The commenter also stated that, although the tested treatment satisfied statistical security requirements, the fact that some fruit flies survived the treatment might indicate an unacceptable risk when the treatment is applied on a commercial scale. We are making no changes based on this comment. The data provided by ARS indicates that "probit 9" security (at least 99.968 percent insect mortality rate) was obtained by storage of carambola at 1.1±0.6 °C for 12 days.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for carambola from Hawaii is imminent. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

We are allowing the fruit of carambola to move from Hawaii to other parts of the United States, under safeguards to prevent the introduction of injurious plant pests from Hawaii.

At present, there are approximately 5 to 10 farms in Hawaii that produce commercial quantities of carambola. These farms are small, family-owned, operations.

This rule will provide Hawaiian producers with access to markets in other parts of the United States. We estimate that approximately 1,500 to 3,000 pounds of fresh carambola fruit might be shipped from Hawaii to other parts of the United States annually. These shipments would have an estimated annual market value of between $3,000 and $9,800, depending on market prices. This represents less than .0002 percent of total Hawaiian agricultural production. The average annual market value of Hawaiian agricultural products totals about $600 million.

Small shippers of Hawaiian fruits and vegetables may also receive some benefits from this rule. We estimate that between 10 and 15 small entities will be able to increase marginally the volume of products shipped to other parts of the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR parts 300 and 318 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through August 1994, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–4 [Amended]

4. Section 318.13–4 is amended by adding, at the end of the section, the following: "(Approved by the Office of Management and Budget under control number 0579–0049)"

5. A new § 318.13–4h is added to read as follows:

§ 318.13–4h Administrative instructions; conditions governing the movement of the fruit of carambola from Hawaii.

(a) Subject to the requirements of §§ 318.13–3 and 318.13–4 and any other applicable regulations, the fruit of carambola may be moved interstate from Hawaii only if it is treated under the supervision of an inspector with a treatment authorized by the Administrator for the following pests: the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

(b) Treatments authorized by the Administrator are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Done in Washington, DC, this 19th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23638 Filed 9–23–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Parts 54 and 91

[Docket No. 93–070–2]

Inspection and Handling of Livestock for Exportation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding inspection and handling of livestock for exportation to provide that United States origin health certificates include all test results, certifications, or other statements required by the foreign country of destination. This action is necessary to

ensure that the origin health certificate contains all of the information required by the foreign country of destination. We are also amending the requirements concerning scrapie for sheep and goats intended for export. This action clarifies the regulations and makes the terminology used in the export regulations consistent with that used in our domestic scrapie regulations. We are also revising one definition in the domestic scrapie regulations to make the definitions in those regulations consistent with each other.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States.

On May 13, 1994, we published in the **Federal Register** (59 FR 24979–24982, Docket No. 93–070–1) a proposal to amend the regulations by providing that United States origin health certificates include all test results, certifications, or other statements required by the foreign country of destination. We also proposed to amend the requirements concerning scrapie for sheep and goats intended for export, in order to clarify the regulations and make the terminology used in the export regulations consistent with that used in the domestic scrapie regulations. Additionally, we proposed to revise a definition in the domestic scrapie regulations to make the definitions in those regulations consistent with each other.

We solicited comments concerning the proposed rule for a 60-day comment period ending July 12, 1994. The one comment we received by that date supported the proposal as written.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis regarding the impact of this rule on small entities.

This rule requires that the origin health certificate required for animals exported from the United States include any test results, certifications, or other statements required by the foreign country of destination. It also revises the export regulations in 9 CFR part 91 to make them consistent with the regulations in 9 CFR parts 54 and 79 regarding the Voluntary Scrapie Flock Certification Program.

No issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis we published in our proposal, and we identified no significant alternatives to this rule. We anticipate that the changes involving certification will have little or no impact on domestic exporters. In order for exporters to sell their animals abroad, the animals must meet the import requirements of the country of destination. Therefore, it is in the exporter's interest to ensure that those requirements are met. This rule change requires only that the origin health certificate include all test results, certifications, or other statements required by the country of destination. However, estimates of the number of animals and the number of small entities that will be affected, and the potential costs to exporters, are not available.

The changes to the regulations concerning sheep and goats with regard to scrapie will affect some producers. Under the regulations, sheep and goats from "source flock" premises may not be exported. Under the regulations prior to the effective date of this rule, source flock premises are considered those from which an animal affected with scrapie was moved within 18 months or less prior to showing signs of scrapie. Under this rule, the export of sheep and goats from source flocks continues to be prohibited, but the meaning of source flock is revised to mean a flock in which at least two animals were diagnosed as scrapie-positive animals at an age of 54 months or less, provided the second diagnosis was made within 60 months of the first, and provided the requirements of a flock plan have not been completed. This change makes the regulations more restrictive, and may increase the number of animals prohibited exportation because they originated in a source flock. However, as of July 1993, there were only five source flocks in the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0020.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Sheep.

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 54 and 91 are amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 is amended by removing the definition of *scrapie-exposed animals* and by adding, in alphabetical order, a definition of *exposed animal* to read as follows:

§ 54.1 Definitions.

* * * * *

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals

concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

* * * * *

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

3. The authority citation for part 91 is revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

4. In § 91.3, paragraph (a) is amended by removing "§ 161.2" in the fourth sentence and replacing it with "§ 161.3(k) of this chapter", and by adding a new sentence at the end of the paragraph to read as follows:

§ 91.3 General Export requirements.

(a) * * * "The origin health certificate shall include all test results, certifications, or other statements required by the foreign country of destination.

* * * * *

5. In § 91.6, and paragraph (a)(3) is revised as set forth below: footnote 4 is removed.

§ 91.6 Goats.

(a) * * *

(3) No goat shall be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

6. In § 91.8, paragraph (a) introductory text is revised to read as follows:

§ 91.8 Sheep.

(a) No sheep shall be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

§§ 91.6 and 91.8 [Amended]

7. In § 91.6, paragraph (a)(5), and § 91.8, paragraph (a)(2), footnote 5 and the references to footnote 5 are redesignated as footnote 4.

Done in Washington, DC, this 19th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23613 Filed 9–23–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AE31

Specific Licensing of Exports of Certain Alpha-Emitting Radionuclides and Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish specific licensing controls on the export of bulk tritium, transuranic isotopes americium-242m, californium-249, californium-251, curium-245, curium-247, and certain specified alpha-emitting radionuclides; revise and establish new general licenses for tritium and the specified alpha-emitting radionuclides, which are keyed to the recipient country's membership in the Nuclear Suppliers Group; remove Argentina, Brazil, and Chile from the list of restricted destinations; and revise the general license for exports of Canadian-origin uranium. The amendments are necessary to conform the export controls of the United States to international export control guidelines and a treaty obligation of the U.S. under the U.S.-Canada Agreement for Cooperation.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Elaine Hemby, Office of International Programs, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2341.

SUPPLEMENTARY INFORMATION:

I. Background

On March 17, 1993 (58 FR 14344), the NRC published in the **Federal Register** a proposed rule that would amend NRC's regulations in 10 CFR Part 110 pertaining to the export of nuclear material and equipment. The proposed amendments would revoke the current general licenses for bulk tritium and alpha-emitting radionuclides having an alpha half-life of 10 days or greater but less than 200 years to conform NRC's regulations to the export control guidelines of the Nuclear Suppliers Group (NSG) for nuclear-related, dual-use items contained in IAEA INFCIRC/254/Revision 1/Part 2 and approved in 1992.[1] The alpha-emitting radionuclides subject to this rule are plutonium-236, plutonium-238, thorium-227, thorium-228, uranium-230, uranium-232, actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223 (specified alpha-emitting radionuclides). Consistent with the NSG guidelines, new general licenses would be established to permit the export of the specified alpha-emitting radionuclides and dispersed tritium to countries which are members of the NSG dual-use guidelines and to permit the export of the specified alpha-emitting radionuclides to most other countries when in a device, or a source for use in a device, containing less than 100 millicuries (3.7 GBq) of alpha activity per device (10 CFR part 71, appendix A, provides specific activities in curies per gram).

The current general license for source material in § 110.22(b) would be revised to reduce the annual limit of Canadian-origin natural uranium that can be exported to any single country from 1,000 kilograms to 500 kilograms to help assure U.S. compliance with provisions of the U.S.-Canada Agreement for Cooperation.

The current general licenses for transuranic isotopes americium-242m, californium-249, californium-251, curium-245, and curium-247 would be revoked to conform NRC's regulations to the International Atomic Energy List of the Coordinating Committee on Multilateral Export Controls (COCOM). Although COCOM was dissolved in March 1994, the NRC is placing specific licensing controls on these isotopes because the U.S. and other COCOM member countries agreed to retain export controls on the existing COCOM list of items. Steps are now being taken by former COCOM member countries to propose that the NSG control most, if not all, of the nuclear commodities on the COCOM list.

[1] Tritium and reactor produced alpha-emitting radionuclides are the two commodities on the NSG dual-use list whose exports are regulated by the NRC. The other items identified on this list, including alpha-emitting radionuclides produced with nuclear particle accelerators, are subject to Department of Commerce export controls, and are contained on a list referred to as the Nuclear Referral List.

The proposed amendment to restructure Appendix A, which describes the nuclear reactor equipment subject to NRC licensing authority, will be addressed in a separate rulemaking proceeding.

II. Comments on the Proposed Rule

The Commission received six letters commenting on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC. Five of the letters, two of which were from the same company, came from U.S. manufacturers that utilize sources containing the specified alpha-emitting radionuclides. These commenters strongly objected to the revocation of the general licenses for the specified alpha-emitting radionuclides, particularly californium-252 (Cf-252). The commenters indicated that the specific licensing requirements could result in serious economic disadvantage to their export business. It is their view that specific licenses would be disruptive to their businesses and cause them to lose potential business because of the higher expenses of license application fees, the additional paperwork burden, time delays, and uncertainties in delivery. One commenter believed the current general license regulations in Part 40 provided sufficient documentation to identify the supplier, quantity exported, and end user/end use. Several commenters argued that the revisions were unnecessary and were without any benefit to the stated objective of nonproliferation of nuclear weapons.

In view of these adverse comments, the NRC asked the companies to provide specific sales data on their exports to better understand the implications of the new regulation. After reviewing the responses, the NRC continues to believe that the economic impact on these companies is not significant because of the steps we have taken to address their concerns. First, the new general licenses permit the export of the specified alpha-emitters in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding, in itself, reduced much of their concerns. The final rule was revised to clarify this point. Other new general licenses permit the export of unlimited quantities (except as limited by existing general licenses) of the specified alpha-emitting radionuclides to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf-252 sources, including replenishment sources, without obtaining specific licenses. Also the companies are encouraged to apply for broad, long-term licenses to export their Cf-252 sources. These kinds of applications could include customers in a number of friendly, non-NSG countries and in sufficient quantities to cover replenishment sources for six years.

Several commenters questioned whether a source containing less than 100 millicuries (186 micrograms) of Cf-252, if shipped separately from the device in which it is to be used, could be exported under the proposed new general license. One commenter noted that in the NRC materials licensing regulations, a "source" is not defined as a "device". As stated above, the NRC considers, for the purpose of part 110, that the export of a Cf-252 source for use in a specified device qualifies for this general license. The new general licenses are revised to clarify this point.

One commenter requested that the effective date of the rule be delayed or that exports under contract be exempted by a "grandfather" clause to avoid possible forced defaults in currently existing contracts that are now subject to specific licensing controls. In response to this concern, the effective date of this rule is 45 days after publication. This should be sufficient time for exports that are "in process" to be accomplished without default. The NRC did not consider a "grandfather" clause in the rule to cover committed contracts. One commenter has committed contracts to deliver Cf-252 sources to the year 1997. The NRC believes these sources should not be excluded from the new regulation for more than another few weeks. The applicable export control guidelines were agreed to by the U.S. and other NSG member countries in 1992 and should be implemented by the NRC without an extended delay.

A commenter representing a major U.S. vendor stated that the proposed restructuring of Appendix A and the new language still did not clearly delineate which minor reactor components required NRC licenses and which fall within the jurisdiction of the Department of Commerce. The commenter believed that the proposed amendment could result in increased confusion for exporters. In view of this comment, the Commission defers consideration of the revision of Appendix A to a future rulemaking.

The same commenter was concerned that service tooling contaminated with residual byproduct, source, or special nuclear material may be subject to specific licensing controls under the proposed rule. It is not the intent of the NRC to place new controls on these types of nuclear materials in this rulemaking.

III. The Final Rule

Under current NRC regulations, bulk tritium in quantities up to 100 curies, the specified alpha-emitting radionuclides in unlimited quantities, and transuranic isotopes americium-242m, californium-249, californium-251, and curium-245 in unlimited quantities can be exported to most countries under general licenses. The final rule amends the general license provisions in §§ 110.21–110.23 for the export of special nuclear, source, and byproduct material to revoke the general licenses for these materials. Specific licensing controls are established on the above materials. Although some of the specified alpha-emitting radionuclides inadvertently were not specifically identified in the proposed rule, they are included in the general license revocation implemented by this rule.

Argentina, Brazil, and Chile are removed from the list of restricted destinations in § 110.29. Since publication of the proposed rule, Argentina and Brazil have ratified and begun implementation of the Argentina/Brazil/IAEA full-scope safeguards agreement and Chile has waived into force the Treaty of Tlatelolco.

Section 110.30 is a list of the other member countries of the NSG. Exports of the specified alpha-emitting radionuclides in unlimited quantities (except as limited by the existing general licenses) and dispersed tritium in quantities up to 40 curies per device are permitted to NSG member countries under the new general licenses established for them. Subsequent to the publication of the proposed rule, Argentina has become a member of the NSG and is included in the list.

Three items covered in this final rule were not specifically identified in the proposed rule: (1) The general licenses in § 110.23 for einsteinium-252 -253 -254 -255, fermium-257, gadolinium-148, and mendelevium-258 are revoked; (2) Argentina, Brazil, and Chile are removed from the restricted destination list in § 110.29; and (3) Argentina is added to the NSG member list in § 110.30. Although the NRC did not publish these changes for comment in the proposed rule, the NRC is merely codifying international obligations of the United States. The NRC is proceeding to final rule because these changes involve a foreign affairs function of the United States. Therefore, solicitation of public comment is not

required under the Administrative Procedure Act (5 U.S.C. 553(a)(1)) and 10 CFR 110.132(e) and 110.134. Here solicitation of public comments would delay U.S. conformance with its international obligations and therefore would not be in the public interest.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion under 10 CFR 51.22 (c)(1) and (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0036 and 3150–0027.

The public reporting burden for this collection of information is estimated to average less than 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0036, 3150–0027), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

See the discussion in the Regulatory Flexibility Certification for the final regulatory analysis for this rule.

Regulatory Flexibility Certification

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

Based on the information available to the Commission at the time the proposed rule was published, the Commission previously certified that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. The information to support this was obtained from the Department of Energy's national laboratories and some industry sources. The Commission also invited any small entity that determined that it is likely to bear a disproportionate economic impact because of its size to notify the Commission.

The Commission received four comments on the proposed rule from U.S. manufacturers that utilize radioactive sources containing Cf–252. Two of the companies qualify as small entities. Through their comments, the Commission became aware of the potentially detrimental economic impact that the revocation of the general licenses under which they were permitted to export Cf–252 would have. In view of these adverse comments, the NRC asked the companies to provide sales data on their exports to better reflect the implications of the new regulation. Based on a review of this summary data, the NRC, in cooperation with the companies, found that the impact of the rule changes on future sales will be much less than they had feared.

First, new general licenses are established to permit the export of CF–252 sources in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding, in itself, reduces much of their concerns. Further, other new general licenses are established to permit the export of unlimited quantities (except as limited by existing general licenses) of Cf–252 sources to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf–252 sources, including replenishment sources, without obtaining specific licenses. In addition, the companies may submit broad, long-term licenses to export their Cf–252 sources to their medical, scientific, industrial, and reactor-related customers in friendly, non-NSG countries, thereby eliminating case-by-case review. Such licenses could authorize exports of Cf–252 sources in sufficient quantities to cover startup sources and replenishment sources for Taiwan and South Korean power reactors for a number of years. The anticipated value of the exports under such licenses would range from $260,000 to over $2 million. Other such licenses could authorize exports of Cf–252 sources and replenishment sources to medical, industrial, and scientific customers, with total export values under such licenses ranging from $100,000 to over $500,000. The current fee would be $1300 for each specific license application submitted. These steps will greatly reduce the financial burden of the license application fees and the additional paperwork. The processing of an export license application of this type normally takes less than 45 days for final action. The annual burden imposed by the rule is estimated to average less than 3 hours for an exporter for each specific application. The staff expects less than ten new applications a year as a result of this rule.

As an additional step to address the concerns of the exporters, the NRC consulted with the Department of Energy technical specialists to determine if any adjustments could be made to the proposed amendments for the specified alpha-emitting radionuclides, particularly Cf–252, to lessen the burden on U.S. exporters that export these materials to non-NSG member countries (exports to NSG countries would still be under general licenses). However, no acceptable adjustments were identified. We confirmed with U.S. nuclear weapons design experts that all of the specified alpha-emitting radionuclides, including Cf–252, could have some utility in nuclear explosive devices and that the 100 millicurie threshold for control was appropriate for the specified alpha-emitting radionuclides.

There are no alternatives for achieving the stated objective. This rule is necessary to conform NRC's export controls to the international export guidelines of the NSG. The United States and other NSG member countries have formally agreed to control these materials because of their utility in nuclear explosive weapons. Thus, the regulation is required to satisfy an international obligation of the United States. The foregoing discussion constitutes the regulatory flexibility analysis and the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

2. In § 110.2, a definition for *Specific activity* is added in alphabetical order to read as follows:

§ 110.2 Definitions.

* * * * *

Specific activity (millicuries per gram) equals 3.575×10^8 divided by (the atomic weight times the half life in years).

* * * * *

§ 110.4 [Amended]

3. In § 110.4, first sentence, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

§ 110.7 [Amended]

4. In § 110.7, second sentence, the reference to "§ 110.31" is revised to read "§ 110.32" and the reference to "§ 110.30", where it appears twice, is revised to read "§ 110.31".

§ 110.20 [Amended]

5. In § 110.20, paragraph (a), the reference to "110.29" is revised to read "110.30" and the reference to "§§ 110.30–110.31" is revised to read "§§ 110.31–110.32", and in the first sentence of paragraph (f), the phrase "§§ 110.21 through 110.26, 110.28, and 110.29" is revised to read "§§ 110.21 through 110.26, 110.28, 110.29, and 110.30".

6. In § 110.21, paragraphs (a)(3) and (b)(1) are revised and new paragraphs (a)(4) and (c) are added to read as follows:

§ 110.21 General license for the export of special nuclear material.

(a) * * *

(3) Special nuclear material, other than Pu–236 and Pu–238, in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of Pu or U–233 are contained in each sensing component.

(4) Pu–236 and Pu–238 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (189 micrograms Pu–236, 5.88 milligrams Pu–238) per device or source.

(b) * * *

(1) Special nuclear material, other than Pu–236 and Pu–238, in individual shipments of 0.001 effective kilogram or less (e.g., 1.0 gram of plutonium, U–233 or U–235, or 10 kilograms of 1 percent enriched uranium), not to exceed 0.1 effective kilogram per year to any one country.

* * * * *

(c) A general license is issued to any person to export Pu–236 or Pu–238 to any country listed in § 110.30 in individual shipments of 1 gram or less, not to exceed 100 grams per year to any one country.

7. In § 110.22, paragraphs (a)(1), (a)(2), (b), and (c) are revised and new paragraphs (a)(3) and (d) are added to read as follows:

§ 110.22 General license for the export of source material.

(a) * * *

(1) Uranium or thorium, other than U–230, U–232, Th–227, and Th–228, in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium, other than Th–227 and Th–228, in incandescent gas mantles or in alloys in concentrations of 5 percent or less.

(3) Th–227, Th–228, U–230, and U–232 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (3.12 micrograms Th–227, 122 micrograms Th–228, 3.7 micrograms U–230, 4.7 milligrams U–232) per device or source.

(b) A general license is issued to any person to export uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

(c) A general license is issued to any person to export uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of 1 kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country.

(d) A general license is issued to any person to export U–230, U–232, Th–227, or Th–228 in individual shipments of 10 kilograms or less to any country listed in § 110.30, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

8. Section 110.23 is revised to read as follows:

§ 110.23 General license for the export of byproduct material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) All byproduct material (see Appendix F to this part), except actinium–225, actinium–227, americium–241, americium–242m, californium–248, californium–249, californium–250, californium–251, californium–252, curium–240, curium–241, curium–242, curium–243, curium–244, curium–245, curium–246, curium–247, einsteinium–252, einsteinium–253, einsteinium–254, einsteinium–255, fermium–257, gadolinium–148, mendelevium–258, neptunium–237, polonium–208, polonium–209, polonium–210, radium–223, and tritium unless authorized in paragraphs (a)(2) through (a)(6), (b), or (c) of this section.

(2) Actinium–225, actinium–227, californium–248, californium–250, californium–252, curium–240, curium–241, curium–242, curium–243, curium–244, einsteinium–252, einsteinium–253, einsteinium–254, einsteinium–255, fermium–257, gadolinium–148, mendelevium–258, polonium–208, polonium–209, polonium–210, and radium–223 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (see § 110.2 for specific activity) per device or source, except that exports of polonium–210 when contained in static eliminators may not exceed 100 curies (22 grams) per individual shipment.

(3) Americium–241, except that exports exceeding one curie (308

milligrams) per shipment or 100 curies (30.8 grams) per year to any country listed in § 110.29 must be contained in industrial process control equipment or petroleum exploration equipment in quantities not to exceed 20 curies (6.16 grams) per device or 200 curies (61.6 grams) per year to any one country.

(4) Neptunium–237 in individual shipments of less than 1 gram, not to exceed 10 grams per year to any one country.

(5) Tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 10 curies (1.03 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(6) Tritium in luminescent safety devices installed in aircraft when in quantities of 40 curies (4.12 milligrams) or less per light source.

(b) A general license is issued to any person to export to the countries listed in § 110.30 tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 40 curies (4.12 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(c) A general license is issued to any person to export to the countries listed in § 110.30 actinium–225, actinium–227, californium–248, californium–250, californium–252, curium–240, curium–241, curium–242, curium–243, curium–244, einsteinium–252, einsteinium–253, einsteinium–254, einsteinium–255, fermium–257, gadolinium–148, mendelevium–258, polonium–208, polonium–209, polonium–210, and radium–223, except that polonium–210 when contained in static eliminators must not exceed 100 curies (22 grams) per individual shipment.

§ 110.29 [Amended]

9. In § 110.29 remove footnote 1 and the countries of "Argentina", "Brazil", and "Chile".

§§ 110.30 and 110.31 [Redesignated]

10. Sections 110.30 and 110.31 are redesignated as § 110.31 and § 110.32.

11. A new § 110.30 is added to read as follows:

§ 110.30 Members of the Nuclear Suppliers Group.

Argentina
Australia
Austria
Belgium
Bulgaria
Canada
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Japan
Luxembourg
Netherlands
Norway
Poland
Portugal
Romania
Russia
Slovak Republic
Spain
Sweden
Switzerland
United Kingdom

§ 110.31 [Amended]

12. In § 110.31, paragraph (a), remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations", paragraph (d), the reference to "§ 110.31" is revised to read "§ 110.32".

13. In § 110.43, paragraph (a) is revised to read as follows:

§ 110.43 Physical security standards.

(a) Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev.2, December 1989, "The Physical Protection of Nuclear Material," and is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of INFCIRC/225/Rev.2 may be obtained from the Director for Nonproliferation, Exports, and Multilateral Relations, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection at the NRC library, 11545 Rockville Pike, Rockville, Maryland 20852–2738. A copy is available for inspection at the library of the Office of the Federal Register, 800 N. Capitol Street, NW., suite 700, Washington, DC.

* * * * *

§ 110.50 [Amended]

14. In § 110.50, paragraph (b)(3), sentences one, two, and three, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

Appendix F—[Amended]

15. Appendix F to Part 110 is amended to add, in alphabetical order, curium-240 (Cm-240), curium-241, (Cm-241) einsteinium-252 (Es-252), einsteinium-253 (Es-253), einsteinium-254 (Es-254), einsteinium-255 (Es-255), fermium-257 (Fm-257), gadolinium-148 (Gd-148), and mendelevium-258 (Md-258).

Dated in Rockville, Maryland, this 16th day of September, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–23464 Filed 9–23–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 22 and 51

[PN 2083]

Fee for Expedited Passport Processing

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: This rule amends the Schedule of Consular Fees and the passport regulations to reflect that an additional fee will be charged within the United States for expediting the processing of passports. The service will be provided upon payment of the fee when requested by the applicant and justified by urgent departure plans.

The rule establishes what service is provided for the fee; establishes when the fee will be charged; sets the amount of the fee; establishes the documentation the applicant will need to present to obtain the service; defines the limited situations when the fee will not be charged; provides for a refund when expedited services cannot be given; and provides that the after hours surcharge for consular services will not be charged within the United States.

DATES: Effective Date: October 1, 1994.

Comments: Interested persons are invited to submit written comments on or before November 1, 1994.

ADDRESSES: Director, Office of Passport Policy and Advisory Services, 1111–

19th Street NW., Washington, DC 20522–1705.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Passport Policy and Advisory Services, 1111–19th Street NW., Washington, DC 20522–1705. Tel. (202) 955–0221.

SUPPLEMENTARY INFORMATION: On August 26, 1994, the President signed into law Public Law 103–317, the Department of State and Related Agencies Appropriations Act, 1995. The Diplomatic and Consular Programs appropriation in this Act provides that "all receipts received from a new charge from expedited passport processing" shall, in effect, be retained by the Department of State in the "Diplomatic and Consular Programs account" and available until expended. See S. Rept. 103–309, at 123 (July 14, 1994).

To utilize this new fee retention authority consistent with congressional intent, the Department of State is, in this rule, establishing a new fee for expedited passport processing. The Department already has specific authority to establish passport fees under 22 U.S.C. 214, as amended (which normally requires that fees be collected into the U.S. Treasury). The Department also is authorized to establish fees for passport related services under 31 U.S.C. 9701, a reference to which is being added to the authorities section of 22 CFR part 51.

Public Law 103–317 authorizes the Department to retain the new fee for expedited passport processing.

The Schedule of Fees for Consular Services, 22 CFR 22.1 is amended to add Item 14, Passport Expedite Fee and to limit the application of the after hours fee, Item 93, to posts abroad. The after-hours fee has been used domestically only in cases where passport agencies were open after hours to process urgent passport requests. These costs will now be subsumed in the expedited processing fee. 22 CFR part 51 is amended to add section 51.67 to provide for the expedited processing of a passport within the United States upon payment of the passport expedite fee. Section 51.64(f) is added to provide for a refund of the expedite fee when the expedited service is not, in fact, provided.

The new fee will be in addition to any other applicable fee. The expedite fee will not cover the cost of urgent mailing fees, if required.

The new fee is being set at $30.00, consistent with the Department's consultations with Congress before Public Law 103–317 was enacted. This fee will ensure that the costs of processing passports on an expedited basis, as reflected in the Department's 1991 consular fees cost study, are borne by those who receive that service and that the Department recovers additional costs associated with implementing this fee and eliminating the separate charge for overtime work. (As noted by Congress, for example, up to 60% more time is required to process a passport application on an expedited basis than to provide normal processing services.)

If expedited processing is granted, the Department, through the Passport Agencies, will undertake to process the passport within three business days. The expedited service covered by the new fee begins when the application is received by a Passport Agency through personal delivery; by mail; or, if the application is already at an Agency, when the request to expedite is approved. If the applicant's planned departure is within fewer than three days, the Passport Agency may be able to accommodate this shorter period.

There will be situations in which expedited passport processing cannot be completed within three days. Such circumstances could include cases in which the applicant does not submit adequate documentation; the applicant is the subject of an unresolved civil or criminal law enforcement matter; or, passport equipment breaks down. The Department expects that these situations will be very rare. In such circumstances, the applicant will be notified and the fee will be refunded.

The rule provides for waiver of the expedite fee in cases where the need for expedited processing results from a mistake by the Department in processing the application. No waiver of the fee will otherwise be made.

To ensure that expedited processing is used only by those who have urgent travel plans, the regulation requires a person requesting this service to provide confirmed tickets or an itinerary showing his or her imminent departure in less than ten days or showing special visa needs.

This rule takes effect on October 1, 1994, the beginning of Fiscal Year 1995, the fiscal year covered by Public Law 103–317. The implementation of this rule as an interim final rule with provision for post-promulgation comments is based upon the "good cause" exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Delay in implementing this provision of Public Law 103–317 would be contrary to congressional expectations that the Department will begin collection of this fee at the beginning of FY 1995.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 22 and Part 51

Passports and visas, Schedule of fees for consular services.

PART 22—[AMENDED]

For the reasons set forth in the preamble, 22 CFR is amended as follows:

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, 214; 2651, 2658, 3921, 4219; 31 U.S.C. 9701; Title V, Pub. L. 103–317, 108 Stat. 1724; E.O. 10718, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570, unless otherwise noted.

2. Section 22.1 is amended by adding Item 14 under "Passport and Citizenship Services" to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee

* * * * *

14. Expedited Passport Processing Within the United States—30.00.

* * * * *

3. Item 93 of § 22.1 is amended by removing the words "in the United States or"; by removing the comma and inserting the word "or" between "Consul General" and "the supervising consular officer"; and, by removing the words "or the Passport Agency Director".

4. The authority citation for Part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, as amended; 22 U.S.C. 2658, 3926; sec. 122(d)(3), Pub. L. 98–164, 97 Stat. 1017; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570; Pub. L. 100–690; sec. 129, Pub. L. 102–138, 105 Stat. 661; sec. 503, Pub. L. 102–140, 105 Stat. 820; Title V, Pub. L. 103–317, 108 Stat. 1724, unless otherwise noted.

5. Section 51.64 is amended by adding paragraph (f) to read as follows:

§ 51.64 Refunds.

* * * * *

(f) The passport expedite fee will be refunded if the Passport Agency does

not provide the requested expedited processing as defined in § 51.67.

6. Section 51.67 is added, to read as follows:

§ 51.67 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance, amendment, extension or the addition of visa pages) may request expedited processing by a Passport Agency.

(b) Expedited passport processing shall mean completing processing within 3-business days commencing when the application reaches a Passport Agency or, if the application is already with a Passport Agency, commencing when the request for expedited processing is approved. The processing will be considered completed when the passport is ready to be picked up by the applicant or is mailed to the applicant.

(c) The fee for expedited service is $30.00. This amount will be in addition to any other applicable fee and does not include urgent mailing costs, if any.

(d) A request for expedited processing normally will be accepted only if the applicant can document urgent departure with airline tickets showing confirmed reservation or similar evidence. The Passport Agency may decline to accept the request if it is apparent at the time it is made that the request cannot be granted.

(e) The expedite fee may be waived only where the need for expedited processing was necessary due to Department error, mistake or delay.

Dated: September 16, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94-23717 Filed 9-23-94; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

RIN 0790-AF63

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule replaces the current method of per diem billings to one based on diagnostic related groups, expands the single outpatient billing category to as many as sixty, and expands the billing for outpatient services to include land ambulance service, air ambulance service and hyperbaric services. This final rule improves billing methods for both inpatient and outpatient care. This expansion creates a greater level of specificity which more accurately reflects the cost of the care provided. In addition, this final rule identifies additional outpatient services for which recovery of costs will be sought.

EFFECTIVE DATE: This final rule is effective on October 26, 1994.

FOR FURTHER INFORMATION CONTACT: LCDR Patrick Kelly, (703) 756-8910.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted 10 U.S.C. 1095 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, § 2001(a)(1), to permit the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of most DoD health care beneficiaries. To implement this statute, the Department of Defense issued a proposed rule October 8, 1986, and a final rule September 25, 1987. The final rule has been amended several times since 1987, most recently on September 9, 1992, (57 CFR 41096). That rule changed the unified per diem rate for inpatient care to a set of 12 clinical group per diem rates. It also implemented authority to bill for outpatient services by establishing a single per visit rate for most outpatient services.

II. Provisions of the Final Rule

A. Inpatient Services

In October 1992, the Department of Defense began a transition from the traditional single rate for reimbursement for various healthcare services to multiple rates reflective of the clinical care provided. The multiple rates result in charges that more closely approximate the actual costs of delivering specific categories of medical services, such as surgical care, obstetrical care, pediatric care, etc. The rates are based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS).

This rule changes paragraph 220.8(c) by replacing the current twelve billing categories with a billing method based on diagnostic related groups (DRGs), as specifically authorized by 10 U.S.C. 1095(f)(3). The DRG-based method for determining reasonable costs of inpatient care will produce more accurate and equitable billings. Billings will more accurately reflect the costs associated with the actual services provided. This rule models the DRG-based cost methodology, the basis for the DRG-based payment system for hospital care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). However, in some respects, this rule simplifies CHAMPUS methods, with authority to introduce the additional refinements at a later date.

For example, initially this rule uses a single national standardized amount, rather than the three standardized amounts (large urban, other urban, and rural) used by CHAMPUS. The three amounts do not differ significantly and are probably not as relevant in connection with a unified federal hospital system, such as DoD's. However, the rule allows us to adopt the multiple standardized amounts at a later date.

The standardized amount is the result of dividing total system-wide costs of inpatient care by the total number of discharges system-wide. With respect to DRG relative weights, this rule uses the same weights as are used for the CHAMPUS DRG-based payment method. The CHAMPUS weights were calculated from a data base of actual CHAMPUS claims filed by civilian hospitals. Because the patient population under military treatment facilities and CHAMPUS are quite similar, we believe it is appropriate to use the same weights.

The CHAMPUS DRG-based payment method uses a number of adjustments to the product of standardized amount multiplied by the relative weight of the appropriate DRG. The adjustments relate to outlier cases, area wage differences and indirect medical education. Initially, this rule does not use these adjustments, but allows all related costs to be reflected in the standardized amount. This approach has the advantage of simplicity and predictability for payers. However, the final rule allows these adjustments to be introduced at a later date.

In accordance with current practice, the standard DRG-based rate is divided into two categories: Hospital charges, which includes ancillary charges, and Professional charges.

The effective date for implementation of a multiple rate schedule will be the effective date of this rule, barring unforeseen difficulties in automation support. The specific rates will be published in the Federal Register.

B. Outpatient Services

As with the inpatient rates, the outpatient rates are based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System

(MEPRS). MEPRS is the standard expense reporting system for all fixed medical treatment facilities (MTFs) within the Department of Defense (DoD) and is the accepted source of healthcare information for Congress and offices and agencies of the Executive Branch. The reimbursement categories are selected based on board certified specialties/subspecialties widely accepted by graduate medical accrediting organizations such as the Accreditation Council for Graduate Medical Education (ACGME) or the American Board of Medical Specialties (ABMS).

Rates are established but need not be limited to each of the following clinical reimbursement categories: Internal Medicine, Allergy, Cardiology, Diabetic, Endocrinology, Gastroenterology, Hematology, Hypertension, Nephrology, Neurology, Nutrition, Oncology, Pulmonary Disease, Rheumatology, Dermatology, Infectious Disease, Physical Medicine, General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Organ Transplant, Otolaryngology, Plastic Surgery, Proctology, Urology, Pediatric Surgery, Family Planning, Obstetrics, Gynecology, Pediatrics, Adolescent Pediatrics, Well Baby, Orthopaedics, Cast, Orthotic Laboratory, Hand Surgery, Podiatry, Psychiatry, Psychology, Child Guidance, Mental Health, Social Work, Substance Abuse Rehabilitation, Family Practice, and Occupational and Physical Therapy. This rule does not necessarily establish a separate rate for each of these clinical reimbursement categories. Similar categories may be combined for purposes of billing.

Another revision to section 220.8 involves the expansion of a single outpatient rate to multiple reimbursement category rates similar to that for inpatient care. The Department of Defense adopts a methodology for computing rates for outpatient care similar to that used for computing multiple rates for inpatient care. Thus, collections for most outpatient services will be based on a standard per visit fee to a specialty/subspecialty which is representative of the average cost in facilities of the Uniformed Services of an outpatient visit to that specialty clinic. Multiple outpatient visits on the same day to different clinics will result in one charge for each clinic visit. Multiple visits on the same day to the same clinic will result in only one charge. As a general rule, each standard per visit amount to the specialty/subspecialty clinic will be all-inclusive. No additional charge will be made for outine laboratory, radiology, pharmacy or other ancillary or overhead services provided in conjunction with an outpatient visit.

Although most outpatient services will be billed based on the standard per visit fee for a specialty/subspecialty, there are several special rules for particular types of care. One special rule is that a separate charge for same day/ambulatory surgery will be published annually.

The effective date of the expanded number of billing categories is targeted for October 1, 1994. The specific rates will be published in the **Federal Register.**

C. Miscellaneous Healthcare Services

Initial implementation of the Third Party Collection Program was somewhat limited in scope and concentrated on inpatient and ambulatory care areas. This final rule expands the program to include outpatient services which may not traditionally be provided in hospitals or which are not traditional clinical specialties or subspecialties. This includes, but is not limited to, ambulance service, hyperbaric treatments, dental care services and immunizations. We intend to recover the cost of these services to the extent they are generally applicable coverage provisions of a third party payer.

We intend to recover the cost of ambulance service which includes the cost of providing emergency aid and then transportation of beneficiaries to a medical treatment facility. It would also include the transport of patients to other medical facilities or to specialized clinics for diagnostic or therapeutic services which is frequently necessary. We intend to recover costs on the basis of the length of time the ambulance is in service with one hour to be the minimum amount billed. The reimbursement rates for ambulance care will only cover the costs of operating the vehicle, including labor costs (driver and attendant), supplies, fuel, and overhead.

We intend to recover the cost of hyperbaric treatments provided to beneficiaries as part of a course of treatment. For example, high pressure oxygenation treatments, burn treatments and decompression treatments in response to diving incidents are frequently provided. We only intend to recover the cost of providing these treatments which includes the operating cost of the chamber, i.e., labor costs, (operators and attending medical personnel), supplies, and overhead. We do not intend to include amortization of either the actual or replacement cost of the hyperbaric chamber or the building.

Dental services are provided to beneficiaries on a space available basis and in remote locations. Dental services may include oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics.

The Department also provides a wide range of immunizations to Military Health Service beneficiaries, including immunizations against common childhood diseases such as measles, smallpox and diphtheria and regional endemic diseases such as yellow fever, plague and cholera. We also administer a variety of medications and test beneficiaries for allergic conditions. Immunizations costs are not included as part of the reimbursement rates for either inpatient or ambulatory care. We intend to seek reimbursement for immunizations against childhood diseases and diseases characteristic of the United States and its Territories. We will also seek reimbursement for the administration of all medications or allergy extracts, when the medication or extract is purchased by the medical treatment facility, and for the testing for allergic conditions. We do not intend to seek recovery for immunizations administered incident to overseas travel or transfer, or for those medications purchased by the beneficiary and simply administered at the medical treatment facility. The reimbursement rate shall be based on the average fully burdened cost of an immunization and a separate charge shall be applied for each immunization which is administered.

D. Other Revisions

We received one public comment on the proposed rule. It was from a group of organizations who objected to the provision in the proposed rule concerning PRIMUS and NAVCARE clinics. In the proposed rule, we proposed to eliminate from the Third Party Collection Program regulation the special rule regarding PRIMUS and NAVCARE clinics, which are contractor owned, contractor operated freestanding clinics under contract with DoD. Under special demonstration program authority, these clinics have functioned under rules applicable to military medical treatment facilities, including Third Party Collection program rules. With the conclusion of the demonstration project, these clinics are no longer authorized to bill third party payers under the authority of 10 U.S.C. 1095 (but will continue to bill under other authority). Therefore, the change set forth in the proposed rule is necessary, and has been included in the final rule.

The organizations who objected to this proposed change did so on the belief that this would terminate features of PRIMUS and NAVCARE clinics that they strongly support, including access to primary care visits without deductible or copayment requirements, and eligibility for military beneficiaries who are not CHAMPUS eligible (such as active duty members and Medicare-eligible beneficiaries). These organizations can be assured that the adoption of this final rule has no impact on those aspects of the PRIMUS/NAVCARE program.

We have added one other revision to the regulation, a technical correction to section 220.8(d), which had incorrectly referred to paragraph (j) concerning a matter for which paragraph (k) is the appropriate reference.

III. Regulatory Procedures

This final rule is not a significant regulatory action under Executive Order 12866. It will not have an impact of $100 million or other significant economic impacts. Similarly, the rule does not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As stated above, for the most part, this final rule simply incorporates into the third party collection program regulation more precise cost calculation methods. In addition, this rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For the reasons stated in the preamble, 32 CFR Part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. Section 220.8 is amended by revising paragraph (a), the heading and first sentence of paragraph (c), and paragraphs (d), (e), (g), (h), (i), (k) and (l) as follows:

§ 220.8 Reasonable costs.

(a) *Diagnosis related group (DRG)-based method for calculating reasonable costs for inpatient services.*

(1) *In general.* As authorized by 10 U.S.C. 1095(f)(3), the calculation of reasonable costs for purposes of collections for inpatient hospital care under 10 U.S.C. 1095 and this part shall be based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average cost per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under the Civilian Health and Medicare Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1).

(2) *Standardized amount.* The standardized amount shall be determined by dividing the total costs of all inpatient care in all military medical treatment facilities by the total number of discharges. This will produce a single national standardized amount. The Department of Defense is authorized, but not required by this part to calculate three standardized amounts, one each for large urban areas, other urban areas, and rural areas, utilizing the same distinctions in identifying those areas as is used for CHAMPUS under 32 CFR 199.14(a)(1).

(3) *DRG relative weights.* Costs for each DRG will be determined by multiplying the standardized amount per discharge by the DRG relative weight. For this purpose, the DRG relative weights used for CHAMPUS pursuant to 32 CFR 199.14(a)(1) shall be used.

(4) *Adjustments for outliers, area wages, and indirect medical education.* The Department of Defense may, but is not required by this part, to adjust cost determinations in particular cases for length-of-stay outliers (long stay and short stay), cost outliers, area wage rates, and indirect medical education. If any such adjustments are used, the method shall be comparable to that used for CHAMPUS hospital reimbursements pursuant to 32 CFR 199.14(a)(1)(iii)(E), and the calculation of the standardized amount under paragraph (a)(2) of this section will reflect that such adjustments will be used.

(5) *Identification of professional and hospital costs.* For purposes of billing third party payers other that automobile liability and no-fault insurance carriers, inpatient billings will be subdivided into two categories:

(1) Hospital charges (which refers to routine service charges associated with the hospital stay and ancillary charges).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(6) Outpatient billings will continue to be subdivided into three categories:

(i) Hospital charges (which refers to routine service charges associated with the outpatient visit).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(iii) Ancillary charges (which refers to diagnostic and treatment services, other than professional services, provided by components of the hospital in connection with the outpatient visit).

* * * * *

(c) *Clinical groups per diem rates for care provided on or after October 1, 1992, and prior to October 1, 1994.* For inpatient hospital care provided on or after October 1, 1992, and prior to October 1, 1994, the computation of reasonable costs shall be based on the per diem full reimbursement rate applicable to the clinical category of services involved. * * *

* * * * *

(d) *Medical services and subsistence charges included.* Medical services charges pursuant to 10 U.S.C. 1078 or subsistence charges pursuant to 10 U.S.C. 1075 are included in the claim filed with the third party payer pursuant to 10 U.S.C. 1095. For any patient of a facility of the Uniformed Services who indicates that he or she is a beneficiary of a third party payer plan, the usual medical services or subsistence charge will not be collected from the patient to the extent that payment received from the payer exceeds the medical services or subsistence charge. Thus, except in cases covered by section 220.8(k), payment of the claim made pursuant to 10 U.S.C. 1095 which exceeds the medical services or subsistence charge, will satisfy all of the third party payer's obligation arising from the inpatient hospital care provided by the facility of the Uniformed Services on that occasion.

(e) *Per visit rates.*

(1) As authorized by 10 U.S.C. 1095(f)(2), the computation of reasonable costs for purposes of collections for most outpatient services shall be based on a per visit rate for a clinical specialty or subspecialty. The per visit charge shall be equal to the outpatient full reimbursement rate for that clinical specialty or subspecialty and includes all routine ancillary services. A separate charge will be calculated for cases that are considered same day/ambulatory surgeries. These rates shall be updated and published annually. As with inpatient billing categories, clinical groups representing selected board certified specialties/subspecialties widely accepted by graduate medical accrediting organizations such as the Accreditation

Council for Graduate Medical Education (ACGME) or the American Board of Medical Specialties will be used for ambulatory billing categories. Related clinical groups may be combined for purposes of billing categories.

(2) The following clinical reimbursement categories are representative, but not all-inclusive of the billing category clinical groups referred to in paragraph (e)(1) of this section: Internal Medicine, Allergy, Cardiology, Diabetic, Endocrinology, Gastroenterology, Hematology, Hypertension, Nephrology, Neurology, Nutrition, Oncology, Pulmonary Disease, Rheumatology, Dermatology, Infectious Disease, Physical Medicine, General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Organ Transplant, Otolaryngology, Plastic Surgery, Proctology, Urology, Pediatric Surgery, Family Planning, Obstetrics, Gynecology, Pediatrics, Adolescent Pediatrics, Well Baby, Orthopaedics, Cast, Orthotic Laboratory, Hand Surgery, Podiatry, Psychiatry, Psychology, Child Guidance, Mental Health, Social Work, Substance Abuse Rehabilitation, Family Practice, and Occupational and Physical Therapy.

* * * * *

(g) *Special rule for services ordered and paid for by a facility of the Uniformed Services but provided by another provider.* In cases where a facility of the Uniformed Services purchases ancillary services or procedures, from a source other than a Uniformed Services facility, the cost of the purchased services will be added to the standard rate. Examples of ancillary services and other procedures covered by this special rule include (but are not limited to): laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services.

(h) *Special rule for certain ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain ancillary services, prescription drugs or other procedures based on a request from a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual per diem or per visit rate. Rather, a separate standard rate shall be established based on the cost of the particular high-cost service, drug, or procedure provided. This special rule applies only to services, drugs or procedures having a cost of at least $60. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and published annually.

(i) *Miscellaneous health care services.* Some outpatient services are provided which may not traditionally be provided in hospitals or which are not traditional clinical specialties or subspecialties. This includes, but is not limited to, land ambulance service, air ambulance service, hyperbaric treatments, dental care services and immunizations.

(1) The charge for ambulance services shall be based on the full costs of operating the ambulance service.

(2) For hyperbaric treatments (such as high pressure oxygenation treatments, burn treatments and decompression treatments in response to diving incidents), charges will be based on the full operating costs of the hyperbaric treatment services.

(3) Charges for dental services (including oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics) will be based on a full cost of the dental services.

(4) The charge for immunizations, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided in a separate immunizations or shot clinic, will be based on the average full cost of these services, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

* * * * * *

(k) *Special rule for partnership program providers.* In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the professional charges component of the total standard rate will be deleted, as applicable, from the claim for the facility of the Uniformed Services. The third party payer will receive a claim for professional services directly from the individual healthcare provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199). The same is true for the professional services provided on an outpatient basis under the Partnership Program.

(l) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the standard rate (or other amount as determined under paragraphs (f) through (k) of this section) of the facility of the Uniformed Services may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for that aggregate category of services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

* * * * *

3. Section 220.10 is amended by revising paragraph (c)(1)(ii), as follows:

§ 220.10 Special rules for Medicare supplement plans.

* * * * *

(c) * * *

(1) * * *

(ii) Include adjustments, as appropriate, to identify major components of the all inclusive per diem or per visit rates for which Medicare has special rules.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 132-6436a; FRL-5063-9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action makes corrections to the final rule published on August 4, 1994 (59 FR 39692). The final rule addressed the attainment status of the Memphis and Shelby County area for Ozone.

EFFECTIVE DATE: This action is effective September 26, 1994.