250.18(d) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR part 250 is corrected by making the following correcting amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.18, paragraph (d) is revised to read as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified on Forms MMS–123 through MMS–128 are protected as follows:

(1) On Form MMS–123, Application for Permit to Drill, the following items of data and information shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier:

(i) Item 17, Well Location at Total Depth (Estimated);
(ii) Item 24, Total Depth (Proposed), MD and TVD;
(iii) Item 25, Attachments.

(2) On Form MMS–124, Sundry Notices and Reports on Wells, Item 36, Describe Proposed or Completed Operations, shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier.

(3) On Form MMS–125, Well Summary Report, the following data and information shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier, except that Item 78, Summary of Porous Zones, and Item 85, Geologic Markers, shall not be released when the well goes on production unless the period of time specified in paragraph (b) of this section has expired.

(i) Item 17, Well Location at Total Depth (Surveyed);
(ii) Item 24, Total Depth (Surveyed), MD and TVD;
(iii) Item 34, Well Status/Type Code;
(iv) Item 37, Well Location at the Producing Zone (Surveyed);
(v) Item 46, Top (MD);
(vi) Item 47, Bottom (MD);
(vii) Item 48, Top (TVD);
(viii) Item 49, Bottom (TVD);
(ix) Item 50, Reservoir Name;
(x) Item 51, Name(s) of Producing Formation(s) This Completion;
(xi) Item 52, Hole Size;
(xii) Item 53, Casing Size;
(xiii) Item 54, Casing Weight;
(xiv) Item 55, Grade;
(xv) Item 56, Setting Depth (MD);
(xvi) Item 57, Cement Type;
(xvii) Item 58, Quantity of Cement (FT^3);
(xviii) Item 59, Hole Size;
(xix) Item 60, Tubing Size;
(xx) Item 61, Tubing Weight;
(xxi) Item 62, Grade;
(xxii) Item 63, Setting Depth (MD);
(xxiii) Item 64, Packer Setting Depth (MD);
(xxiv) Item 65, Hole Size;
(xxv) Item 66, Liner Size;
(xxvi) Item 67, Liner Wt.;
(xxvii) Item 68, Grade;
(xxviii) Item 69, Top (MD);
(xxix) Item 70, Bottom (MD);
(xxx) Item 71, Cement Type;
(xxxi) Item 72, Cement Quantity (Ft^3);
(xxxii) Item 73, Top (MD);
(xxxiii) Item 74, Bottom (MD);
(xxxiv) Item 75, Type of Material;
(xxxv) Item 76, Material Quantity;
(xxxvi) Item 77, List of Electric and Other Logs Runs, Directional Surveys, Velocity Surveys, and Core Analysis;
(xxxvii) Item 78, Summary of Porous Zones: Show all zones containing hydrocarbons; all cored intervals; and attach all drill stem and well potential tests;
(xxxviii) Item 79, Formation;
(xxxix) Item 80, Top MD;
(xl) Item 81, Top TVD;
(xli) Item 82, Bottom MD;
(xlii) Item 83, Bottom TVD;
(xliii) Item 84, Description, Contents, Etc.;
(xliv) Item 85, Geologic Markers;
(xlv) Item 86, Top MD;
(xlvi) Item 87, Top TVD.

(4) On Form MMS–126, Well Potential Test Report and Request for Maximum Production Rate (MPR), Item 101, Static Bottomhole Pressure, is not available to the public until 2 years after submittal. All other data and information on Form MMS–126 are available to the public upon commencement of production.

(5) On Form MMS–127, Request for Reservoir Maximum Efficient Rate (MER), the following data and information are not available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

(i) Item 124, Upper ϕ Cut Off;
(ii) Item 125, Lower ϕ Cut Off;
(iii) Item 126, Upper k Cut Off;
(iv) Item 127, Lower k Cut Off;
(v) Item 128, G/O Interface;
(vi) Item 129, W/O Interface;
(vii) Item 130, G/W Interface;
(viii) Item 131, A_g;
(ix) Item 132, A_o;
(x) Item 133, V_o;
(xi) Item 134, V_g;
(xii) Item 135, H_o;
(xiii) Item 136, h_o;
(xiv) Item 137, H_g;
(xv) Item 138, H_g;
(xvi) Item 139, ϕ_c;
(xvii) Item 140, S_w;
(xviii) Item 141, S_g;
(xix) Item 142, S_o;
(xx) Item 143, B_{oi};
(xxi) Item 144, B_{gi};
(xxii) Item 145, N;
(xxiii) Item 146, G;
(xxiv) Item 147, K_h;
(xxv) Item 148, K_v;
(xxvi) Item 149, Avg Well Depth;
(xxvii) Item 150, R_{io};
(xxviii) Item 151, R_{ig};
(xxix) Item 152, $R_{io}N$;
(xxx) Item 153, $R_{ig}G$;
(xxxi) Item 154, $N_p(2)/N$;
(xxxii) Item 155, $G_p(2)/G$;
(xxxiii) Item 156, Degrees API @ 60°F;
(xxxiv) Item 157, SG;
(xxxv) Item 158, R_{si};
(xxxvi) Item 159, μ_{oi};
(xxxvii) Item 160, μ_o;
(xxxviii) Item 161, T_{avg};
(xxxix) Item 162, P_i;
(xl) Item 163, P_iDATE;
(xli) Item 164, P_{ws};
(xlii) Item 165, P_{ws}DATE;
(xliii) Item 166; P_b;
(xliv) Item 167; P_d;
(xlv) Item 168, Datum Depth.

(6) All data and information on Form MMS–128 are available for public inspection.

* * * * *

Dated: February 1, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–6041 Filed 3–15–94; 8:45 am]

BILLING CODE 4310–MR–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 93–13A]

Procedures for Copyright Restoration of Certain Motion Pictures and Their Contents in Accordance With the North American Free Trade Agreement

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office is issuing interim regulations to establish procedures governing the filing of Statements of Intent for the restoration of copyright protection in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement (NAFTA) and the statute implementing it. The NAFTA Implementation Act authorizes the Copyright Office to establish procedures whereby potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office on or before December 31, 1994, will have copyright protection restored effective January 1, 1995.

DATES: These interim regulations are effective March 16, 1994. Comments should be in writing and received on or before May 16, 1994.

ADDRESSES: If sent by mail, fifteen copies of written comments should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If hand delivered, fifteen copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue SE., Washington, DC 20024. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by private messenger service.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Policy Planning Advisor, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On January 10, 1994, the Copyright Office notified the public of the provisions in NAFTA with regard to the restoration of copyright protection for certain works, 59 FR 1408 (1994). To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed in Mexico or Canada and entered the public domain in the United States because of first publication anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

These interim regulations set out the procedures that potential copyright owners must follow if they wish to have copyright protection for their works restored in the United States. To restore copyright, potential copyright owners must file Statements of Intent with the Copyright Office on or before December 31, 1994, and these Statements must contain the information set out in these regulations. The regulations also detail the procedures the Copyright Office will use to process Statements of Intent and create a record for the public.

I. Background

The North American Free Trade Agreement entered into force on January 1, 1994. The NAFTA Agreement and the NAFTA Implementation Act (Pub. L. 103–182) provide for the restoration of copyright for certain works that are currently in the public domain in the United States. New section 104 sets out the conditions for restoring protection:

Classes of works eligible. Two types of works are eligible for copyright restoration: (1) Motion pictures; and (2) works included in motion pictures (such as an underlying work—a novel or play on which a motion picture was based—or the original screenplay or original musical score of a motion picture).

Dates of publication and public domain status. To be eligible for restoration, the motion picture, or the work included in a motion picture, must meet two criteria: (1) The work must have been first published on or after January 1, 1978, and before March 1, 1989; and (2) the work must have fallen into the public domain in the United States because, at the time of its first publication, it failed to meet the requirements of the U.S. copyright law for publication with notice of copyright (17 U.S.C. 401, 402, 403, 405) as they existed at that time.

Place of first fixation or publication. Assuming they meet the other criteria, the following two kinds of works are eligible for copyright restoration: (1) Published works that were first fixed in Canada or Mexico, regardless of where they were first published; and (2) works first published in Mexico or Canada, regardless of where they were first fixed. A motion picture, or a work included in a motion picture, meeting these requirements is entitled to receive copyright protection under title 17 for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with the required notice. 17 U.S.C. 104A(a)(1993).

Potential copyright owners of qualifying works must file a Statement of Intent with the Copyright Office between January 1, 1994 (the date on which the Agreement entered into force), and December 31, 1994, to notify the public of their intent to restore copyright protection for these works in the United States. After January 1, 1995, the Copyright Office will publish in the **Federal Register** a list of the works which are determined to be properly qualified for protection and for which complete Statements of Intent have been filed. The restoration of copyright protection for eligible works will be effective on January 1, 1995.

The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of works for which Statements of Intent have been received.

The copyright restoration provisions apply to a "motion picture" or any work included in a motion picture. Section 101 of title 17 defines motion pictures to include audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Thus, for example, the restoration provisions apply to feature films, short films, documentaries, silent films, television films, television series, and television programs, as well as works contained in these "motion pictures."

To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed[1] in Mexico or Canada and entered the public domain in the United States because of first publication[2] anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

Although the Copyright Office has authority to charge a fee for the processing of NAFTA Statements of Intent under 17 U.S.C. 708, it has decided not to do so at this time. However, it reserves the right to charge a fee in the future if the Office's duties are broadened under the NAFTA or a similar agreement.

The filing of an effective Statement of Intent will not give any of the legal benefits or presumptions that a voluntary copyright registration now provides under U.S. copyright law. The Statement of Intent is submitted only for the purposes of the NAFTA copyright restoration provisions. Any work for which copyright is restored may be registered on and after January 1, 1995, in accordance with title 17, upon the submission of the proper copyright application, filing fee, and an appropriate deposit of the work. The Copyright Office will not accept applications for copyright registration for these works before January 1, 1995; only Statements of Intent may be filed before then.

After January 1, 1995, the Copyright Office encourages potential copyright owners to make a voluntary copyright registration to obtain the legal and commercial advantages made available by registration. These include certain evidentiary benefits; availability of statutory damages; and the creation of a complete registration record in the Copyright Office's online database.

II. Explanation of Interim Regulations

Procedures for Filing an Effective Statement of Intent

Potential copyright owners or their agents must file Statements of Intent with the Copyright Office on or before December 31, 1994, in order for a Statement to be effective. No fee is required. The Statement of Intent must be in English and should be typed or clearly printed by hand on 8½-inch by 11-inch white paper. To be complete, a Statement of Intent must contain all of the information required in items 1 through 6 below, including the entire "certification statement" and the signature of the potential copyright owner or authorized agent.

A complete Statement should clearly indicate at the top of the first page that the potential copyright owner is submitting: A Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement (NAFTA). All statements must be mailed to the Copyright Office at: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

All of the information required in items 1 through 6 below must be contained in a Statement of Intent. Otherwise the Copyright Office will correspond with the party submitting the Statement to correct omissions. Should that party continue to fail to include any of the required items (1 through 6), copyright restoration cannot be effected for that particular work. In addition to the required information, the Office encourages the potential copyright owner to provide other "optional" information that should be useful in providing information to the public about any work for which copyright is restored.

The required and optional information for a Statement of Intent is:

(1) *Title* (Required Information)

The title of the work or works for which copyright restoration is sought. If multiple works are listed in a single Statement of Intent, each individual work must be clearly and separately identified in items 1 through 6 of the Statement. For series and episodes, these titles must be clearly identified by a title or number.

Explanation of item #1: Only motion pictures and their contents (as defined in 17 U.S.C. 104A and 101) are eligible for copyright restoration. Potential copyright owners can submit the titles of any number of works for which they are seeking restoration on a single Statement of Intent. Assuming that the exploitation of the contents in a motion picture was legally authorized at the time the motion picture was made, submission of the title of the motion picture will suffice for the restoration of copyright protection for the works included in it.

Optional information for item #1 includes alternative titles (for example, the American release title of a motion picture if different from the foreign title); the original producer and/or director of the motion picture; and the format or physical description of the work as first published (for example, running time, number of reels, and whether the work is on film, videotape, videodisc, or another medium). This descriptive material will help identify similarly titled films or rereleases.

(2) *Nation of First Fixation* (Required Information)

Explanation of item #2: To be eligible for copyright restoration a work must have been first fixed in Mexico or Canada, or, if first fixed in any other nation, it must have been first published in Mexico or Canada. For example, a work may be eligible for restoration if it was first fixed before 1978 in the United States but later published in Mexico or Canada between January 1, 1978, and March 1, 1989.

Optional information for item #2 would include the year date of first fixation.

(3) *Nation of First Publication* (Required Information)

Explanation of item #3: To be eligible for copyright restoration the work must have been first published in Mexico or Canada if it was first fixed in a nation other than Mexico or Canada. If a work remains unpublished in 1994, the NAFTA copyright restoration provisions are not applicable because the work is already protected under the copyright law of the United States regardless of the nationality or domicile of its author. The duration of unpublished works is governed by 17 U.S.C. 302 and 303.

(4) *Date of First Publication* (Required Information)

Explanation of item #4: To be eligible for copyright restoration a work must have been first published on or after January 1, 1978, and before March 1, 1989, and must have entered the public domain in the United States for failure to comply with the copyright notice

[1] See 17 U.S.C. 101. For example, a "fixed" motion picture would be completed and embodied in a copy, such as on film stock or videotape. Also see the definitions provided in these interim regulations.

[2] See 17 U.S.C. 101. The place of first publication would be the place where copies were first sold, leased, loaned or offered for sale, by for example, the distribution of videotape copies or film prints. Also, see the definitions provided in these interim regulations.

Also, see Article 3(4) of the Berne Convention for the Protection of Literary and Artistic Works which permits simultaneous publication, that is, within 30 days of its first publication if published in two or more countries. For example, if a motion picture was first published (between January 1, 1978 and March 1, 1989) within 30 days in two countries, and one of these countries is Mexico or Canada, it would be eligible for the NAFTA copyright restoration.

requirements of the U.S. Copyright Code. For example, the date of first publication would be the date of a film's release, or the date of its first offering for rental or sale.

(5) *Name and Address* (Required Information)

The name and mailing address of the potential copyright owner of work, and a telephone and telefax number, if available.

Explanation of item #5: The name and mailing address (the telephone and telefax numbers, if available) of the potential copyright owner will be used to create a readily available public record at the Library of Congress. This information will serve to identify the copyright owner of works for which copyright has been restored, to provide notice to the public that these works will have copyright protection for the remainder of their term, and to facilitate licensing and other uses of these works by the general public.

Optional information for item #5 would include the name of the original copyright owner of the work, if it is different from the potential copyright owner; and for works contained in motion pictures, the potential owner or owners of those works, if different from the potential copyright owner submitting a Statement of Intent. Separate Statements of Intent may be submitted by the potential copyright owner(s) of the underlying works, if different from the owner of the motion picture.

(6) *Certification Statement and Signature* (Required Information)

The following dated certification statement must be included in its entirety along with the signature of the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Explanation of item #6: The entire certification statement must be reproduced on each Statement of Intent to attest that the person signing the statement understands the copyright restoration provisions and the consequences of false statements of material facts. A complete Statement of Intent must be signed and dated by the potential copyright owner or an authorized agent.

III. Sample Statement of Intent

As an Appendix, the Copyright Office provides a sample Statement of Intent which may be used by potential copyright owners or their authorized agents. This Appendix will not appear in the Code of Federal Regulations. The sample Statement includes both the required information that must be provided for the Statement of Intent to be effective and the additional optional information which is not required. If provided, the optional information, clearly identified in this sample, will greatly enhance the Copyright Office records. The Office encourages potential copyright owners to use this suggested format for their submissions to ensure that all necessary information is provided and to avoid correspondence.

IV. Copyright Office Procedures for Handling Statements of Intent

A timely Statement of Intent will be reviewed by the Copyright Office for the required information listed in items 1 through 6. If the Statement does not give the required information, the Copyright Office will ask the potential copyright owner or authorized agent to submit the missing information. Complete and timely Statements of Intent will be entered into the Copyright Office's records and will be readily accessible to the public. The Copyright Office will publish a list of all the titles of eligible works for which effective Statements of Intent have been made in the **Federal Register** as soon as possible after January 1, 1995, and will make it available to the public after that date. Statements of Intent submitted after December 31, 1994, will not be accepted for inclusion in the Copyright Office's database or for the **Federal Register** notice in 1995. Copyright restoration is automatic and requires no further action by the Copyright Office.

Appendix

Statement of Intent To Restore Copyright Protection in the United States in Accordance With the North American Free Trade Agreement (NAFTA)

1. Title of work(s): ____________
(For multiple works complete items 1 through 6 for each separate work.)

1a. Include series and episode title(s)/number(s), if any ____________

1b. If this Statement does not cover the entire motion picture, specify the underlying work covered, *e.g.*, screenplay, music, etc.

1c. (Optional) Alternative titles (for example, U.S. release title, if different from foreign title) ____________

1d. (Optional) Original producer and/or director ____________

1e. (Optional) Format or physical description of work as first published (running time, reels, etc.)______
Film______ Videotape______
Videodisc______ Other (describe)

2. Nation of first fixation—Mexico ( ) Canada ( ) Other nation (specify):______

2a. (Optional) Year of first fixation:______

3. Nation of first publication—Mexico ( ) Canada ( ) Other nation (specify):______

4. Date of first publication: ____________
(month/day/year)

5. Name and mailing address of potential copyright owner of work:
Name: ____________
Address: ____________
(Street or Post Office Box, City/State, Country)
Telephone______ Telefax______

6. Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: __________ Date: __________
(Potential copyright owner or authorized agent)

List of Subjects in 37 CFR Part 201

Copyright, Restoration of copyright for certain works in accordance with the North American Free Trade Agreement

Interim Regulations

For the reasons set out in the Preamble, section 37 CFR chapter II is amended in the manner set forth below

PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; § 201.31 is also issued under Public Law 103–182, 107 Stat. 2115.

2. A new § 201.31 is added to read as follows:

§ 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required in 17 U.S.C. 104A(a). On or after January 3, 1995, the Copyright Office will publish in the **Federal Register** a list of works for which potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Effective filing.* To be effective a Statement of Intent must be complete and timely.

(2) *Eligible work* means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) *Fixed* means a work 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101

(4) *Potential copyright owner* means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) *Published* means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

(c) *Forms.* The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) *Requirements for effective Statements of Intent.* (1) The document should be clearly designated as a "Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement".

(2) Statements of Intent must include: (i) The title(s) of the work(s) for which copyright restoration is sought; (ii) nation of first fixation; (iii) nation of first publication; (iv) date of first publication; (v) name and mailing address (and telephone and telefax, if available) of the potential copyright owner of the work; (vi) the following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

(3) Statements of Intent must be received in the Copyright Office on or before December 31, 1994.

(4) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.

(e) *Fee.* The Copyright Office is not requiring a fee for the processing of Statements of Intent.

(f) *Effective date of restoration of copyright protection.* (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.

(2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) *Registration of works whose copyright has been restored.* After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

Dated: March 8, 1994.

Barbara Ringer,

Acting Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-6122 Filed 3-15-94; 8:45 am]

BILLING CODE 1410-07-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN18-1-5906 FRL-4830-3]

Approval and Promulgation, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State Implementation Plan (SIP) revision submitted by the State of Minnesota for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (program). The implementation plan was submitted by the State to satisfy the mandate of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this action; additional information is available at the address indicated.

DATES: This final rule will be effective May 16, 1994 unless notice is received by April 15, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments can be mailed to William L. MacDowell, Air and Radiation Division, (AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3509.

Copies of the State's submittal and USEPA's technical support document are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency (AE-17J), Region 5, Air Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604-3509, Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260-7548 and Mr. Leo Raudys, Program Development Section, Air Quality Division, Minnesota Pollution Control Agency, 520 LaFayette Road, St. Paul, Minnesota 55155–3898.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, U.S. Environmental Protection Agency (AE–17J), Region 5, Air Enforcement Branch 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, telephone (312) 353–3849.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (program), and submit this program as a revision to the federally approved SIP. In addition, the CAA directs the United States Environmental Protection (USEPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a program are set out in section 507 of the CAA. In February 1992, USEPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments," in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The Minnesota Pollution Control Agency (MPCA), on November 9, 1992, submitted a SIP revision to USEPA. To gain full approval, the MPCA's submittal must provide for each of the following program elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of the State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

The Minnesota legislation charged the Commissioner of the MPCA to establish a SBAP to provide direct and timely technical assistance to small businesses. The SBAP plan was submitted to the USEPA as a SIP revision on November 9, 1992. Full implementation of the SBAP begins in November 1994. However, elements of the program are being implemented earlier. For example, the Compliance Advisory Council which is established by legislation, and has program oversight responsibilities, held its first meeting in September 1993. An ombudsman was hired in August 1993, and the SBAP has a total of 3 full-time employees currently assisting small businesses. The Minnesota Technical Assistance Program (MnTAP), established in 1984 at the University of Minnesota, while not yet available for air pollution control purposes, will provide non-regulatory assistance and act as an information clearinghouse, on an as needed basis, to help the MPCA to implement the SBAP. MnTAP will provide technical expertise to the MPCA to implement the SBAP. MnTAP will provide technical expertise to the MPCA to evaluate air pollution control regulations and source control procedures affecting small sources.

Section 507(a) sets forth six requirements[1] that States must meet to have an approvable Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The first requirement in the CAA is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and activities to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The MPCA has met this requirement by providing that the SBAP, develop and prepare information packets which describe in layperson's terms the compliance and technical information relevant to a small business stationary source's obligation under the Act; identify appropriate information dissemination and outreach mechanisms, and help to disseminate technical and compliance information to small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The MPCA has met the requirement by requiring the SBAP to identify and develop needed and appropriate printed resources to provide information on pollution prevention opportunities for specific small business source categories or processes which have proposed standards; and identify appropriate mechanisms to disseminate the above information to small businesses, including news letters, trade associations, Small Business Development Centers, Chambers of Commerce, pollution prevention conference, and cooperative extension. The SBAP has planned workshops scheduled for early 1994, as one of the mechanisms for informing small businesses of the need for pollution prevention and emissions control.

The third requirement is to develop a compliance assistance program, for small business stationary sources, which assists small businesses in determining applicable requirements and in receiving permits in a timely and efficient manner. The MPCA's SBAP plan includes a procedure to refer businesses to appropriate air quality staff for cases of rule identification, understanding, interpretation, permit needs, and permit procedures; and provides a procedure to require the MPCA staff to assist the SBAP with emission control or emission prevention information needed by small businesses.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard. The Minnesota SBAP plan is designed to meet this requirement by providing direct access of the small business owner or operator with the SBAP staff and making available information applicable to control technologies and legal rights. The plan includes opportunities for small businesses to attend workshops focused on selected source categories, and will include pre-printed source material and forms to optimize the technical and compliance assistance services provided by the SBAP staff.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act,

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The MPCA SIP meets this requirement by: holding information workshops requiring the SBAP to develop and maintain a list of qualified auditors, based upon criteria established by the SBAP in coordination with MPCA Air Quality Division technical staff and MnTAP.

The sixth requirement is to develop procedures for consideration of requests for a small business stationary source for modification of any work practice or technological method of compliance, or the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The MPCA addresses this requirement by committing the SBAP to develop administrative procedures, by November 15, 1994, to handle requests of this nature. Existing Minnesota statutes require the MPCA, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses: the establishment of performance standards required in the rule, and exempting small businesses from any or all requirements of the State rule. The USEPA believes this responds to the spirit of the guidance yet any such streamlining of existing rules or development of new rules affecting compliance to avoid unreasonable burden on small businesses will be required to go through the public processes. An adequate opportunity will exist for comment by the public and by USEPA.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The Minnesota legislation: requires the MPCA Commissioner to appoint an ombudsman, specifies the duties of the office, insures independence of action, and details the candidates qualifications. In this case, the Commissioner, MPCA, placed the ombudsman in the Environmental Analysis Office (EAO) of the MPCA. The MPCA SIP states that the ombudsman, hired in August 1993, has authority, under section 8, subdivision (3) of the Small Business Air Quality Compliance Assistance Act, to act independently of the MPCA. The EAO is responsible for implementing the Minnesota Environmental Review Program (MERP). The function of MERP is to avoid and minimize damage to Minnesota's environmental resources caused by public and private development by requiring that proposed actions which have the potential for significant environmental effects undergo special review procedures in addition to any other required approvals and permits. The USEPA believes that the ombudsman has sufficient authority, and is adequately located for technical and program support purposes, to monitor the small business stationary source technical and environmental compliance assistance program.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Minnesota legislation is consistent with these guidelines and satisfies the requirement by establishing the Minnesota Small Business Air Quality Compliance Assistance Advisory Council, referred to in the plan as the Compliance Advisory Council. The requirements for the council are listed in the State legislation of April 29, 1992. The legislature however, increased the membership of the Council by requiring the participation of two additional state agencies: the Director of the Minnesota Office of Waste Management or the Director's designee, and the Commissioner of Department of Trade and Economic Development or the Commissioner's designee. The legislature's action to increase the size of the Council is considered to be within the scope of the CAA and is satisfactory to the USEPA because the CAA requires the size of the CAP to be not less than 7 individuals, specifying the minimum number rather than the maximum.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to USEPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act[2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The Minnesota legislation and plan charge the council with carrying out all but the last of these responsibilities. The last of these responsibilities is found in the plan as a responsibility of the SBAP program staff to carry out. Since the SBAP staff will be supervised by the ombudsman, the USEPA believes this is sufficient to satisfy this requirement.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Minnesota has established a mechanism in the SBAP plan for ascertaining the eligibility of a source to receive assistance under the program, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The USEPA believes this mechanism, which includes the criteria noted above, corresponds with the Acts' requirements and the Agency's guidelines.

The State of Minnesota has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Minnesota has provided for exclusion from the small business stationary source definition, after consultation with the USEPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, USEPA believes that the State program must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes

III. The USEPA's Action

In this action, USEPA is approving in final the SIP revision submitted by the State of Minnesota. The State of Minnesota has submitted a SIP revision implementing each of the program elements required by section 507 of the CAA. For each of the three essential elements of the Program: the Small Business Assistance Program, the element is currently operational or the State has submitted a schedule for that element indicating implementation by November 15, 1994. The USEPA is therefore approving this submittal. This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 6 of Executive Order 12866 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request.

Because USEPA considers this action noncontroversial and routine, we are approving it without proposal. The action will become effective on May 16, 1994. However, if the USEPA receives notice April 15, 1994 that someone wishes to submit substantive and critical comments, then USEPA will publish: (1) A document that withdraws this action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, USEPA is approving in final a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the USEPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Dated: January 14, 1994.

William E. Muno,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(28) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(28) On November 9, 1992, the State of Minnesota submitted the Small Business Stationary Source Technical and Environmental Compliance Assistance plan. This submittal satisfies the requirements of section 507 of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Minnesota Laws Chapter 546, sections 5 through 9 enacted by the Legislature, and signed into Law on April 29, 1992.

* * * * *

[FR Doc. 94–5907 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IN36–1–6182; FRL–4849–3]

Approval and Promulgation of a State Implementation Plan for Photochemical Assessment Monitoring; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements for enhanced ozone monitoring in the Clean Air Act (Act) and regulations promulgated pursuant to the Act. These regulations require the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

DATES: This final rule will be effective May 16, 1994 unless notice is received by April 15, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mark Palermo at (312) 886–6082, before visiting the Region 5 Office.) US Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark Palermo, Regulation Development Section (AR–18J), Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(1) of the Act, as amended in 1990, requires that the USEPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_x), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the 1990 Amendments. In addition, the Act requires that following the promulgation of the rules relating to enhanced ambient monitoring, the State must commence actions to adopt and implement a program based on these rules, including a revision to each SIP affecting areas classified serious and above for ozone. See also the April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble), 57 FR 13498, 13515.

On February 12, 1993, USEPA promulgated regulations providing for the establishment and maintenance of the PAMS program (58 FR 8452). Section 58.40(a) of 40 CFR part 58 requires the State to submit a photochemical assessment monitoring network description, including a schedule for implementation, to the Administrator within 6 months after promulgation, or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within 9 months after promulgation of the final rule or November 12, 1993.

On August 12, 1993 the Lake Michigan Air Directors Consortium submitted a regional PAMS network description, including a schedule for implementation, under the signature of the State Air Directors for the four States of Illinois, Indiana, Michigan and Wisconsin (the States). This submittal is currently being reviewed by the USEPA and is intended to satisfy the requirements of § 58.40(a).

On November 15, 1993 Indiana submitted to the USEPA a revision to the Indiana ozone SIP providing for the establishment and maintenance of the PAMS network and requested its approval. A letter finding the submittal complete was sent to the State on January 19, 1994. The November 15, 1993, Indiana PAMS SIP revision request is intended to meet the requirements of Section 182(c)(1) of the Act and effect compliance with 40 CFR part 58 by implementing the rules for PAMS. The Indiana Department of Environmental Management (IDEM) held a public hearing on the Indiana PAMS SIP revision request on December 14, 1993. IDEM submitted the transcript of the hearing on January 19, 1994.

II. Analysis of State Submittal

The November 15, 1993 Indiana PAMS SIP revision request would incorporate PAMS into the ambient air quality monitoring network of State and Local Ambient Monitoring Stations/National Ambient Monitoring Stations (SLAMS/NAMS). The State will establish and maintain PAMS as part of the overall ambient air quality monitoring network.

The criteria used to review the Indiana PAMS SIP revision request are derived from section 182 (c)(1) of the Act, 40 CFR part 58 (as promulgated on February 12, 1993 (58 FR 8452)), the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58* (EPA–450/4–78–038, OAQPS, November 1979), the September 2, 1993 memorandum from G.T. Helmes of the U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), entitled *Final Boilerplate Language for the PAMS SIP Submittal*, and the April 16, 1992 General Preamble.

The regional PAMS network submitted by the States on August 12, 1993 is currently being reviewed by USEPA. A joint network description and implementation schedule is permitted and encouraged by 40 CFR 58.40(a)(3) for States where a State's PAMS network requires monitoring stations in different States and/or Regions.

Since network descriptions may change annually, they are not part of the SIP, as recommended by the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR 58*. However, the network description is negotiated and approved during the annual review via the grant process under section 105 of the Act, as required by 40 CFR 58.20(d), 58.25, 58.36 and 58.46.

The November 15, 1993 submittal would incorporate PAMS into the overall ambient air quality monitoring network. It would provide Indiana with the authority to establish and operate the PAMS sites, secure funds for PAMS and provide the USEPA with authority to enforce the implementation of PAMS (under the section 105 grant process), since their implementation is required by the Act.

The September 2, 1993 memorandum from OAQPS entitled *Final Boilerplate Language for the PAMS SIP Submittal* provides that the PAMS SIP revision request, at a minimum, should provide for the monitoring of criteria and non-criteria pollutants, as well as meteorological parameters; provide that a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, be made available for public inspection during the public notice and/or comment period for the SIP revision request or, alternatively, provide that, on request, information concerning the State's plans for implementing the rules be made publicly available; make reference to the fact that PAMS will become a part of the State and local air monitoring stations (SLAMS) network; and, allow for sampling via methods approved by USEPA which are not Federal Reference Methods or equivalent.

The Indiana PAMS SIP revision request provides that the network will measure ambient levels of ozone, NO_x, speciated VOC, including hydrocarbons and carbonyls and meteorological data. During the public comment period and hearing, Indiana provided a copy of the proposed alternative regional PAMS network description, including a schedule, to the public. The Indiana PAMS SIP revision request provides that each station in the air quality surveillance network provided for and described in the network description will be termed a SLAMS. Finally, the Indiana PAMS SIP revision request provides that the methods used in PAMS will meet the criteria established by 40 CFR 58.41, the quality assurance requirements as contained in 40 CFR part 58, appendix A, and the monitoring methodology requirements contained in appendix C.

III. Final Rulemaking Action

The USEPA approves the Indiana rule revision for PAMS as part of the Indiana SIP for ozone.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on May 16, 1994. However, if we receive notice by April 15, 1994 that someone wishes to submit adverse comments, then USEPA will publish: (1) A document that withdraws the action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period. This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. Under the revised tables this action remains classified as a Table 3. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 On September 30, 1993.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This SIP approval involves a monitoring network that will be operated by the IDEM and does not impose any new regulatory requirements on small businesses. Therefore, I certify that it does not have a significant economic impact on any small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 1, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (e) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(e) Approval—The Administrator approves the incorporation of the photochemical assessment ambient monitoring system submitted by Indiana on November 15, 1993 into the Indiana State Implementation Plan. This submittal satisfies 40 CFR 58.20(f), which requires the State to provide for the establishment and maintenance of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

[FR Doc. 94–5905 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[NM–19–1–6069; FRL–4847–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Permitting Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) which includes Albuquerque/Bernalillo County Regulation Number 20, entitled *Authority-to-Construct Permits*, and the Supplement pertaining to general new source review (NSR) in Albuquerque/Bernalillo County, New Mexico. This SIP approval action makes federally enforceable the revised City/County general NSR regulation (outside the boundaries of Indian lands), and allows the EPA to revoke the construction moratorium for nonattainment areas in Albuquerque/Bernalillo County. This construction moratorium was put in place by the Governor of New Mexico on May 20, 1980.

DATES: This final rule will become effective on May 16, 1994, unless notice is received by April 15, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

Background

Albuquerque/Bernalillo County Regulation 20, a portion of Albuquerque's complete NSR permitting program, was initially approved by the EPA on April 10, 1980, at 45 FR 24460, as a part of the 1979 New Mexico SIP submittal to the EPA. A construction moratorium for nonattainment areas was put in place by the Governor of New Mexico on May 20, 1980. On this date, the Governor committed the State of New Mexico to not issue permits to stationary sources located in nonattainment areas. This construction ban has continued in Albuquerque/Bernalillo County as outlined in 40 CFR 52.1627(a) and 52.1628, in reference to the carbon monoxide nonattainment status of Bernalillo County, and in reference to the County not having a complete federally approved NSR permitting program.

The EPA in this action can now revoke the construction ban for Albuquerque/Bernalillo County because of two developments. The first development focuses on the FR notice of January 25, 1991 (56 FR 2852). This notice announced that the 1990 Clean Air Act Amendments (CAAA) repealed the provisions of section 110(a)(2)(I) of the Clean Air Act as amended in 1977. The 1977 provisions had required the EPA to impose a construction moratorium in nonattainment areas that failed to submit plans meeting all of the requirements of part D of the 1977 Clean Air Act (CAA). The 1990 CAAA, however, contained a savings clause, new CAA section 110(n)(3), that preserved certain existing construction moratoriums (i.e., relating to the establishment of a permit program and relating to sulfur dioxide (SO_2) attainment status). Therefore, the EPA interpreted the provisions of the 1990 CAAA as repealing by operation of law, as of the date of enactment of the 1990 CAAA (November 15, 1990), all construction moratoriums that the EPA had imposed under the 1977 CAA (section 110(a)(2)(I)) for any reason other than failure to submit an approvable NSR program or failure to demonstrate timely attainment of the SO_2 National Ambient Air Quality Standards (NAAQS). Albuquerque/Bernalillo County is currently classified attainment for the SO_2 NAAQS, and with the approval of revised Regulation 20, along with Regulations 29 and 32 (i.e., the Prevention of Significant Deterioration (29) and Nonattainment NSR (32) permitting regulations approved in separate FR actions at 58 FR 67330 and 58 FR 67326 (December

21, 1993), respectively), the Albuquerque/Bernalillo County NSR permitting program has now been brought up to date and found to be approvable by the EPA. Thus, the construction ban can be revoked for Albuquerque/Bernalillo County.

Analysis of City/County Submission

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing (see also section 110(l) of the CAA). Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the City of Albuquerque held public hearings on February 10, 1993, and on May 12, 1993, to entertain public comment on proposed revisions to Regulation 20 and its narrative supplement, respectively. No public comments were received. Following the public hearings, Regulation 20 and its narrative supplement were adopted by the Albuquerque/Bernalillo County Air Quality Control Board and submitted as a SIP revision to the EPA by cover letter from the Governor dated July 22, 1993.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter datedSeptember 10, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

B. Review of Revisions to Regulation 20

Albuquerque/Bernalillo County filed revisions to Regulation 20 with the State of New Mexico Records and Archives Center on February 26, 1993. The revisions to Regulation 20 were adopted in order to update the currently approved Albuquerque/Bernalillo County permit program, and to allow for revoking the construction ban referenced in 40 CFR 52.1627(a) and 52.1628. Regulation 20 sets forth certain emissions thresholds requiring a pre-construction permit (e.g., 10 pounds per hour or 25 tons per year), stipulates required contents of permit applications, outlines public participation requirements, and addresses performance testing procedures. It is important to note that the revisions to Regulation 20 are minor and noncontroversial, resulting in a clarification of nonattainment area permit requirements, a re-defining of "potential emission rate" as "pre-controlled emission rate," and other minor clarifications. For further details on both the requirements and the revisions of Regulation 20, please reference the Technical Support Document (TSD). Copies of the TSD can be obtained from the EPA Region 6 office listed above.

Final Action

The EPA is approving a revision to the New Mexico SIP to include revisions to Albuquerque/Bernalillo County Regulation Number 20, entitled *Authority-to-Construct Permits*, as filed with the State Records and Archives Center on February 26, 1993. The EPA is also approving the SIP narrative entitled *Supplement Pertaining to General New Source Review; Albuquerque/Bernalillo County, New Mexico; May 12, 1993.* This SIP approval action makes federally enforceable the revised City/County general NSR regulation (outside the boundaries of Indian lands), and allows the EPA to revoke the construction ban codified at 40 CFR 52.1627(a) and 52.1628.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 16, 1994, unless, by April 15, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective [Insert date 60 days from date of publication].

With respect to all of the statutory changes discussed in this action, the EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its permitting regulations. Upon final adoption of those regulations, the EPA will call upon States with approved permitting programs, including Albuquerque, to make corresponding changes in their SIPs. Based on the above evaluation, the EPA is approving the revised Albuquerque/Bernalillo County Regulation 20 and its narrative Supplement as a strengthening of the New Mexico (Albuquerque/Bernalillo County) SIP.

Miscellaneous

Under the Regulatory Flexibility Act,5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

This action has been classified as a table three action by the Regional

Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived table two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 onSeptember 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 28, 1994.

W.B. Hathaway,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(54) A revision to the New Mexico SIP addressing the Albuquerque/Bernalillo County Permitting Program was submitted by the Governor of New Mexico by cover letter dated July 22, 1993.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Regulation Number 20–Authority-to-Construct Permits, Section 20.00, "Purpose;" Section 20.01, "Applicability;" Section 20.02, "Fees for Permit Application Review;" Section 20.03, "Contents of Applications;" Section 20.04, "Public Notice and Participation;" Section 20.05, "Permit Decisions and Appeals;" Section 20.06, "Basis for Permit Denial;" Section 20.07, "Additional Legal Responsibilities on Applicants;" Section 20.08, "Permit Conditions;" Section 20.09, "Permit Cancellation;" Section 20.10, "Permittee's Notification Obligations to the Department;" Section 20.11, "Performance Testing Following Startup;" Section 20.12, "Emergency Permits;" Section 20.13, "Nonattainment Area Requirements;" Section 20.14, "Definitions Specific to Authority-to-Construct Permit Regulations;" and Table One, "Significant Ambient Concentrations," as filed with the State Records and Archives Center on February 26, 1993.

(ii) Additional material.

(A) The Supplement Pertaining to General New Source Review in Albuquerque/Bernalillo County, New Mexico, as approved by the Albuquerque/Bernalillo County Air Quality Control Board onMay 12, 1993.

3. Section 52.1627 is revised to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

Part D disapproval. The Bernalillo County carbon monoxide plan is disapproved for failure to meet the resource requirements of section 172 of the Clean Air Act.

§ 52.1628 [Removed and Reserved]

4. Section 52.1628 is removed and reserved.

[FR Doc. 94–5906 Filed 3–15–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 417, and 473

[BPD–694–F]

RIN 0938–AE93

Medicare Program; Aggregation of Medicare Claims for Administrative Appeals

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

ACTION: Final rule.

SUMMARY: Medicare beneficiaries and, under certain circumstances, providers, physicians and other entities furnishing health care services may appeal adverse determinations regarding certain claims for benefits payable under part A and part B of Medicare. For administrative appeals at the carrier or intermediary hearing level or administrative law judge (ALJ) level and for any subsequent judicial review, the amount remaining in dispute must meet or exceed threshold amounts set by statute. Section 1869(b)(2) of the Social Security Act permits claims to be aggregated to reach the ALJ hearing threshold amounts. This final rule establishes a system of aggregation under which individual appellants have one set of requirements for aggregating claims and two or more appellants have a different set of requirements for aggregating claims.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Olenick, (410) 966–4472.

SUPPLEMENTARY INFORMATION:

Background

Statutory Basis

Section 1869(b) of the Social Security Act (the Act) grants Medicare beneficiaries who are dissatisfied with certain Medicare determinations the right to a hearing before an administrative law judge (ALJ) and the right to judicial review. The Social Security Administration (SSA) makes determinations concerning entitlement to Medicare. Other determinations concerning payment are made initially by Medicare contractors. Fiscal intermediaries make most part A and some part B determinations; carriers make most part B determinations. Our regulations generally address appeals of claims arising under part A at 42 CFR part 405, subpart G, and appeals of claims under part B at 42 CFR part 405, subpart H.

Utilization and quality control peer review organizations (PROs) also make certain types of part A and part B determinations. Section 1155 of the Act establishes beneficiary rights to hearings and judicial review of certain Medicare issues (mostly inpatient hospital service denials) adjudicated initially by PROs. Our regulations address this subject at 42 CFR part 473, subpart B.

For enrollees of health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), the HMO, CMP or HCPP is responsible for making initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain part A and part B claims submitted by or on behalf of enrollees of HMOs, CMPs or HCPPs. Our regulations address this subject at 42 CFR 417.600 to 417.638.

For the following discussion, the term "provider" refers to a hospital, skilled nursing facility, home health agency, hospice program or comprehensive outpatient rehabilitation facility that has in effect an agreement to participate in Medicare. See section 1861(u) of the Act and 42 CFR 400.202.

The term "supplier" is defined in 42 CFR 400.202 and means a physician or other practitioner, or an entity other than a provider, who furnishes health care services under Medicare. Although "supplier" encompasses physicians, our usual phraseology is "physician or supplier."

Under section 1879(d) of the Act, a physician or supplier who accepted assignment or a provider of services has the same appeal rights as that of an individual beneficiary under certain limited circumstances when the issue in dispute involves medical necessity, custodial care, or home health denials involving the failure to meet homebound or intermittent skilled nursing care requirements. Moreover, by regulation, we have provided that a physician or supplier that has taken assignment of a Medicare claim under part B has the same appeal rights as the beneficiary.

Under section 1842(l) of the Act, a physician who does not accept assignment must refund to the beneficiary any amounts collected for services found to be not reasonable and necessary. A refund is not required if the physician did not know and could not reasonably have been expected to know that Medicare would not pay for the services, or if the beneficiary was appropriately informed in advance that Medicare would not pay for the services and agreed to pay for them. With respect to a physician who is subject to the refund requirement, our regulations at 42 CFR 411.408 provide that if payment is denied for unassigned claims because the services are found to be not reasonable and necessary, the physician who does not accept assignment has the same appeal rights as the physician who submits claims on an assignment-related basis, as detailed in subpart H of part 405 and subpart B of part 473. (See 55 FR 24561, June 18, 1990.)

Omnibus Budget Reconciliation Act of 1986

Before the enactment of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (Public L. 99–509), section 1869 of the Act provided for ALJ hearings and judicial review of claims for entitlement to Medicare parts A and B and of disputes over claims for benefits under part A. There was no provision for ALJ hearings or judicial review for disputes over the amount of part B benefits, except under section 1876 of the Act pertaining to HMO, CMP and HCPP denials, and concerning certain PRO matters as authorized by section 1155 of the Act. Instead, as specified in section 1842(b)(3)(C) of the Act, Medicare carriers (or, if appropriate, intermediaries) provided fair hearings on claims for part B benefits when the amount remaining in controversy was $100 or more. (Before receiving a fair hearing, beneficiaries must receive an initial determination and review of their claims. Carriers perform initial determinations and reviews of claims for part B benefits in accordance with 42 CFR part 405, subpart H.)

Section 9341 of OBRA '86 amended section 1869 of the Act to permit hearings before ALJs and judicial review of claims for benefits under part B. The law provided that, for a part B ALJ hearing, the amount in controversy must be at least $500 and, for judicial review, the amount in controversy must be at least $1000. It did not change the existing amount in controversy requirements ($100 and $1000, respectively, under the Medicare part A provisions and $200 and $2000, respectively, under the PRO provisions) for ALJ hearings and judicial review.

Section 9341 of OBRA '86 further provided that in determining the amount in controversy, the Secretary, by regulations, must permit claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. This aggregation provision applies to requests for ALJ hearings of both part A and part B claims brought under section 1869 of the Act.

Under OBRA '86, the right to an ALJ hearing and judicial review for part B claims as well as the right to aggregate under section 1869(b)(2) of the Act apply to claims for items and services furnished on or after January 1, 1987.

The Omnibus Budget Reconciliation Act of 1990

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public L. 101–508) provided that the Secretary would carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). The study would be conducted in at least four carrier areas. The Secretary would report on the results of the study and any recommendations to the Senate Finance Committee and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

Aggregation Before OBRA '86

Before OBRA '86, the statute was silent on the issue of aggregating claims to meet the threshold amounts to establish a right to part A or part B hearings. We had, however, provided for beneficiaries to aggregate certain part A claims in our regulations at 42 CFR 405.740 and 405.745. Our regulations at 42 CFR 405.741 also provide that the presiding officer at the hearing (that is, the ALJ) determines whether the $100 threshold is met. The current regulations for part A claims do not allow a provider to aggregate claims involving more than one beneficiary.

Before OBRA '86, we had also provided for the aggregation of part B claims to reach the amount in controversy required for a hearing before a carrier hearing officer. In 42 CFR 405.820(b) (redesignated as § 405.817 in this rule), we permit a beneficiary to aggregate any and all part B claims for treatment or medical equipment or supplies (or both) furnished to him or her. A physician or supplier may aggregate any and all claims accepted on an assignment-related basis for services or supplies he or she provided to one or more beneficiaries. Each such claim must have completed all prior levels of appeal and the request for subsequent appeal of each such claim must be timely filed. The regulations do not address whether claims may be aggregated together by two or more appellants to meet the minimum amount in controversy needed for appeal.

Proposed Rule

On June 20, 1991, we published a proposed rule that described how we would implement the OBRA '86 provision amending section 1869(b)(2) of the Act concerning aggregation of claims (56 FR 28353). In the absence of specific legislative history, we concluded at that time that the OBRA '86 aggregation provision did not provide a basis for permitting two or more appellants to aggregate their claims to meet the threshold amount in controversy for administrative or judicial appeal. We based our conclusion, in part, on our assessment that section 1869 of the Act in all respects applies to claims filed by individuals. Because the OBRA '86 aggregation provision amended section

1869 of the Act, it was our view that individual appeals alone were affected. Therefore, we proposed that only an individual appellant could aggregate his or her own claims to reach the jurisdictional minimums for appeal. Moreover, in our view, the OBRA '90 provision, in which the Congress directed the Secretary to conduct a pilot study to investigate the effect of permitting aggregation of claims by two or more appellants, suggested that the Congress had not yet decided to provide for aggregation of claims by multiple appellants.

The specific statutory language of the OBRA '86 aggregation provision directs the Secretary to issue regulations to permit aggregation under the limited circumstances specified (that is, if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals) to reach the threshold amounts in controversy for ALJ hearings. Upon initial consideration of this provision, we believed it would be appropriate to have a uniform aggregation policy for all levels of administrative appeal. Therefore, we proposed to rescind our current regulations governing carrier hearings under part B to conform them with the more narrow aggregation rules contained in OBRA '86. We also proposed minor revisions to our current part A aggregation rules, to make them consistent with the OBRA '86 aggregation requirements. We devised procedural rules to be followed for determining the amount in controversy and we described what actions were required of individuals and providers to aggregate claims to meet the amount in controversy threshold. We also proposed definitions of: "Delivery of similar or related services," "services," "common issues of law and fact," "common issues of law," "common issues of fact," and "mutually exclusive bases for appeal."

Comments and Responses

We received comments from 21 commenters on our proposed rule. The commenters included an intermediary/carrier association, a carrier, seven provider associations or their legal counsel, five medical associations or their legal counsel, five beneficiary advocacy organizations, one PRO and one provider. Below we discuss the comments and our responses.

Comment: A number of commenters expressed direct opposition to our assertion that the Congress did not intend for more than one appellant to aggregate their claims. The commenters presented various reasons why they believed that the Congress intended to permit aggregation by groups of individuals and providers.

Response: We reexamined our proposed aggregation policy in light of the public comments submitted in response to the proposed rule and are revising our position to take the comments into account. Our revised position also takes into account a February 5, 1992, district court decision in favor of a group of anesthesiologists who contended that they should be able to aggregate their claims on the basis of "common issues of law and fact arising from services furnished to two or more individuals" (*Moore* v. *Sullivan*, 785 F. Supp. 44 (S.D.N.Y. 1992)).

Section 1869(b)(2) of the Act states, in pertinent part, that "(i)n determining the amount in controversy, the Secretary, under regulations, *shall allow* * * *" claims to be aggregated under the criteria outlined in that section (emphasis added). Thus, although the plain wording of the statute makes it clear that the Secretary will provide for aggregation of claims in the situations provided in the statute, it does not limit the Secretary's authority to allow aggregation in additional, unspecified circumstances as well. Thus, we believe that the statute affords the Secretary considerable discretion in devising an aggregation policy, as long as she allows aggregation in the circumstances outlined in the statute.

Consistent with this interpretation, we have concluded that in drafting section 1869(b)(2) of the Act, the Congress did not necessarily mean to overhaul the current aggregation system for appeals raised by individual beneficiaries and providers. Rather, we believe that the Congress intended to provide an additional avenue for reaching the amount in controversy to provide for group adjudication of issues arising from claims that, because they involve fairly small amounts, may never be adjudicated beyond the intermediary or carrier level. However, in providing for this additional access to the appeals process by two or more appellants, the Congress recognized that such appeals would only be an efficient use of the administrative and judicial appeals process if the underlying claims presented common issues that, if resolved, would be decisive for all the claims included in the appeal. Therefore, the Congress required that such appeals involve "similar or related services" or "common issues of law and fact."

As a result of our reexamination of this issue, we have decided to permit aggregation of claims by two or more appellants at the ALJ level. In order for two or more appellants to aggregate their claims, the claims must involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. Although the Congress expanded the part B appeals process to also include judicial review of part B claims, the statute does not require the courts to follow the administrative aggregation rules established by the Secretary for determining the amount in controversy. However, the courts may wish to use the administrative rules as a reference point for determining the amount in controversy at the judicial level. Therefore, we are providing in our regulations that, when a civil action is filed, the Secretary may assert that the aggregation provisions contained in 42 CFR part 405, subparts G and H, may be applied to determine the amount in controversy for judicial review.

(We note that under our interpretation of section 1869(b)(2) of the Act, two or more beneficiaries will not be able to aggregate their claims under the criterion involving "delivery of similar or related services to the same individual," because the provision describes services to only one individual. Moreover, two or more providers/suppliers may avail themselves of this provision only if they are providing similar or related services to the same patient. However, this limitation is of little practical consequence, since, under the first prong of the bifurcated system of aggregation we are establishing with this regulation, an individual appellant (either a beneficiary or a provider/supplier) may aggregate all claims relating to the same patient without having to demonstrate that the services provided are either similar or related.)

In order to effectuate this interpretation we are establishing one set of requirements for aggregating claims for individual appellants and another set of requirements for aggregating claims when two or more appellants together seek to aggregate their claims. The system will work as follows:

Individual Appellants

Our approach for individual part A appellants (including individual HMO, CMP, HCPP or PRO appellants (hereafter, references to HMOs will include CMPs and HCPPs)) will permit an individual who files an appeal to aggregate two or more part A claims (in a specified time period), regardless of issue, to meet the requisite jurisdictional minimum for an ALJ hearing. Also, an individual who files a part B appeal will be permitted to aggregate two or more part B claims (in a specified time period), regardless of issue, to meet the jurisdictional minimums for a carrier hearing and ALJ hearing.

This approach expands the existing aggregation policy currently applied to part A appellants. (Existing aggregation policy for individual part A appellants is limited to the following circumstances: Items or services furnished to a patient of a provider arising from a single continuous period of treatment and any series of posthospital home health visits.) It is also consistent with the aggregation policy currently existing for part B appellants in that it allows appellants to aggregate two or more claims regardless of issue. (However, consistent with the provision in the proposed rule dated June 20, 1991 (56 FR 28355), we are requiring in the final rule that, for all claims to be aggregated, the request for appeal must be timely filed; see §§ 405.740(a) and 405.817(a).)

Two or More Appellants

Two or more part A appellants will be permitted to aggregate their part A claims together (in a specified time period) to meet the requisite jurisdictional minimum for an ALJ hearing. Similarly, two or more part B appellants will be permitted to aggregate their part B claims together (in a specified time period) to meet the jurisdictional minimum for an ALJ hearing. However, two or more appellants may aggregate their claims only if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals.

To reflect these changes, we are revising the text of §§ 405.740, 405.742, 405.820 (redesignated as § 405.815), and 405.827 that we proposed in our June 20, 1991 rule. Sections 405.740 and 405.817 contain our procedures for determining the amount in controversy and for aggregating claims. We are not making final §§ 405.742 and 405.827 that we included in the proposed rule (the relevant contents have been incorporated elsewhere) and we are removing current § 405.741.

Comment: Because section 1869(b)(2) of the Act applies only to aggregation for ALJ hearings, the current liberal rules for individual appellants to aggregate claims at carrier fair hearings should be retained.

Response: As stated in our previous response, we will permit individual part A or part B appellants to aggregate their claims regardless of issue to reach the minimum amounts in controversy needed for a carrier hearing or ALJ hearing. (However, consistent with the provision in the proposed rule dated June 20, 1991 (56 FR 28355), we are requiring in the final rule that, for all claims to be aggregated, the request for appeal must be timely filed; see §§ 405.740(a) and 405.817(a).)

Although we are essentially retaining the current aggregation rules for individual part B appellants, we are not allowing two or more appellants to aggregate their claims together at the carrier hearing level. Rather, we are providing in the final rule that two or more appellants may aggregate their claims together beginning at the ALJ hearing level. We are adopting this approach because, as noted by the commenters, the statute does not require that proceedings conducted under section 1842(b)(3)(C) of the Act (carrier hearings) utilize the aggregation provisions in section 1869(b)(2) of the Act. For this reason, we are also not making final the provision in § 405.832(d) of the proposed regulation text. That provision would have authorized an ALJ to review a carrier hearing officer's dismissal of a hearing request based on the section 1869(b)(2) aggregation criteria to determine whether those criteria had been properly applied.

Comment: The definitions of "common issues of law and fact" and "delivery of similar or related services" are inconsistent with the statute and unnecessarily restrictive and burdensome.

Response: We have reevaluated the definitions of "common issues of law and fact" and "delivery of similar or related services" in light of the comments received and the general lack of practical experience in applying these criteria.

Many of the public comments received on this issue persuasively demonstrated that the proposed definitions were too narrow to encompass many case scenarios that present common decisional issues. For example, one of the commenters noted that the requirement that similar services may only be those "with the same procedural terminology and code" is excessively strict. For instance, claims for echocardiography services such as standard echocardiography (CPT 93307), doppler echocardiography (CPT 93320) and doppler color-flow echocardiography (CPT 93321) may be "similar or related services" that could be aggregated under the statute. This same commenter believed that "common issues of law and fact" should be defined to permit aggregation on the basis of broad categorical issues such as level of care, the type of action taken by the contractor (for example, downcoding), or the involvement of one or more physicians in the patient's care even though CPT codes, sites of service, and diagnoses may differ. While we agree that the definition of common issues of law and fact published in our proposed rule was overly restrictive, we do not agree with this suggestion.

Aggregation on the basis of broad categorical issues would render the aggregation requirements virtually meaningless in many instances. We believe that the key concept in determining "common issues of law and fact" is the materiality of the alleged common facts. For example, a group of claims denied under section 1862(a)(1) of the Act as not medically reasonable and necessary because a certain procedure is considered experimental would present "common issues of law and fact" if the procedure had been performed for the same reason for each patient but not if it had been performed for different purposes. A procedure may be considered experimental for purposes of treating one particular condition or diagnosis but not for the treatment of a second condition or diagnosis. Facts establishing medical necessity in the first instance would not establish medical necessity in the second instance. Consequently, although the situation might present common issues of law, common issues of fact would not be present.

In our view, both "similar or related services" and "common issues of law and fact" require that the appeal present common issues, which when resolved will have some decisional impact on the aggregated claims. In order to further this statutory goal and rather than attempt to anticipate every situation that would warrant aggregation, we have decided to provide more general definitions for these terms, which are as follows: "Delivery of similar or related services," with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants. "Common issues of law and fact," with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occur when the claims sought to be aggregated arise from a similar fact pattern material to the reason the claims are denied and the claims are denied or reduced for similar reasons.

This approach will provide adjudicators with more flexibility and discretion to decide if the criteria for aggregation under section 1869(b)(2) of the Act have been met in a particular case. (Some commenters suggested that the proposed regulations did not give adjudicators enough discretion in applying the statutory terms.) In any event, we intend to monitor in the future the application of these definitions by adjudicators and we will consider providing more precise definitions via rulemaking if experience shows this is warranted.

Comment: The procedural rules for aggregating claims, requiring appellants to identify claims by type of item or service and to explain the basis for the aggregation, go beyond the capacity of the average appellant and represent an impediment to appeal.

Response: We agree that the documentation requirements should be modified. Sections 405.742(a) and 405.827(a) of the proposed rule imposed strict documentation requirements on an appellant seeking to aggregate claims. For instance, we proposed to require an appellant to identify each claim by the type of item or service, the person or entity that furnished the item or service and the amount being contested. Also, we proposed to require the appellant to describe why claims are either "similar or related" or involve "common issues of law and fact." In light of the comments received, we are not making final the stringent documentation requirements and are establishing the following standard procedural requirements:

- The appellant(s) must specify the claims that he or she seeks to aggregate. The burden is clearly on the appellant in this situation to identify the claims sought for aggregation. Otherwise, the appellant risks having his case dismissed for failure to meet the amount in controversy. In other words, in considering a request for hearing or review, carrier hearing officers, ALJs and the Appeals Council must consider claims identified by the appellant to determine whether the requisite amount in controversy is met, but they need not aggregate other pending cases not included in the appellant's request for hearing. In addition, although we are not requiring that appellants describe in their requests for hearing why the claims they seek to aggregate involve "similar or related services" or "common issues of law and fact," we note that it is in the appellant's interest to address these issues in the appeal, as well as any other aspects of the case he or she believes were decided incorrectly.
- In order for all claims to be aggregated, the request for appeal must be timely filed with respect to all claims included in the appeal. For example, a carrier hearing officer issues an adverse hearing decision that is received by the beneficiary on June 5. As a result of this decision, $300 remains in controversy. On a separate matter, the hearing officer issues an adverse decision, which is received by a different beneficiary on July 10. As a result of the July decision, $400 remains in controversy. The beneficiaries believe that their decisions involve common issues and because, individually, neither of their cases meet the $500 minimum required for an ALJ hearing, they seek to aggregate their claims together ($300+$400=$700) to obtain jurisdiction before an ALJ. In this hypothetical situation, a request for an ALJ hearing that includes these two claims may be made no later than August 4. A request for ALJ hearing filed, for example, on September 1, would fail because the 60-day appeal period for the June 5 decision would have lapsed and there would only be $400 remaining in controversy. Therefore, when individual appellants seek to aggregate their claims under § 405.740(a) or § 405.817(a), or when two or more appellants seek to aggregate their claims together under section 1869(b)(2) of the Act, they must be aware of the appropriate timeframe for appealing to an ALJ (60 days from the previous administrative determination) and proceed accordingly.
- In order for claims to be aggregated at a carrier hearing or an ALJ hearing, the claims must have completed all prior levels of appeal. For example, two beneficiaries seek to aggregate their part B claims in a request for ALJ hearing under section 1869(b)(2) of the Act. The ALJ may aggregate only those claims for which a beneficiary or other party has received an initial determination, a review determination and a carrier hearing decision. This requirement is consistent with the general rule contained throughout subparts G and H of part 405 that appellants must complete all prior steps in the appeals process before proceeding to the next level.
- In general, an appellant may not aggregate part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. Section 1869(b)(2) of the Act recognizes a distinct appeals process for part A and for part B and provides different rules for each. Part A and part B claims are processed independently of one another and follow different appeals processes. As such, we think it is clearly impermissible for an appellant to aggregate part A and part B claims together.

There is one notable exception to the general rule described above. HMO determinations may involve a combination of part A and part B services; the part A and part B claims involved in such determinations are not processed independently of one another. Therefore, an HMO appellant is permitted to aggregate part A and part B claims together. We are revising § 417.630 of the regulations to provide that HMO appellants may combine both part A and part B services in their appeals to reach the amount in controversy. (This provision was previously codified at § 417.260(b)(4), a regulation that was obsoleted on October 17, 1991 (56 FR 51985).)

Comment: The proposed rule implements a statutory change to section 1869 of the Act and, as such, should not apply to: (1) The separate and distinct appeals process for HMOs under section 1876 of the Act, or (2) the appeals process involving PRO determinations under section 1155 of the Act.

Response: We agree with this comment to the extent that the aggregation criteria under section 1869(b)(2) of the Act should not apply to the HMO appeals process. For enrollees of HMOs, the HMO is responsible for making the initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain part A and part B claims submitted by or on behalf of HMO enrollees. HCFA regulations address this subject at 42 CFR 417.600 to 417.638.

The Congress specifically amended section 1869 of the Act to provide for the aggregation of claims by two or more appellants in very specific circumstances; that is, if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact. The Congress did not similarly amend section 1876 of the Act to provide for such aggregation in the HMO setting. Accordingly, we do not believe that HMO appellants should be afforded the aggregation rights specified in section 1869 of the Act. We are modifying the regulation text in § 417.630(b) to state specifically that the aggregation provisions contained in section 1869(b)(2) do not apply to HMO appeals.

On the other hand, we believe that the aggregation criteria under section 1869(b)(2) of the Act should apply to the

PRO appeals process. PROs issue determinations under title XI of the Act relating to quality of care, medical necessity and appropriateness of setting and the appeals process for these determinations is governed by section 1155 of the Act. The PROs also issue limitation of liability determinations under section 1879 of the Act and the appeals process for such determinations is governed by section 1869(b) of the Act. Given this policy, a case decided by a PRO may involve, in essence, two separate determinations, one for the substantive coverage issue under section 1155 of the Act and the other for the limitation of liability issue under section 1869(b) of the Act. Having an adjudicator apply different aggregation rules to each issue in a case would make the situation unnecessarily complex. Therefore, we are revising the regulation to allow multiple appellants to aggregate claims decided by PROs under the criteria in section 1869(b)(2), regardless of whether the claim is decided under title XI or title XVIII. However, we also note that PRO appellants may only aggregate those claims under section 1869(b)(2) that they have standing to appeal under the rules provided in part 473.

In the HMO regulations at 42 CFR 417.630 and in the PRO regulations at § 473.44, we are also specifying in the final rule (by cross-reference to the appropriate provisions in part 405, subparts G and H) that individual HMO and PRO appellants (as opposed to group appellants) are permitted to aggregate their claims in the same manner provided to individual appellants who appeal claims under section 1869 of the Act. Thus, an individual appellant challenging a determination by an HMO or a PRO may aggregate two or more claims regardless of the issues involved. We are making these changes to provide a consistent, across-the-board procedure for an individual appellant seeking to aggregate his or her claims to reach the minimum amount in controversy needed for an ALJ hearing. Because this is a liberalization of the current rules, we do not anticipate any objections from any members of the beneficiary/provider community concerning this policy.

Comment: Section 9341 of OBRA '86 does not provide that a carrier hearing must always precede an ALJ hearing. Section 1842(b)(3)(C) of the Act was amended to provide for carrier hearings when the amount in controversy is "at least $100, but less than $500." Therefore, for amounts in controversy of $500 or more following a carrier's review determination, a claimant should be able to appeal directly to an ALJ.

Response: As we announced in the preamble to the proposed rule (56 FR 28354 (June 20, 1991)), this rule was intended to establish criteria for determining the amount in controversy thresholds for both Part A and B ALJ hearings. Although we captioned § 405.820 (now redesignated § 405.815) as "Right to hearing," we did not intend for this regulation to provide all of the procedural requirements necessary to establish the right to an ALJ hearing. Those requirements will be addressed in a separate regulation document. In the meantime, to the extent not superseded by this or other regulations, Part B ALJ hearings and Appeals Council review are conducted pursuant to the procedures outlined in HCFA and SSA's **Federal Register** notice of June 1, 1988 (53 FR 20023).

In order to clarify the scope of § 405.815, we have revised the caption to read "Amount in controversy for carrier hearing, ALJ hearing and judicial review" and have made other clarifying changes to the regulation text. However, because, under current procedures, we continue to require that appellants complete the carrier fair hearing process before proceeding to an ALJ hearing, we briefly address the commenters' concerns about the legality of this requirement.

We disagree with the commenters' conclusion concerning the requirements of the statute. We believe that the Secretary has the authority under the Medicare statute to require that claimants whose claims exceed $500 complete all prior stages of the administrative appeals process, including a carrier fair hearing, before obtaining an ALJ hearing.

We note that the Secretary's position on this point is supported by the decision of the U.S. Court of Appeals for the Second Circuit in *Isaacs* v. *Bowen*, 865 F.2d 468 (2nd Cir. 1989), which considered the effect of the statutory provision cited by the commenters. In 1987, HCFA amended its Medicare Carriers Manual to require that a carrier fair hearing must precede an ALJ hearing regardless of the amount in controversy. Following this revision, the Congress held hearings concerning the Medicare appeals process and enacted the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, which addressed the carrier fair hearing procedures in two respects. First, the language of section 1842(b)(3)(C) of the Act describing the monetary amounts for a carrier fair hearing was changed by substituting the phrase "less than $500" for the phrase "not more than $500." Second, the Congress authorized the General Accounting Office to conduct a cost-effectiveness study of the Secretary's requirement for carrier hearings before proceeding to an ALJ hearing. In light of these provisions, which were enacted after the Congress had heard testimony concerning HCFA's decision to require carrier hearings in all circumstances, the Court of Appeals for the Second Circuit found that the Congress by its actions had ratified the manual provision.

Comment: A single overpayment determination may involve a large number of claims and several different issues. The overpayment in its entirety should be considered as a "common issue of law and fact" and therefore all claims contained therein should be aggregable.

Response: An overpayment determination made to an individual person or entity will fall under the first prong of our bifurcated approach. That is, an individual appellant may aggregate all appealable claims included in a single overpayment determination regardless of the issues involved. (However, the appellant may only aggregate those claims included in the overpayment determination that the appellant has standing to appeal under the rules provided in part 405, subparts G and H, part 417 or part 473, as applicable.) Thus, the section 1869(b)(2) criterion of "common issues of law and fact," applicable to two or more appellants who seek to aggregate their claims together, does not apply in this situation.

Comment: Physicians in a multi-specialty group practice would be prohibited from aggregating claims together. An exception to the proposed rule should be made for physicians in the same group practice whose claims are billed and paid in the name of the group.

Response: In light of the approach we are taking in the final rule, we believe the concerns raised by the commenter no longer apply. Physicians in a multi-specialty group practice would not be prohibited from aggregating their claims together as long as those claims involve "similar or related services" or "common issues of law and fact."

As previously stated, the proposed rule did not permit two or more appellants to aggregate their claims together and limited the rights of individual appellants to aggregate their claims on the basis of "similar or related services" or "common issues of law and fact." The final rule establishes a bifurcated system of aggregation whereby: (1) Individual appellants may aggregate two or more claims regardless of issue and (2) two or more appellants may aggregate their claims together if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

If a multi-specialty group of physicians: (1) Has one billing number, (2) bills Medicare under that number, (3) uses a uniform charge structure and (4) typically appeals as a single entity (rather than having its physicians appeal individually), we believe that the aggregation rules pertaining to individual appellants should apply. Therefore, in this situation, the multi-specialty group would be able to submit claims from two or more of its physicians in a single appeal request (the filing time limit would have to be met for the particular level of appeal) without having to demonstrate that the claims involve common issues.

Comment: A non-participating physician may accept or reject assignment on claims at his or her discretion. Because the proposed rule permits a non-participating physician under section 1842(l) of the Act to aggregate unassigned claims for appeal purposes, the non-participating physician should be able to aggregate assigned claims with his or her unassigned claims if "common issues of law and fact" or "delivery of similar or related services" are involved.

Response: We agree with this comment. The determining factor in the situation posed is not whether a non-participating physician's claims are assigned or unassigned, but whether the claims are appealable. Under the first prong of our bifurcated approach, an individual appellant may aggregate all appealable claims regardless of issue. Therefore, a non-participating physician may aggregate assigned claims with unassigned claims providing that he or she has standing to appeal the claims under the rules in part 405, subpart H, part 417 or part 473, as applicable. The section 1869(b)(2) criteria of "common issues of law and fact" and "delivery of similar or related services," applicable to two or more appellants who seek to aggregate their claims together, do not apply in this situation.

Comment: One commenter suggested that the regulations should afford adjudicators more discretion to determine whether "common issues of law and fact" exist based upon evidence presented by the entity seeking a hearing.

On the other hand, another commenter believed that giving the carrier hearing officer the power to determine the criteria for aggregation gives too much discretion to these officials.

Response: As stated in a previous response, we have reevaluated the definition of "common issues of law and fact" in light of the comments received and the general lack of practical experience in applying this criterion. In our view, the statute requires commonality of law and fact so that the appeal will present common issues, which, when resolved, will have some decisional impact on aggregated claims. In order to further this statutory goal and rather than attempt to anticipate every situation that would warrant aggregation, we have decided to provide a more general definition for this term. This approach will provide adjudicators with more flexibility and discretion to determine if the criteria for aggregation under section 1869(b)(2) of the Act have been met in a particular case.

The concern raised by the second commenter is no longer an issue because carrier hearing officers will not be applying the criteria in section 1869(b)(2) of the Act to determine whether the bases for aggregation have been met.

Comment: If the hearing officer dismisses the request to aggregate claims to meet the $100 requirement, then certainly the $500 requirement would not be met for a Part B ALJ appeal. A dismissal by a carrier hearing officer should not be subject to further appeal rights.

Response: Under the proposed rule, the only issue in a carrier hearing officer dismissal that the ALJ could review was the applicability of the criteria in section 1869(b)(2) of the Act; that is, "delivery of similar or related services" and "common issues of law and fact." In light of the approach to aggregation that we are taking in the final rule, carrier hearing officers will not be considering section 1869(b)(2) criteria. Therefore, we are not making final the proposed regulation text that would have allowed ALJ review of a carrier hearing officer's dismissal of a hearing request.

Comment: One commenter believes the requirement that "at each review level the filing time limit must be met for all claims to be aggregated" creates a chilling effect on the ability of home health agencies (HHAs) to aggregate claims.

Response: As stated in previous responses, the proposed rule provided for aggregation only by individual appellants and only under the circumstances described in section 1869(b)(2) of the Act, that is, if the claims involve the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals. Accordingly, the proposed rule might have significantly limited an HHA's ability to aggregate claims. However, the final rule permits an individual appellant, such as an HHA, to aggregate two or more claims regardless of issue. (However, the HHA, like all appellants, may only aggregate those claims that it has standing to appeal under the rules provided in part 405, subparts G and H, part 417 or part 473, as applicable.) As a result, the effect of the new bifurcated approach should be to facilitate aggregation of claims by HHAs such that the time limits for appeal will not be significant barriers.

Section 1869(b)(1) of the Act incorporates by reference the provisions of section 205(b) of the Act relating to hearings under the Medicare program. Section 205(b)(1) of the Act mandates that an individual must request an ALJ hearing within 60 days after receipt of the previous decision. Therefore, Part A and Part B Medicare appellants are obliged to appeal claims within this timeframe. We believe that allowing appellants to aggregate claims beyond this timeframe would dilute this requirement.

Comment: Three commenters had concerns about our proposed requirement that claims with mutually exclusive bases for appeal could not be aggregated. One thought that this requirement could prohibit a supplier from aggregating claims denied or only partially paid because of carrier error; another thought that "mutually exclusive" means incompatible and that our examples do not show incompatibility. The latter commenter also thought the definition to be unclear, invalid and unnecessary because of our definition of "common issues of law." The third commenter thought the requirement should be relaxed if not eliminated and that at the very least physicians should not be prohibited from appealing claims denied for more than one reason.

Response: We agree with the commenters that the definition for "mutually exclusive bases for appeal" is overly restrictive and difficult to apply. Upon further review, we have decided to eliminate this term to provide more flexibility to an ALJ in applying the criteria for multiple appellant aggregation under section 1869(b)(2) of the Act.

Comment: The proposed rule sets forth a definition of "delivery of similar or related services" to mean, among other things, services provided to a single beneficiary during the same continuous course of treatment or continuous period of medical care. One commenter believes we should develop more precise definitions of "continuous course of treatment" and "continuous period of medical care" to avoid inconsistent carrier application of the aggregation rule.

Response: In light of the comments received questioning the definition of "delivery of similar or related services" and our lack of practical experience in applying it (and other terms), we have decided to provide a more general definition for this term. This approach will provide adjudicators with more flexibility and discretion to decide if this criterion for aggregation by multiple appellants under section 1869(b)(2) of the Act has been met in a particular case. As stated previously, we intend to monitor in the future the application of this definition by adjudicators and we will consider providing more precise definitions via rulemaking if experience shows this is warranted.

Comment: As recommended by the House Budget Committee in its Report accompanying OBRA '86 (H.R. Rep. No. 727, 99th Cong., 2nd Sess., 95–96 (1986)), ALJs with specific knowledge of the Medicare program should be assigned to review carrier hearing decisions. Also, HCFA should issue a new set of aggregation rules to enhance physician access to appropriate due process through fair hearings and administrative appeals.

Response: The portion of this comment that addresses who will hear Medicare cases is beyond the scope of this regulation. With respect to the second portion of the comment, the commenter believes that the proposed rule places undue burdens on physicians who want to appeal Medicare claims and suggests generally that physicians are being placed at a disadvantage under the aggregation rules. Although we disagree with the commenter's assessment of the proposed rule, in light of the bifurcated approach to aggregation that we are taking in the final rule, we believe the commenter no longer should have any concerns in this regard. An individual physician who accepts assignment has the same appeal rights as a beneficiary; he or she is able to aggregate two or more assigned claims from one or more beneficiaries without having to demonstrate that the claims involve common issues. Moreover, two or more physicians may aggregate their claims together to meet the minimum amount needed for appeal if the claims involve "common issues of law and fact" or, if the claims involve services to a single beneficiary, they involve "similar or related services."

Comment: Section 4113 of OBRA '90 directed the Secretary to conduct a study of the "effects of permitting the aggregation of claims that involve common issues of law and fact furnished * * * to two or more individuals by two or more physicians within the same 12-month period." The proposed rule stated that the study mandated by the Congress confirms, for the present, that the Congress did not require the Secretary to provide for aggregation by two or more appellants. One commenter believed that the Congress had already accepted the premise that two or more appellants could aggregate their claims together and the study was merely a response to a proposed House bill that would have extended the period in which claims could be aggregated from 60 days to 12 months.

Response: In the absence of specific legislative history, we took the position in the proposed rule that the OBRA '86 aggregation provision did not provide a basis for permitting two or more appellants to aggregate their claims together to meet the minimum amount in controversy needed for a particular level of appeal. It was our view that the OBRA '90 provision, in which the Congress directed the Secretary to conduct a pilot study to investigate the effect of permitting aggregation by two or more appellants, suggested that the OBRA '86 aggregation provision should apply only to individual appellants.

As discussed previously, we have changed our position from the proposed rule to provide for aggregation by two or more appellants under the statutory criteria for aggregation specified in section 1869(b)(2) of the Act. The study itself has been completed and a report is being prepared.

Comment: The proposed rule provides that a single provider may combine claims from several different beneficiaries if common issues of law and fact are involved. The commenter, a PRO, is concerned that this could place an added and unnecessary burden on the PRO appeals system.

Response: As we stated in a previous response, we are applying the section 1869(b)(2) aggregation provision to the PRO appeals process. Therefore, two or more PRO appellants will be permitted to aggregate their appealable claims together on the basis of "similar or related services" or "common issues of law and fact." However, any aggregation under section 1869(b)(2) will take place in connection with a request for an ALJ hearing or judicial review and, consequently, should not result in any significant burden on PROs.

In the final rule we are expanding the aggregation rights for individual appellants under part A. As a result, an individual provider appellant would be able to aggregate two or more claims of one or more beneficiaries. However, it has been our experience that the amount in controversy ($200) for an ALJ hearing has not been a particular obstacle in PRO appeals even when a single claim is being adjudicated.

Comment: One commenter noted that the proposed rule did not address whether claims of several different beneficiaries, each meeting the minimum amount in controversy needed for appeal, could be consolidated into a single hearing for reasons of economy and efficiency.

Response: This comment is beyond the announced scope of this regulation. In the second full paragraph on p. 28357 of the preamble to the proposed rule, we state that "We emphasize that the purpose of these regulations is to provide criteria for aggregation of claims in order to meet the amount in controversy requirements (that is, the jurisdictional threshold) for appealing Medicare claims. These rules are not meant to address procedures (or alter existing provisions) concerning the conduct of hearings once the required amount in controversy is established or to address the *discretion of the presiding officer to join claims in a single hearing for administrative purposes*" (emphasis supplied).

Summary of Revisions

Below we describe changes we are making, as discussed above in the responses to comments, to both the regulations as they currently appear in the Code of Federal Regulations and to the rules we proposed on June 20, 1991.

A. Definitions (§§ 405.701 and 405.802)

1. We are adding a definition of "appellant", to designate the beneficiary, provider or other person or entity appealing a determination of benefits under part A (§ 405.701) or part B (§ 405.802), to facilitate the implementation of our bifurcated system of aggregation by providing a single, consistent term identifying the person or entity that has filed the appeal in a part A or part B claim. The term merely identifies the individual that filed the appeal; designation as an "appellant" does not convey the right to appeal the issue in question.

2. We are not making final the proposed definitions of "common issues of * * * fact" and "common issues of law" because they are overly restrictive

and difficult to apply. We are revising the proposed definition of "common issues of law and fact" to provide a more general application of this term and to provide ALJs with more flexibility in applying this criterion for aggregation.

3. We are revising the proposed definition of "delivery of similar or related services" to provide a more general application of this term and to provide ALJs with more flexibility in applying this criterion for aggregation.

4. We are not making final the proposed definition of "mutually exclusive bases of appeal" because it is overly restrictive and difficult to apply.

5. We are not making final the proposed definition of "services" because we believe that the definition of services in § 400.202 is sufficient.

B. Principles for Determining the Amount in Controversy (§ 405.740)

We are modifying the proposed principles for determining the amount in controversy and revising the current rules to say specifically that two or more appellants may aggregate their claims together to meet the amount in controversy requirements if the claims at issue are appealed on time and involve common issues of law and fact. Further, two or more providers may aggregate their claims together if the claims involve the delivery of similar or related services to the same individual. We are also providing that individual appellants may aggregate their claims without having to demonstrate that the claims involve common issues.

C. Determinations of Amount in Controversy (§ 405.741)

We are not making final the proposed section. The proposed provisions are no longer relevant because of our revised policy, and we have incorporated the current provision—that the presiding officer will determine whether the amount in controversy is $100 or more—into § 405.740.

D. Procedural Rules for Aggregating Claims (Proposed § 405.742)

This section is not included in the final rule as the now relevant portions are in § 405.740. The provision at proposed § 405.742(c), which would have required a reconsideration by the appropriate entity before a hearing, is not included because the concept is repeated elsewhere in the subpart.

E. Definitions (§ 405.802)

1. We are adding the definition of "appellant" for the reasons explained above under the discussion of § 405.701.

2. The definition of "carrier" is revised to include intermediaries authorized to make determinations with respect to part B provider services, obviating our need to add the phrase "intermediaries where appropriate" everywhere we proposed.

F. Notice of Review Determination and Effect of Review Determination (§§ 405.811 and 405.812)

We are revising these sections to update the cross-references. We are also specifying that the hearing referred to is a carrier hearing and changing the tense of the sentences to present tense in accordance with our current style.

G. Amount in Controversy for Carrier Hearing, ALJ Hearing and Judicial Review (Proposed § 405.820)

We are revising the proposed § 405.820 by redesignating it as § 405.815, changing its heading, and moving the contents of paragraphs (b) and (d) with appropriate changes to §§ 405.820 and 405.821, respectively. Paragraph (c) of the current § 405.820 will be § 405.821(b).

H. Principles for Determining the Amount in Controversy (§ 405.817)

We are adding this new section. It contains, as does § 405.740, our procedures and policies for determining the amount in controversy and for aggregating claims. Most of this section was derived from proposed § 405.827, which is not included in this final rule.

I. Request for a Carrier Hearing (§ 405.821)

We are revising the current contents of this section to include those portions of proposed § 405.827 that remain relevant; that is, § 405.827 (c) and (d).

J. Procedural Rules for Aggregating Claims (Proposed § 405.827)

We are not including this section in the final rule as we have revised our policy and placed that policy as well as unrevised procedures in other sections, as explained above. Paragraph (d), concerning exhaustion of administrative remedies, is covered elsewhere in the subpart.

K. Dismissal of Request for Carrier Hearing (§ 405.832)

We are not revising paragraph (d) as proposed because carrier hearing officers will not be making determinations concerning aggregation on the basis of "delivery of similar or related services or "common issues of law and fact."

L. Right to a Hearing (§ 417.630)

We are revising the cross-references in this section because of changes in this final rule. We are also adding a provision that members of HMOs who are appellants may combine both part A and part B services in their appeals. We are also specifying in a new paragraph (b) that the criteria for aggregating claims under section 1869(b)(2) of the Act do not apply to appeals under part 417.

M. Determining the Amount in Controversy (§ 473.44)

We are updating cross-references in this section. We are also specifying that the criteria for aggregating claims under section 1869(b)(2) of the Act, as implemented at §§ 405.740(b) and 405.817(b), apply to appeals under part 473.

N. We Are Revising the Headings of the Following Sections To Include the Word "Carrier"

§§ 405.822, 405.823, 405.824, 405.825, 405.830, 405.831, 405.832, 405.833, 405.834, 405.835, 405.841 and 405.860.

Paperwork Burden

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians, providers, and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule establishes in Medicare regulations an approach for aggregating Medicare claims by two or more appellants to obtain the right to an ALJ hearing. It also provides easier access to the appeals process for an individual part A appellant, by providing these individuals with essentially the same aggregation rights that an individual part B appellant now has.

We believe that the system for aggregating claims by two or more appellants will provide for easier access to hearings but we do not expect it to be widely used. This is because an individual appellant (who is permitted to combine claims without having to demonstrate a basis for the aggregation) should usually be able to meet the appropriate jurisdictional thresholds on his or her own behalf without having to combine the claims of other appellants. We also believe that individuals concerned with privacy of their records or proceedings, or individuals not inclined to locate other potential appellants might choose not to avail themselves of this opportunity. For whatever reasons, only a few requests for hearing involving the aggregation of claims by multiple appellants have been submitted in response to the decision in *Moore* vs. *Sullivan*. Nor do we expect that the changes to the aggregation rules for individual part A appellants will significantly increase the volume of part A hearings. The Secretary certifies that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. This regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

A. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. Subpart G is amended as follows:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

a. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 1102, 1151, 1154, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1395ff(b), 1395hh, 1395ii and 1395pp).

b. In § 405.701, the section heading is revised and a new paragraph (d) is added to read as follows:

§ 405.701 Basis, purpose and definitions.

* * * * *

(d) *Definitions.* As used in subpart G of this part, the term—

Appellant designates the beneficiary, provider or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part A. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for a hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more provider appellants to meet the minimum amount in controversy needed for a hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

c. Section 405.740 is revised to read as follows:

§ 405.740 Principles for determining the amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a hearing ($100), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more providers to meet the $100 hearing threshold and a single provider may aggregate claims for services provided to one or more beneficiaries to meet the $100 hearing threshold.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s).

(4) When requesting a hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified below, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for a hearing ($100). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different provider(s) if the claims involve common issues of law and fact;

(ii) Two or more providers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary; or

(iii) Two or more providers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s). Moreover, in the request for hearing, the appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is $100 or more is made by the administrative law judge (ALJ).

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ also makes the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review ($1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 411.400 of this chapter or had such liability not been limited pursuant to § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amounts in controversy for a hearing.

§ 405.741 [Removed]

d. Section 405.741 is removed.

2. Subpart H is amended as follows:

Subpart H—Appeals Under the Medicare Part B Program

a. The authority citation for subpart H is revised to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b)).

b. The heading for subpart H is revised as set forth above.

c. Section 405.802 is revised to read as follows:

§ 405.802 Definitions.

As used in subpart H of this part, the term—

Appellant designates the beneficiary, assignee or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part B. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Assignee means a physician or supplier who furnishes services to a beneficiary under Medicare part B and who has accepted a valid assignment executed by the beneficiary.

Assignment means the transfer by the assignor of his or her claim for payment to the assignee in return for the latter's promise not to charge more for his or her services than the carrier finds to be the reasonable charge or other approved amount.

Assignor means a beneficiary under Medicare part B whose physician or supplier has taken assignment of a claim.

Carrier means an organization which has entered into a contract with the Secretary pursuant to section 1842 of the Act and which is authorized to make determinations with respect to part B of title XVIII of the Act. For purposes of this subpart, the term carrier also refers to an intermediary that has entered into a contract with the Secretary under section 1816 of the Act and is authorized to make determinations with respect to part B provider services, as specified in § 421.5(c) of this chapter.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more physician/supplier appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

Representative means an individual meeting the conditions described in §§ 405.870 through 405.871.

d. Section 405.811 is revised to read as follows:

§ 405.811 Notice of review determination.

Written notice of the review determination is mailed to a party at his or her last known address. The review determination states the basis of the determination and advises the party of his or her right to a carrier hearing when the amount in controversy is $100 or more as determined in accordance with § 405.817. The notice states the place and manner of requesting a carrier hearing as well as the time limit under which a hearing must be requested (see § 405.821).

e. Section 405.812 is revised to read as follows:

§ 405.812 Effect of review determination.

The review determination is final and binding upon all parties to the review unless a carrier hearing decision is issued pursuant to a request for hearing made in accordance with § 405.821 or is revised as a result of reopening in accordance with § 405.841.

f. Section 405.820 is redesignated as § 405.815 and is revised to read as follows:

§ 405.815 Amount in controversy for carrier hearing, ALJ hearing and judicial review.

Any party designated in § 405 822 is entitled to a carrier hearing after a review determination has been made by the carrier if the amount remaining in controversy is $100 or more and the party meets the requirements of § 405.821 of this subpart. To be entitled to a hearing before an ALJ following the carrier hearing, the amount remaining in controversy must be $500 or more, and for judicial review following the ALJ hearing and Appeals Council Review, the amount remaining in controversy must be $1000 or more.

g. A new § 405.817 is added as follows:

§ 405.817 Principles for determining amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a carrier hearing ($100) or ALJ hearing ($500), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more physicians/suppliers to meet the $100 or $500 thresholds. A single physician/supplier may aggregate claims from two or more beneficiaries to meet the $100 or $500 threshold levels of appeal.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for a carrier hearing only if the claims have previously been reviewed and a request for hearing has been made within six

months after the date of the review determination(s).

(4) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for an ALJ hearing only if the claims have previously been decided by a carrier hearing officer and a request for an ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s).

(5) When requesting a carrier hearing or an ALJ hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified in this paragraph, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for an ALJ hearing ($500). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different physician(s) or supplier(s) if the claims involve common issues of law and fact;

(ii) Two or more physicians/suppliers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary;

(iii) Two or more physicians/suppliers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been decided by a carrier hearing officer(s) and a request for ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s). Moreover, in a request for ALJ hearing, the appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is $100 or more is made by the carrier hearing officer. The determination as to whether the amount in controversy is $500 or more is made by the ALJ.

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ will also make the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review ($1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid under § 411.400 of this chapter or had such liability not been limited under § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amount in controversy for a hearing.

h. Section 405.821 is revised to read as follows:

§ 405.821 Request for carrier hearing.

(a) A request for a carrier hearing is any clear expression in writing by a claimant asking for a hearing to adjudicate a claim when not acted upon with reasonable promptness or by a party to a review determination who states, in effect, that he or she is dissatisfied with the carrier's review determination and wants further opportunity to appeal the matter to the carrier.

(b) The hearing request must be filed at an office of the carrier or at an office of SSA or HCFA.

(c) Except when a carrier hearing is held because the carrier did not act upon a claim with reasonable promptness (see § 405.801), a party to the review determination may request a carrier hearing within six months after the date of the notice of the review determination. The carrier may, upon request by the party affected, extend the period for filing the request for hearing.

§§ 405.822, 405.823, 405.824, 405.825, 405.826, 405.830, 405.832, 405.833, 405.834, 405.835, 405.841, and 405.860 [Amended]

i. The headings of §§ 405.822, 405.823, 405.824, 405.825, 405.826, 405.830, 405.832, 405.833, 405.834, 405.835, 405.841, and 405.860 are amended by adding the word "carrier" before the word "hearing".

B. Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874 and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); section 9312(c) of Public Law 99–509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

2. Section 417.630 is revised to read as follows:

§ 417.630 Right to a hearing.

(a) Any party to the reconsideration who is dissatisfied with the reconsidered determination has a right to a hearing if the amount in controversy is $100 or more. The amount in controversy for an individual claimant, which can include any combination of part A and part B services, is computed in accordance with § 405.740(a) of this chapter for part A services and § 405.817(a) of this chapter for part B services. When the basis for the appeal is the refusal of services, the projected value of those services must be used in computing the amount in controversy.

(b) The criteria for aggregating claims available to two or more appellants under section 1869(b)(2) of the Act do not apply to appeals under this part.

PART 473—RECONSIDERATIONS AND APPEALS

C. Part 473 is amended to read as follows:

1. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

2. In § 473.44, paragraph (a) is revised to read as follows:

§ 473.44 Determining the amount in controversy for a hearing.

(a) After an individual appellant has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740(a) of this chapter for Part A services or § 405.817(a) of this chapter for Part B services. When two or more appellants submit a request for hearing, the ALJ determines the amount in controversy in accordance with § 405.740(b) of this chapter for Part A services and § 405.817(b) of this chapter for Part B services.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 3, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-5791 Filed 3-15-94; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Deputy Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Deputy Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows: