Class of substance	Substance	Purpose	Product	Amount
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Done at Washington, DC, on: March 11, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 94–6242 Filed 3–16–94; 8:45 am]

BILLING CODE 3410–DM–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AE83

Restoration of the Generic Exemption From Annual Fees for Nonprofit Educational Institutions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: On September 29, 1993 (58 FR 50859), the Nuclear Regulatory Commission ("NRC" or "Commission") published a proposed rule granting a petition for rulemaking submitted by a number of colleges and universities possessing NRC licenses. The petition requested that the NRC reinstate the exemption from annual fees previously given nonprofit educational licensees. The proposed rule requested public comment solely on that issue. The exemption had been eliminated in a final rule published in the **Federal Register** on July 20, 1993. After careful consideration, the Commission has decided to reinstate the annual fee exemption for nonprofit educational institutions.

EFFECTIVE DATE: April 18, 1994.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–1974.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to comments.
III. Final action—changes included in final rule.
IV. Section-by-section analysis.
V Environmental impact: categorical exclusion.
VI. Paperwork reduction act statement.
VII. Regulatory analysis.
VIII. Regulatory flexibility certification.
IX. Backfit analysis.

I. Background

Soon after publishing its final rule establishing the NRC's FY 1993 fee schedules (58 FR 38666; July 20, 1993), which included for the first time annual fees for previously exempt nonprofit educational institutions [1], the Commission received a petition for reconsideration of that rule. The petition, filed by a number of colleges and universities affected by the policy change, requested that the NRC reconsider its decision to charge annual fees to such institutions. The petition asserted that the externalized benefits and public good resulting from use of university research reactors in various fields of education would be lost if these fees were imposed upon college and university licensees. (See Petition for Reconsideration of Final Rule (July 30, 1993) (appended to the Proposed Rule for the Restoration of the Annual Fee Exemption to Nonprofit Educational Institutions, 58 FR 50859; September 29, 1993.)) The petition pointed to research in such fields as nuclear safety, medicine, archaeology, food science and textiles, education of the public in nuclear matters, and to various benefits of education.

The petition relied upon a letter from economist Alfred Kahn to counsel for Cornell University, a petition signatory. The Kahn letter referred to "pure knowledge," especially nonproprietary university research made accessible to the public free of charge, as "the archetypical 'public good,' in economic terms, the essential characteristic of which is that, once produced, it can be made available more and more widely at zero economic cost."

While considering whether to grant the petition for reconsideration, or in the alternative to grant some nonprofit educational institutions individual "public interest" exemptions from the new annual fees, the NRC sent staff members to a number of colleges and universities to learn more about the use of nuclear materials in educational programs and the benefits that resulted from those materials' use. The Commission concluded, on the basis of these visits and the arguments made in the petition for reconsideration, that it should propose to retract the new annual fees ($62,100 per research reactor license; lesser amounts for each materials license). Accordingly, on September 29, 1993 (58 FR 50859), the Commission published in the **Federal Register** a notice granting the petition and proposing to restore the annual fee exemption for nonprofit educational institutions.

The Commission received over 200 comments on the proposed rule, with the vast majority in favor of restoring the annual fee exemption. (This number includes comments on the educational exemption provided to the Commission in response to its Congressionally-mandated study of overall agency fee policy, see 58 FR 21116; April 14, 1993). After careful review of the comments, and after studying the views of a professional economist engaged to assist in analyzing the comments (see note 2 infra), the Commission has decided to make final its proposed reinstatement of the exemption from annual fees for nonprofit educational institutions.

As the Commission made clear in the proposed rule, it will not charge other licensees retroactively for the monetary shortfall produced by the Commission's change in policy on the educational exemption. Therefore, for FY 1993 no licensees will be charged additional fees to compensate for the restored exemption. In addition, because the educational exemption is being restored for FYs 1991–92, there will be no refunds to power reactor licensees who paid increased annual fees in those years due to the exemption of nonprofit educational institutions (a point also detailed in the proposed rule).

II. Responses to Comments

Although the comment period expired on October 29, 1993, the NRC reviewed all comments received prior to November 13, 1993. The Commission received over 200 comments in response to the proposed rule. Copies of all comment letters received are available for inspection in the NRC Public Document Room ("PDR"), 2120 L Street, NW. (Lower Level), Washington, DC 20555.

1. *Comment.* Most commenters were educational institutions, who argued that their educational and research activities with licensed nuclear materials will have to be severely curtailed or halted altogether if the

[1] The NRC's elimination of the exemption was prompted in part by a court decision questioning the exemption's lawfulness. *Allied-Signal* v. *NRC*, 988 F.2d 146 (DC Cir. 1993).

annual fee exemption is not restored. They claimed that the annual fees would, in many cases, entirely subsume the budget for operation of the research reactor or use of nuclear material. Many commenters also stated that there was no possibility of obtaining more money for their operating budgets, and that the inevitable result of annual fees would therefore be an across-the-board reduction in nuclear-related studies.

Response. The Commission is aware of the effect annual fees could have on nonprofit educational institutions, not only from their comments but also from its own site visits. The Commission believes that much of the work done by these institutions with nuclear materials, in both nuclear and non-nuclear fields of study, is extremely valuable and should not be impeded or halted due to the new annual fees. Further, for reasons discussed later, subsidies for such activities are both necessary and desirable.

2. *Comment.* A number of comments received from nonprofit educational institutions stated that their work produced externalized benefits to society, in the words used in the DC Circuit's Allied-Signal decision, "not captured in tuition or other market prices." Among the benefits cited were research in fields such as nuclear safety, neutron activation analysis, neutron radiography, archaeology, art history and biology. Much of this research, some commenters claimed, was basic research done to advance science, not for profit or commercial use (although such an outcome might occur). One commenter noted that it does not accept research grants and contracts without making them public, and publishes virtually all its findings. The commenters asserted that this research, if halted due to new fees, would not likely be duplicated or replaced by the private sector.

Response. The Commission agrees with commenters that much of the work done with nuclear materials in academia, if halted, would simply not be continued in the private sector. In particular, the Commission was impressed by the arguments made regarding basic research. The Commission believes that such research, done in the spirit of academic inquiry, is an integral part of the programs run by educational institutions with NRC licenses.

The Commission agrees with commenters' arguments that educational institutions' commitment to basic research is largely unique, as it is not driven by the need to develop commercial uses. While there is undoubtedly much basic research performed outside educational institutions, the Commission does not believe that it is an adequate substitute for academic research.

In the Commission's view, a major benefit resulting from educational institutions' use of nuclear reactors and materials is the production of new knowledge through research, which the Commission would term a "public good," as defined in economic theory.[2] Two characteristics of a public good like pure knowledge are its nondepletability and nonexcludability. That is, one person's acquisition of knowledge does not reduce the amount available to others; further, it is not efficient—and often is impossible, as a practical matter—to prevent others from acquiring it. These characteristics make it difficult to recoup the costs of producing pure knowledge. Because the value of a public good may be very great, but the costs of producing it impossible to recapture, it may be necessary to subsidize that good's production for production to occur at all. In the Commission's view, that is true of the pure knowledge produced by nonprofit educational institutions, and the Commission has therefore decided to exempt them from fees.

Restoring the educational exemption will have additional beneficial consequences. Colleges and universities not only produce research results and pure knowledge (what we have termed "public goods"), but also other benefits of great value to both the nuclear community and society as a whole. For instance, many of the students trained on research reactors will likely become the next generation of nuclear reactor operators and engineers. The knowledge they gain from their education in these fields will allow them to operate reactors and other nuclear facilities safely and effectively. Knowledge attained through education will also be of value to those companies or Government agencies, including the armed forces, who hire these students to perform nuclear-related work, which often cannot be done without extensive education in the area.

3. *Comment.* A number of commenters argued, for a variety of reasons, that the educational exemption should not be restored. Some commenters stated that each licensee should pay its fair share. Others believed that for-profit entities benefit the public as well and should not be penalized because they generate profits. Certain nonprofit commenters and medical licensees argued that if the exemption were retained, it should be expanded to include nonprofit institutions and medical licensees that are not now exempted from fees. A few commenters stated that in certain fields of study, schools and university hospitals compete with private research laboratories and nonprofit hospitals, respectively, and thus would receive an unfair subsidy from an annual fee exemption. One commenter went on to argue that such a subsidy amounted to an unlawful promotion of atomic energy by the NRC. Another commenter requested that the proposed rule be changed to exempt it from the annual fee, noting that it was the only Federally-owned research reactor not so exempted, due to the level of its power output.

A number of other commenters supported restoration of the educational exemption, but believed it should be funded in a different manner. The two alternatives most popular with commenters were funding the exemption out of general revenues, which would mean removing it from the fee base, or funding it via a surcharge on all licensees, not just power reactor licensees. Those commenters favoring removal of the educational exemption from the fee base acknowledged that such an outcome would require Congressional legislation.

Response. After deliberating over whether the educational exemption should be restored, the Commission believes the wisest policy decision is to exempt nonprofit educational licensees once again. Since the Commission published its final rule in July 1993 abolishing the educational exemption, it has devoted an extraordinary amount of time and attention to the question of whether to reverse that decision. It has reviewed hundreds of letters on the issue, fielded numerous phone comments and inquiries, and sent staff members to study the issue by visiting college and university licensees. In the Commission's view, the evidence taken as a whole leans strongly in favor of restoring that exemption, for the reasons described above: that many educational licensees would be forced to halt their research and educational activities due to lack of funds if NRC fee subsidies were withdrawn; that those activities would often not be continued in the private sector, resulting in a serious loss of basic research in numerous areas of study; and that the public good inherent

[2] The Commission's analysis of this concept was aided by a memorandum prepared by an NRC consultant on the issues of external benefits and public goods. The memorandum has been placed in the NRC PDR and may be examined by any interested member of the public. See Memorandum to NRC Staff from Stephen J.K. Walters, Professor of Economics, Loyola College (Md.), dated January 4, 1994.

in the production of knowledge made available to all is worthy of Government support. Such support would not therefore constitute an unlawful subsidy or promotion of atomic energy.

The Commission has received anecdotal information from some commenters indicating that certain nonprofit research institutions (which do not fall within the definition of nonprofit educational institution as provided in 10 CFR 171.5) and Federally-owned research reactors should receive the same treatment as educational institutions.[3] However, the Commission does not believe it has sufficient information on which to base a generic exemption for such research institutions and reactors. Because the proposed rule did not suggest that the educational exemption be expanded in this way, the Commission received a smaller number of comments than are needed to make an informed decision on this issue. For that reason, the current policy of charging such entities annual and user fees remains in effect. Those nonprofit research institutions and Federally-owned research reactors who believe that they qualify for an exemption from the annual fee based on the public good concept are, of course, free to request one from the Commission. See 10 CFR 171.11. Depending on the outcome of any such requests, the Commission may need to revisit the question of whether to make nonprofit research institutions generically exempt from fees in a future rulemaking.

The Commission also believes that medical licensees should continue to pay annual fees. This is consistent with past Commission practice. Contrary to some commenters' assertions, the Commission's fee policy does not result in a competitive advantage for university medical licensees over nonprofit hospitals. Both are charged fees for licenses authorizing medical treatment using licensed nuclear material.[4] The Commission does not believe that medical licensees are analogous to nonprofit educational institutions. Their function is not pure research and education, but primarily to provide services to paying customers.

While the Commission does not dispute that medicine provides significant benefits to patients, such treatment is both depletable and excludable. The benefits of medicine are therefore a private rather than a public good. By contrast, an educational institution generally disseminates the results of its basic research to all who want it, even going beyond the confines of the university itself, without receiving compensation from any of those benefitting from that knowledge. The key to nonprofit educational licensees' singular treatment is not merely that they provide valuable social benefits; rather, it is the existence of certain market failure considerations (discussed above) that apply to producers of pure knowledge through basic research, but not to medical practitioners. The distinction between educational and medical licensees is addressed at greater length in the Commission's **Federal Register** notice discussing the petition filed by the American College of Nuclear Physicians and the Society of Nuclear Medicine seeking a fee exemption for medical licensees (published in the Proposed Rule Section of this issue of the **Federal Register**).

The Commission does not plan to adopt the suggestion of some commenters that most or all other licensees should contribute something toward the costs of exempting nonprofit educational licensees. The agency, in any event, is not recouping these costs for FY 1993, as it is legally precluded from retroactively collecting those costs from licensees. The Commission in its Energy Policy Act-mandated review of fee policy has concluded that the costs of exempting nonprofit educational institutions should be excluded from the fee base through legislation modifying OBRA–90. In its study, the Commission concluded that if legislation to accomplish this is not enacted, these costs should continue to be recovered through fees assessed to power reactor licensees.

4. *Comment.* A number of commenters have argued that the Atomic Energy Act of 1954, as amended ("AEA"), mandates NRC support of education, and that accordingly the NRC must restore the educational exemption to conform to that mandate. In this regard, some commenters made the point that their facilities were originally funded or provided to them by the AEC or other Federal agencies.

Response. The Commission acknowledges its longstanding policy of supporting education, and believes that such support has been vital to the success of nuclear and nuclear-related education. That notwithstanding, the Commission does not view its education policy, or the exhortatory language of the AEA, as mandating that colleges and universities be exempt from NRC fees. The Commission has decided to restore the fee exemption as a policy matter, not a matter of legal compulsion.

5. *Comment.* Many educational institutions commented that it made little sense to charge them annual fees when much of their nuclear-education funding was derived from Federal agencies such as the Department of Energy and the National Science Foundation. Another commenter argued that State agencies were nonprofit in nature and should be exempted in the same manner as colleges and universities.

Response. The Commission for reasons discussed above decided to reinstate the exemption for nonprofit educational institutions. The fact that a number of these institutions received funding from Federal agencies was not a factor in the final decision. The Commission's decision was based primarily on who received the benefits of the services rendered, rather than who funded the underlying activities.

The Commission also notes that it charges fees to other governmental licensees, including both Federal and State agencies. (Virtually no Federal agencies are charged user fees under part 170 due to a prohibition against such fees in the Independent Offices Appropriation Act, see 31 U.S.C. 9701.) It finds no basis for changing its historical policy with respect to these entities in this rulemaking. This issue is addressed in the Commission's Report to Congress on fee policy, cited earlier in this rulemaking.

6. *Comment.* Some educational commenters stated that they should fall under the category of small entities, and asked whether the definition of "small entity" could be broadened to include a greater number of institutions than currently fall within the definition.

Response. The Commission intends to re-examine the size standards it uses to define small entities within the context of compliance with the Regulatory Flexibility Act. The Commission will conduct this review within the context of the proposed revisions of small business size standards proposed by the Small Business Administration ("SBA") (58 FR 46573; September 2, 1993). The Commission will not complete its review until the SBA promulgates a final rule containing the revised size standards. Until these activities are

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[3] Most Federally-owned research reactors were exempted from fees by Congress in earlier legislation. See section 6101(c)(4) of OBRA–90, 42 U.S.C. 2214(c), as amended by the Energy Policy Act of 1992. However, the reactor in question operates at a power level greater than that specified in the legislation for exempt facilities, and therefore does not meet the definition of a "research reactor" for purposes of the statutory exemption.

[4] Similarly, materials licenses held by nonprofit educational institutions which authorize remunerated services or services performed under a Government contract are also subject to fees. See 10 CFR 170.11(a)(4) and 171.11(a)(1) (1993).

completed, it would be premature to address this comment.

III. Final Action—Changes Included in Final Rule

The Commission has made only one change to its FY 1993 final rule establishing annual and user fee schedules for that fiscal year. As it proposed, the Commission has amended § 171.11 to exempt nonprofit educational institutions from annual fees. The new exemption provision is identical to that contained in the FY 1991 and 1992 final fee rules. Because the final fee schedule for FY 1993 has already been issued, the Commission will not be charging any other licensees for the fees that would have been paid for FY 1993 by the newly exempt group of licensees. For that reason, no new fee schedule is being published at this time. A revised NRC fee schedule incorporating these changes and billing other licensees for the FY 1994 exemption's costs will be included in the FY 1994 proposed fee rule.

Because the Commission has decided in this final rule to reinstate the annual fee exemption for nonprofit educational institutions, the NRC will cancel the FY 1993 annual fee invoices for those licensed activities exempt under this final rule. Accordingly, refunds will be made to those licensees who paid the FY 1993 annual fees and are now exempt under this final rule. Additionally, no further action will be taken on nonprofit educational institutions' exemption requests, which had been held in abeyance pending this final rule.

Some nonprofit educational institutions filed applications requesting termination, downgraded, possession-only or combined licenses to avoid the FY 1993 annual fee. If those applications are still pending, the licensees should notify the NRC within 30 calendar days from the effective date of this rule if they wish to rescind their applications due to the exemption's reinstatement. Absent such notification, the NRC will process the applications as filed. There are instances where the NRC has already completed final action on some of the applications in question. The affected nonprofit educational institutions are advised that if they wish to reinstate their previous license authority, they must file an application to do so with the NRC. Such applications for reinstatement of previous license authority are exempted from fees under 10 CFR 170.11(a)(4) as appropriate.

IV. Section-by-Section Analysis

Section 171.11 Exemptions

Paragraph (a) of this section is amended by adding nonprofit educational institutions, as defined in § 171.5, to the list of those entities exempted from annual fees by the Commission. A discussion of this change in fee policy is found in Sections I and II of this final rule.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 171, on November 5, 1990 the Congress passed Public Law No. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). OBRA–90, as amended, requires that for FYs 1991 through 1998 approximately 100 percent of the NRC's budget authority be recovered through the assessment of fees. To accomplish this statutory requirement, on July 20, 1993 (58 FR 38666), the NRC, in accordance with § 171.13, published in the **Federal Register** the final amount of the FY 1993 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. Consistent with OBRA–90 and its Conference Committee Report, the Commission has ensured that—

(1) The annual fees are based on the Commission's FY 1993 budget of $540 million less the amounts collected from part 170 fees and the funds directly appropriated from the Nuclear Waste Fund to cover the NRC's high level waste program;

(2) The annual fees, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) Annual fees are assessed to those licensees which the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors, the NRC continues to consider the various reactor vendors, the types of containment, and the location of those reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (DC Cir. 1988), *cert denied*, 490 U.S. 1045 (1989).

10 CFR part 171, which established fees based on the FY 1989 budget, was also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S.Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld recently by the DC Circuit Court of Appeals in *Allied-Signal* v. *NRC*, 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule as adopted does not have a significant economic impact on a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, and approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC hereby adopts the following amendments to 10 CFR part 171.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

1. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2214 note).

2. In § 171.11, paragraph (a) is revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee is not required for:

(1) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

(i) Human use;

(ii) Remunerated services to other persons;

(iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; or

(iv) Activities performed under a Government contract.

(2) Federally-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

Dated at Rockville, MD this 11th day of March, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94–6233 Filed 3–16–94; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–33573A]

Regional Office Reorganization; Correction

ACTION: Correction to final rule amendments.

SUMMARY: This document contains corrections to final rule amendments which were published February 9, 1994 [59 FR 5942]. The amendments pertain to the organization and operation of the Commission's regional offices.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: James Clarkson, Director, Regional Office Operations, (202) 272–3090; Anne Sullivan, Office of General Counsel, (202) 272–7525.

SUPPLEMENTARY INFORMATION: The regulations which are the subject of these corrections are contained in 17 CFR 200 and were amended by release effective February 9, 1994.

Need for Correction

As published, certain addresses contained in the final rule amendments are incorrect or incomplete.

Correction of Publication

Accordingly, the publication on February 9, 1994 of the final rule amendments in Commission Release No. 34–33573 which were the subject of FR Doc. No. 94–2826 is corrected as follows:

§ 200.11 [Corrected]

1. On page 5943, in the first column, in Section 200.11(b), line twelve, remove the words "Sixth Floor," as they appear after "73 Tremont Street".

2. On page 5943, in the first column, in Section 200.11(b), line 28, add "Minnesota," between "Michigan," and "Missouri,".

3. On page 5943, in the first column, in Section 200.11(b), beginning in line 30, revise the phrase "Administrator, Northwestern Atrium Center," to read "Director,".

4. On page 5943, in the first column, in Section 200.11(b), line 30, the zip code "60611" is corrected to read "60661".

5. On page 5943, in the first column, in Section 200.11(b), line 37, remove the word "Administrator" and add, in its place, the word "Director".

6. On page 5943, in the second column, in Section 200.11(b), line eleven, add the words "Suite 1100," before the words "San Francisco,".

§ 200.80 [Corrected]

7. On page 5944, in the third column, in Section 200.80(c)(1)(iii), line one, add the number "3475" before the words "Lenox Road,".

8. On page 5944, in the third column, in Section 200.80(c)(1)(iii), lines four and five, remove the words "Northwestern Atrium Center,".

9. On page 5944, in the third column, in Section 200.80(c)(1)(iii), line six, the zip code "60611" is corrected to read "60661".

10. On page 5944, in the third column, in Section 200.80(c)(1)(iii), line 23, add the words "Suite 1100," before the words "San Francisco,".

§ 200.303 [Corrected]

11. On page 5945, in the first column, in Section 200.303(a)(2), line 15, add the number "3475" before the words "Lenox Road,".

12. On page 5945, in the first column, in Section 200.303(a)(2), beginning on line 18, remove the words "Northwestern Atrium Center,".

13. On page 5945, in the first column, in Section 200.303(a)(2), line 20, the zip code "60611" is corrected to read "60661".

14. On page 5945, in the first column, in Section 200.303(a)(2), line 37, insert the words "Suite 1100," before the words "San Francisco,".

Dated: March 11, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6176 Filed 3–16–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD85.

Supplemental Security Income for the Aged, Blind, and Disabled; Replacement of Lost, Damaged, or Stolen Excluded Resources (Hurricane Andrew)

AGENCY: Social Security Administration, HHS.

ACTION: Interim final rules with request for comments.

SUMMARY: Some supplemental security income (SSI) recipients who were victims of Hurricane Andrew in south Florida have not been able to replace or repair their damaged homes due to circumstances beyond their control. This means that some SSI recipients will have resources (insurance money) in amounts that will disqualify them for SSI benefits if held for periods exceeding the maximum 18-month period provided in regulations at § 416.1232. Since Hurricane Andrew occurred in August 1992, some SSI recipients could become ineligible as early as March 1994. We are codifying in regulations, interim final rules which provide additional time for victims of Hurricane Andrew to make arrangements to effect repair or replacement of excluded property without interruption of their SSI benefits.

DATES: Effective Date: This rule is effective March 17, 1994.

Comments

To be sure that your comments are considered, we must receive them no later than May 16, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Alternately, you may submit comments by telefax to (410) 966–0869.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: In August 1992, Hurricane Andrew devastated south Florida causing damage estimated in excess of $18 billion. According to published reports, of the 47,000 homes destroyed, 32,000 are still uninhabitable. Only 10 percent of 140,000 damaged homes have been rebuilt or repaired because the number of contractors available to rebuild homes is steadily decreasing.

We estimate that approximately 450 SSI recipients, who were victims of Hurricane Andrew, have received payments from private insurance companies for the repair or replacement of their property, but because of the extent of the devastation, they have not yet been able to repair or replace their homes and property.

The regulations at § 416.1205(c) provide that SSI recipients can have no more than $2,000 in countable resources and SSI couples can have no more than $3,000. The regulations at § 416.1237 provide that assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a Federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States or comparable assistance received from a State or local government, or from a disaster assistance organization, is excluded permanently under § 416.1210 in determining countable resources.

The regulations at § 416.1232 complement the disaster assistance exclusion by providing that cash or in-kind items for the repair or replacement of lost, stolen, or damaged excluded resources are not treated as resources for 9 months, plus one extension for a reasonable period up to an additional 9 months for good cause if circumstances do not permit repair or replacement within the initial 9-month period and the individual intends to use the funds for repair or replacement.

Excluded resources generally include the individual's home, household goods and personal effects, and the automobile, as are described in §§ 416.1212, 416.1216 and 416.1218 respectively.

Private insurance payments do not qualify as disaster assistance and, therefore, cannot be permanently excluded. For some of these SSI recipients, the maximum period of 18 months during which monies to repair or replace excluded resources are not treated as resources is about to expire. Because of the vast devastation caused by Hurricane Andrew, these individuals have not been able to rebuild or repair their homes. We estimate that, as early as March 1994, some of these individuals will begin to lose SSI eligibility.

We propose interim final regulations to amend § 416.1232(b) for victims of Hurricane Andrew only, to extend the maximum 18-month period during which cash or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource is not treated as a resource:

- For an additional 12 months as long as the individual intends to repair or replace the property and good cause still exists for not yet having done so.

Existing regulations for the exclusion of monies to repair or replace an excluded resource have been adequate to cover past situations, including other disasters. However, the damage caused by Hurricane Andrew was so extensive and destroyed so much of the existing infrastructure (e.g., governmental and public services and utilities, construction and repair industry and equipment, etc.) that the current maximum 18-month period, in this context, is not adequate. Many SSI recipients hurt by Hurricane Andrew who have received insurance settlements have not been able to rebuild or repair their homes or even contract for those services. Through this regulatory change, we are providing additional time for victims of this extraordinary disaster to make arrangements to effect repair or replacement without interruption in their SSI benefits.

During the extension period, we will make periodic contacts with each individual to determine whether the individual still intends to repair or replace the property and, if so, whether good cause for not yet having done so still exists. We will obtain evidence to make these determinations.

Regulatory Procedures

We are publishing these new SSI resource counting rules as interim final rules with a request for comments instead of as proposed rules. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. After due consideration, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking on these regulations because such procedures would be contrary to the public interest. The process of notice and comment rulemaking generally requires many months before culminating in a final rule. If SSI recipients who are victims of Hurricane Andrew do not receive the beneficial effect of this rule by March 1994, some will lose their SSI eligibility. Since it is in the public interest that these individuals continue to receive SSI benefits while they make arrangements to repair or replace their excluded resources that have been damaged or destroyed by Hurricane Andrew, we believe that the public interest warrants immediate promulgation of these rules. Accordingly, promulgation of these rules pursuant to notice and comment rulemaking would be contrary to the public interest and thus may be dispensed with pursuant to 5 U.S.C. 553(b)(B). However, we are asking the public to comment on these interim final rules and will determine if these regulations need revision on consideration of any comments received.

Executive Order 12866

These interim final regulations do not meet the criteria for a significant regulatory action under section 3(f) of E.O. 12866 and, thus, are not subject to Office of Management and Budget (OMB) review under E.O. 12866.

Paperwork Reduction Act of 1980

These interim final regulations do not contain reporting requirements. However, they extend the initial regulation that did. Inadvertently, we did not publish a narrative for that regulation concerning the need for clearance by the Office of Management and Budget (OMB). We would normally seek approval of the reporting requirements contained in the initial regulation (under the Paperwork Reduction Act) from OMB. We are not doing so in this situation because we already have their clearance to collect this kind of information using the SSA-795 (Statement of Claimant or Other Person), OMB Control Number 0960-0045.

We expect that approximately 450 SSI recipients will be involved, and that it will take them an estimated five minutes each to provide this information. The annual burden for this reporting requirement is estimated at 37.5 hours. The respondents are SSI recipients who have excess countable resources as a result of the damage caused by Hurricane Andrew.

Regulatory Flexibility Act

We certify that these interim final regulations will not have a significant economic impact on a substantial number of small entities because they affect eligibility for or the amount of SSI payments of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplementary Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplementary Security Income.

Dated: February 16, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: March 10, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

2. Section 416.1232 is amended by revising paragraph (b) to read as follows:

§ 416.1232 Replacement of lost, damaged, or stolen excluded resources.

* * * * *

(b) The initial 9-month time period will be extended for a reasonable period up to an additional 9 months where we find the individual had good cause for not replacing or repairing the resource. An individual will be found to have good cause when circumstances beyond his or her control prevented the repair or replacement or the contracting for the repair or replacement of the resource. If good cause is found for an individual, any unused cash (and interest) is counted as a resource beginning with the month after the good cause extension period expires. *Exception: For victims of Hurricane Andrew only,* the extension period for good cause may be extended for up to an additional 12 months beyond the 9-month extension when we find that the individual had good cause for not replacing or repairing an excluded resource within the 9-month extension.

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[FR Doc. 94-6158 Filed 3-16-94; 8:45 am]

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Food and Drug Administration

21 CFR Part 442

[Docket No. 93N-0431]

Antibiotic Drugs; Cefmetazole and Cefmetazole Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new bulk form of cefmetazole and for its use in a new dosage form of cefmetazole sodium, cefmetazole sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective April 18, 1994; written comments, notice of participation, and requests for a hearing by April 18, 1994; data, information, and analyses to justify a hearing by May 16, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0335.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of (1) a new bulk form of cefmetazole, and (2) for its use in a new dosage form of cefmetazole sodium, cefmetazole sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 442 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a