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

- (i) Cause a return of income to be made,
  - (ii) Include on the return the income described in § 1.882-1 of that corporation from all sources concerning which it has information, and
  - (iii) Assess the tax and collect it from one or more of those sources of income within the United States, without allowance for any deductions (other than that allowed by section 170) or credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)).
- If the income of the corporation is not effectively connected with, or if the corporation did not receive income that is treated as being effectively connected with, the conduct of a United States trade or business, the tax will be assessed under § 1.882-1(b)(1) on a gross basis, without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)). If the income is effectively connected, or treated as effectively connected, with the conduct of a United States trade or business, tax will be assessed in accordance with either section 11, 55 or 1201(a) without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

(b) *Allowed deductions and credits—*

(1) *In general.* Except for the deduction allowed under section 170 for charitable contributions and gifts (see section 882(c)(1)(B)), deductions are allowed to a foreign corporation only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States. Deductible expenses (other than interest expense) are properly allocated and apportioned to effectively connected gross income in accordance with the rules of § 1.861-8. For the method of determining the interest deduction allowed to a foreign corporation, see § 1.882-5. Other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii), the foreign corporation is entitled to credits only if they are attributable to effectively connected income. See paragraph (a)(2) of this section for the requirement that a return be filed. Except as provided by section 906, a foreign corporation shall

not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

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

Dated: November 13, 1990.

**Fred T. Goldberg,**  
*Commissioner of Internal Revenue.*

Approved:

**Kenneth W. Gideon,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 90-28772 Filed 12-10-90; 8:45 am]  
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 418

[BPD-670-FC]

#### Medicare Program; Hospice Care Amendments: Medicare

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

**ACTION:** Final rule with comment period.

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

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

from certifying terminal illness and thereby discourage hospice participation in Medicare.

These changes are necessary—

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

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

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

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

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

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

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

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

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

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

periods of respite by providing inpatient care for the beneficiary.

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

#### A. Statutory Amendment

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

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

#### B. Results of GAO Study

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

#### II. Changes in the Regulations

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

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

receive oral certifications, and file written certification in that record.

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

- Undesignated center headings are converted to subpart headings to facilitate references, and several section headings are revised to reflect more accurately the content of the sections.
- Four definitions are removed as unnecessary in these rules. "Carrier" and "Intermediary" are already in the basic definitions at the beginning of the HCFA rules. "Election period" is a matter of rules rather than definition, and this is provided in the new § 418.21. "Freestanding hospice" was used only in § 418.100 and has been removed as erroneous and misleading, since the requirements of that section apply to all hospices.
- Three definitions have been revised. The previous definition of "Hospice" limited the term to facilities that met all the conditions in part 418. We need a broader definition, since the term is also used in these rules for facilities that do not yet—or no longer—meet all those conditions. The revision of "Representative" is purely editorial, to provide better word order. The revision of "Terminally ill" conforms it to the change made in the required certification statement.

• A new § 418.21 is inserted to substitute for the definition of "Election period" and to set forth the rules for the three periods of hospice care that are available.

• Sections 418.24 and 418.28 are revised to improve readability and combine like requirements within sections.

• Section 418.26 is removed and its content is incorporated in § 418.24.

• Section 418.32 is removed as outdated, and outdated content is removed from §§ 418.98 and 418.204(b)(3).

• Several sections are amended to refer to the newly designated or redesignated subparts.

#### III. Waiver of Proposed Rulemaking

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

in a final rule a finding of good cause for waiver.

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

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

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

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

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

#### IV. Regulatory Impact Statement

##### A. Executive Order 12291

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

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

##### B. Regulatory Flexibility Act (RFA)

We generally prepare a regulatory flexibility analysis that is consistent

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

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

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

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

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

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Since this rule applies only to hospices, we have determined and the Secretary certifies that the rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

#### V. Paperwork Reduction Act

Sections 418.22 and 418.24 of these rules contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The cited

sections had been approved under OMB control number 0938-0246.

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

If you comment on the revised certification statement, please send a copy of that comment directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron, Desk Officer for HCFA.

#### List of Subjects in 42 CFR Part 418

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

#### PART 418—(AMENDED)

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

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

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

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

#### PART 418—HOSPICE CARE

##### Subpart A—General Provisions and Definitions

- Sec.
- 418.1 Statutory basis.
  - 418.2 Scope of part.
  - 418.3 Definitions.

##### Subpart B—Eligibility, Election and Duration of Benefits

- 418.20 Eligibility requirements.
- 418.21 Duration of hospice care coverage—Election periods.
- 418.22 Certification of terminal illness.
- 418.24 Election of hospice care.
- 418.28 Revoking the election of hospice care.
- 418.30 Change of the designated hospice.

##### Subpart C—Conditions of Participation, General Provisions and Administration

- 418.50 Condition of participation—General provisions.
- 418.52 Condition of participation—Governing body.
- 418.54 Condition of participation—Medical director.
- 418.56 Condition of participation—Professional management.
- 418.58 Condition of participation—Plan of care.
- 418.60 Condition of participation—Continuation of care.
- 418.62 Condition of participation—Informed consent.
- 418.64 Condition of participation—Inservice training.

- 418.66 Condition of participation—Quality assurance.
- 418.68 Condition of participation—Interdisciplinary group.
- 418.70 Condition of participation—Volunteers.
- 418.72 Condition of participation—Licensure.
- 418.74 Condition of participation—Central clinical records.

##### Subpart D—Conditions of Participation: Core Services

- 418.80 Condition of participation—Furnishing of core services.
- 418.82 Condition of participation—Nursing services.
- 418.83 Nursing services—Waiver of requirement that substantially all nursing services be routinely provided directly by a hospice.
- 418.84 Condition of participation—Medical social services.
- 418.86 Condition of participation—Physician services.
- 418.88 Condition of participation—Counseling services.

##### Subpart E—Conditions of Participation: Other Services

- 418.90 Condition of participation—Furnishing of other services.
- 418.92 Condition of participation—Physical therapy, occupational therapy, and speech-language pathology.
- 418.94 Condition of participation—Home health aide and homemaker services.
- 418.96 Condition of participation—Medical supplies.
- 418.98 Condition of participation—Short-term inpatient care.
- 418.100 Condition of participation—Hospices that provide inpatient care directly.

##### Subpart F—Covered Services

- 418.200 Requirements for coverage.
- 418.202 Covered services.
- 418.204 Special coverage requirements.

##### Subpart G—Payment for Hospice Care

- 418.301 Reimbursement for hospice care.
- 418.302 Payment procedures for hospice care.
- 418.304 Payment for physician services.
- 418.306 Determination of payment rates.
- 418.307 Periodic interim payments.
- 418.308 Limitation on the amount of hospice payments.
- 418.309 Hospice cap amount.
- 418.310 Reporting and recordkeeping requirements.
- 418.311 Administrative appeals.

##### Subpart H—Coinsurance

- 418.400 Individual liability for coinsurance for hospice care.
- 418.402 Individual liability for services that are not considered hospice care.
- 418.405 Reduction of Medicare reimbursement by individual coinsurance liability.

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

B. Subpart A is amended as follows:

**Subpart A—General Provisions and Definitions**

**§ 418.3 [Amended]**

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

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

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

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

C. Subpart B is amended as follows:

**Subpart B—Eligibility, Election and Duration of Benefits**

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

**§ 418.21 Duration of hospice care coverage—Election periods.**

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

- (1) An initial 90-day period.
- (2) A subsequent 90-day period.
- (3) A subsequent 30-day period.

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

**§ 418.22 [Amended]**

2. Section 418.22 is revised to read as follows:

**§ 418.22 Certification of terminal illness.**

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

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

(3) *Exception.* For the initial 90-day period, if the hospice cannot obtain the

written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

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

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

- (i) The medical director of the hospice or the physician member of the hospice interdisciplinary group; and
- (ii) The individual's attending physician if the individual has an attending physician.

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

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

- (1) Make an appropriate entry in the patient's medical record as soon as they receive an oral certification; and
- (2) File written certifications in the medical record.

**§ 418.24 [Amended]**

3. Section 418.24 is revised to read as follows:

**§ 418.24 Election of hospice care.**

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

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

- (1) Identification of the particular hospice that will provide care to the individual.
- (2) The individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness.
- (3) Acknowledgement that certain Medicare services, as set forth in paragraph (d) of this section, are waived by the election.
- (4) The effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement.

(5) The signature of the individual or representative.

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

- (1) Remains in the care of a hospice; and
- (2) Does not revoke the election under the provisions of § 418.28.

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

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

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

- (i) Provided by the designated hospice;
- (ii) Provided by another hospice under arrangements made by the designated hospice; and
- (iii) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

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

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

**§ 418.26 [Removed]**

4. Section 418.26 is removed.

**§ 418.32 [Removed]**

5. Section 418.32 is removed.

D. Subpart C is amended as set forth below:

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

**Subpart C—Conditions of Participation—General Provisions and Administration**

**§ 418.50 Condition of participation—General provisions.**

(a) *Standard: Compliance.* A hospice must maintain compliance with the

conditions of this subpart and subparts D and E of this part.

- 2. The undesignated center heading "Administration" is removed.
- 3. The undesignated center heading "Core Services" is revised to read:

**Subpart D—Conditions of Participation: Core Services**

**§ 418.80 [Amended]**

- 4. In § 418.80, the following changes are made:
  - a. The section heading is revised to read:

**§ 418.80 Condition of participation: Furnishing of core services.**

- b. The phrase "§§ 418.82 through 418.88", wherever it appears, is changed to "this subpart".
- 5. The undesignated center heading "Other Services" is revised to read:

**Subpart E—Conditions of Participation: Other Services**

**§ 418.90 [Amended]**

- 6. In § 418.90, the following changes are made:
  - a. The section heading is revised to read:

**§ 418.90 Condition of participation: Furnishing of other services.**

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

**§ 418.94 [Amended]**

- 7. In § 418.94, the following changes are made:
  - a. In the introductory text to the section, "§ 405.1227" is changed to "§ 484.36".
  - b. In paragraph (b), "§ 405.1227(a)" is changed to "§ 484.36(c)".

**§ 418.98 [Amended]**

- 8. In § 418.98, the following changes are made:
  - a. In paragraphs (a)(2) and (b)(2), "(f)" is changed to "(e)".
  - b. Paragraph (c) is revised to read as follows:

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

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

**§ 418.100 [Amended]**

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

- a. The section heading is revised to read:

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

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

E. Newly redesignated subpart F is amended as follows:

**§ 418.202 [Amended]**

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

**§ 418.204 [Amended]**

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

**§ 418.204 Special coverage requirements.**

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

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

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

**Subpart G—Payment for Hospice Care**

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

Dated: June 5, 1990.

Gail R. Wilensky,  
*Administrator, Health Care Financing Administration.*

Approved: July 9, 1990.

Louis W. Sullivan,  
*Secretary.*

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

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 222**

[Docket No. 90930-0301]

RIN 0648-AD72

**Endangered and Threatened Species: Indus River Dolphin**

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

**ACTION:** Final rule.

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

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

**EFFECTIVE DATE:** January 10, 1991.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

**Notification of the Government of Pakistan**

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

**Public Comments**

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