

TABLE 4.—ESTIMATED COST PER TON OF HC REDUCED WITH FUEL SAVINGS

Category	Source	Fuel saved (gallons)	Value of fuel savings (NPV)	Discounted cost per ton (\$/ton)
Off-highway motorcycles .....	fuel tank .....	1.1	\$0.96	\$465
	fuel hose .....	13.4	11.45	(301)
Total .....		14.6	12.41	(242)
ATVs .....	fuel tank .....	2.2	1.64	292
	fuel hose .....	12.9	9.79	(323)
Total .....		15.1	11.43	(235)
Snowmobiles .....	fuel tank .....	3.4	2.82	326
	fuel hose .....	25.5	21.71	(287)
Total .....		28.8	24.57	(216)

Dated: April 25, 2002.

**Elizabeth Craig,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 02-10730 Filed 4-30-02; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 414

[CMS-1084-WN]

RIN 0938-AK50

### Medicare Program; Payment for Upgraded Durable Medical Equipment; Withdrawal

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This document withdraws all provisions of the proposed rule pertaining to upgraded durable medical equipment (DME) that we published in the **Federal Register** on April 27, 2000. The proposed rule was based on a discretionary provision of the Balanced Budget Act (BBA) of 1997. We solicited comments on a methodology that would have permitted suppliers to charge Medicare beneficiaries more than the Medicare allowed payment amount for certain upgraded DME and bill the Medicare program on an assignment basis.

**DATES:** The proposed rule published on April 27, 2000 at 65 FR 24666 is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** William Long, (410) 786-5655.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Historically, to bill DME claims under Medicare's assignment rules, suppliers were required to accept the Medicare allowed amount as payment-in-full. Under the proposed rule, Medicare payment would have been made to the supplier as if the DME were DME without the upgrade features. The beneficiary purchasing or renting the upgraded DME would pay the supplier an amount equal to the difference between the supplier's charge for the upgraded DME and the amount paid by Medicare for the DME without the upgraded features.

We are withdrawing this proposed rule because we recently implemented a process by which suppliers may bill on an assignment basis for upgraded DME. The supplier can now use Advance Beneficiary Notice (ABN), based on section 1879 of the Social Security Act (the Act), to inform beneficiaries they may be responsible for payment for items since the supplier expects Medicare payment for these items to be denied. Under the ABN process, the supplier would be permitted to bill on an assigned or unassigned basis for the item that would be covered by Medicare. The supplier would bill the beneficiary the difference between Medicare's allowed amount and the cost of the upgraded feature. The ABN nondiscretionary authority is broader than section 4551(c) of the BBA of 1997. Therefore, we are not implementing section 4551(c) of the BBA.

### II. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132. Executive Order

12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$5 to \$25 million in any 1 year. For purposes of the RFA, all suppliers of DME are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million.

This document withdraws all provisions of the proposed rule pertaining to upgraded durable medical equipment (DME) that we published in the **Federal Register** on April 27, 2000.

This withdrawal document will not have an impact of \$110 million or more annually. Neither is this document expected to impose an unfunded mandate on States exceeding \$110 million annually. Therefore, we have not prepared an analysis of cost and benefits as required by E.O. 12866 and the Unfunded Mandates Act for rules with significant economic impacts or that impose significant unfunded mandates on States. Also, we believe this withdrawal document will have very little direct impact on small entities as defined under the RFA or on small rural hospitals as defined under section 1102(b) of the Social Security Act. For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This document will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

### III. Collection of Information Requirements

As stated above, we are withdrawing this proposed rule because we recently implemented the ABN process by which suppliers may bill on an assignment basis for upgraded DME. The supplier can now use ABN to inform beneficiaries they may be responsible for payment for items since the supplier expects Medicare payment for these items to be denied. On October 12, 2001 and February 19, 2002 we published notices in the **Federal Register** announcing that we are seeking Paperwork Reduction Act reapproval of the ABN, approved under OMB number 0938-0566, with a current expiration date of April 31, 2002.

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

Dated: November 21, 2001.

**Thomas A. Scully**,  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: February 22, 2002.

**Tommy G. Thompson**,  
*Secretary.*

[FR Doc. 02-10648 Filed 4-26-02; 12:04 pm]

BILLING CODE 4120-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-908; MB Docket No. 02-58; RM-10415]

### Radio Broadcasting Services; Shafter, CA.

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comment on a Petition for Rule Making filed on behalf of American Media General of Texas, Inc., licensee of Station KCOO, Channel 282A, Shafter, California, requesting the allotment of Channel 226A to Shafter, California, in order to permit it to modify its license to specify operation on Channel 226A. This is necessary because American Media General of Texas, Inc. is losing its transmitter site and has been unable to locate an available site that would accommodate operation on Channel 282A. The coordinates for the Channel 226A allotment at Shafter, California, would be 35-30-06 and 119-16-18.

**DATES:** Comments must be filed on or before June 10, 2002, and reply comments on or before June 25, 2002.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Vincent J. Curtis, Jr., c/o Fletcher, Heald & Hildreth, 1300 North 17th Street, Arlington, Virginia, 22209-3801.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MB Docket No. 02-58, adopted April 17, 2002, and released April 19, 2002. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, D.C. The complete text of this action

may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR

Radio Broadcasting

Federal Communications Commission.

**John A. Karousos**,

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

[FR Doc. 02-10786 Filed 4-30-02; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 600

[I.D. 040202C]

### Magnuson-Stevens Act Provisions, Subpart H; General Provisions for Domestic Fishing; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correction of notice of receipt of petition for rulemaking and request for comments.

**SUMMARY:** In the April 18, 2002, **Federal Register**, NMFS announced receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization concerned with the environmental health of the oceans, petitioned the U.S. Department of Commerce to promulgate immediately a rule to establish a program to count, cap, and control bycatch in U.S. fisheries. The announcement indicated under "ADDRESSES" where copies of the petition could be obtained, and under "SUPPLEMENTARY INFORMATION" that a copy of the petition was available at a