standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

The EPA is proposing to disapprove the operating permits program submitted by Colorado if the specified changes are not made within 18 months of the effective date of final interim approval. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the Act (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the Act, Colorado would have up to 180 days from the date of EPA's notification of disapproval to the Governor of Colorado to revise and resubmit the PROGRAM. The EPA will apply sanctions to Colorado if the Governor fails to submit a corrected PROGRAM within 18 months following EPA disapproval of the PROGRAM. If the State has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied any time during the 18-month period following PROGRAM disapproval. If the State has not received full PROGRAM approval within two years after final interim PROGRAM approval, the EPA must promulgate, administer, and enforce a Federal permits program for the State.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by November 14, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–76719.

Dated: September 30, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–25388 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 82

[FRL–5087–6]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to allocate potential production allowances to producers who have baseline allowances for the production of methyl bromide. These potential production allowances would be intended solely for the production of methyl bromide for export to Article 5 countries, as defined under Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer. In drafting the accelerated phaseout rule, which was published in the **Federal Register** on December 10, 1993, the Agency inadvertently omitted methyl bromide from the list of chemicals for which potential production allowances were granted. Today's action proposes an allocation of potential production allowances for all control periods beginning January 1, 1994, and ending before January 1, 2001, equal to 10 percent of a company's baseline production allowances. The Agency may propose potential production allowances for methyl bromide for control periods after January 1, 2001, at a later date.

DATES: Written comments on this proposed rule must be received on or before November 14, 1994, unless a public hearing is requested. In the case where a public hearing is requested, the public hearing will be scheduled on October 31, 1994. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by October 24, 1994. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Information Hotline at 1–800–296–1996.

ADDRESSES: Comments on this proposed rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW., room M–1500, Washington, DC 20460.

Materials relevant to this proposed rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying the docket.

FOR FURTHER INFORMATION CONTACT: Tom Land, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 401 M Street, SW., Washington, DC 20460, (202) 233–9185. The Stratospheric Ozone Hotline at 1–800–296–1996 can also be contacted for further information.

I. Background

When Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) first met in 1987, they agreed to allow additional production of controlled substances for developing countries beyond the levels being set for the developed countries. The United States, as well as other Parties to the Protocol, recognized the need to continue to supply controlled substances to developing countries during the period of scheduled reductions and for a limited time after the phaseout of production of controlled substances. In Article 2H of the

Protocol, the Parties agreed to allow production after the phaseout occurred. Under Article 5 of the Protocol, developing countries are defined as Parties to the Protocol consuming less than 0.3 kilograms per capita of class I, Group I and II controlled substances. These Article 5 countries have limited resources to adopt alternative technologies to replace the phased out controlled substances. To ensure that such countries do not purchase the technologies to produce controlled substances and otherwise bypass controls on controlled substances, the Parties to the Protocol agreed to provide a set-aside level of production for Article 5 countries. Article 5 countries must ensure that these imported controlled substances are used to meet basic domestic needs.

The Environmental Protection Agency (EPA) implements a program domestically that limits and monitors production and consumption of controlled substances, including methyl bromide. Production for Article 5 countries in the United States is monitored by allocating potential production allowances to those companies that have baseline production allowances. Since 1989, EPA has allocated potential production allowances equal to 10 percent of baseline production allowances for specific controlled substances. Upon the complete phaseout of a controlled substance, and until 10 years after the phaseout, companies are allocated up to 15 percent of their production baseline for export to Article 5 countries. EPA grants authorization to convert potential production allowances to production allowances to producers once they have exported to an Article 5 country. The July 30, 1992 **Federal Register** document (57 FR 33754) as well as the December 10, 1993 **Federal Register** document (58 FR 65018) explain these controls, as well as the recordkeeping and reporting required for such transactions. The specific provisions governing production for, and export to, Article 5 countries are in §§ 82.9 and 82.11. Appendix D of subpart A of 40 CFR part 82 contains a listing of Article 5 countries.[1]

II. Need To Allocate Methyl Bromide Production Allowances

In the December 10, 1993 publication of the accelerated phaseout (58 FR 65018) adding methyl bromide to list of class I controlled substances, the Agency inadvertently neglected to also allocate potential production allowances for methyl bromide. At the time of proposal, the Agency focused on the level of control of methyl bromide and its phaseout, but inadvertently failed to propose additional production of methyl bromide for Article 5 countries. Due to this oversight, EPA is proposing through this Notice to grant potential production allowances to methyl bromide producers equal to 10 percent of their baseline allowances beginning in the current control period (which began January 1, 1994). As with other controlled substances, the 10 percent level of production for Article 5 countries would continue until the effective date of the phaseout of production of the substance, in this case, until January 1, 2001, for methyl bromide. Section 602(d) of the CAA establishes the phaseout date for methyl bromide by stating that production may not extend beyond, "a date more that seven years after January 1 of the year after the year in which the substance is added to the list of class I substances." With this proposal, EPA is reserving action in allocating potential production allowances for control periods starting with January 1, 2001, and beyond.

III. Legal Authority

EPA believes that it has the authority, under both the Montreal Protocol and Section 604 (e) of the Clean Air Act Amendments of 1990 (CAA) to allow increased production of methyl bromide for export to Article 5 countries for the control periods from 1994 to the end of 2000. The Parties to the Protocol, in the Fourth Meeting in Copenhagen, agreed to list methyl bromide as a class I substance. The CAA requires EPA to phase out any newly-listed substances seven years after January 1 of the year following the year in which the chemical was listed. In following the mandate of the CAA, methyl bromide is phased out in the United States by January 1, 2001. The December 10, 1993 final rule incorporates such a phaseout of methyl bromide and on December 30, 1993, EPA allocated baseline production and consumption allowances for methyl bromide.

Both the Protocol and the CAA allow persons with baseline production allowances to produce an additional 10 percent for export to Article 5 countries. As discussed earlier, in Article 2H of the Protocol, the Parties agreed to permit continued production of up to 10 percent of baseline levels of controlled substances for export to Article 5 countries. The CAA also authorizes continued production for such purposes. CAA section 604(e) (Developing Countries) states:

(1) Exception.—Notwithstanding the phase-out and termination of production required under subsections (a) and (b), the Administrator, after notice and opportunity for public comment may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b), or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) Cap on Exception.—(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) in an annual quantity greater than the specified percentage, plus an amount equal to 10 percent of the amount produced by such person in the baseline year.

Section 604(e)(1) authorizes the production of limited quantities of a class I substance in excess of the amounts otherwise allowable "under subsection (a) or (b)." In the case of methyl bromide, the production reductions and phaseout schedules listed in subsection (a) and (b) have been modifed according to section 602(d) to require a freeze at 1994 production levels for methyl bromide until January 1, 2001, at which time methyl bromide may no longer be produced. Thus, sections 604(e)(1) & (2), as applied to methyl bromide, authorize additional production equal to 10% of 1994 baseline allowances solely for export to Article 5 countries until the year in which methyl bromide is phased out.

The Clean Air Act Amendments anticipated the need to continue to supply controlled substances to Article 5 countries despite the freeze and the eventual elimination of production and consumption of these chemicals. Section 604(e) allows for this production, provided it is consistent with the Montreal Protocol. Accordingly, EPA allocated potential production allowances for class I substances in the December 10, 1993 final rule. The authority to allocate such allowances applied to the newly-listed methyl bromide. However, due to an oversight, methyl bromide was not included in the list of chemicals for

[1] EPA is drafting proposed amendments to the accelerated phaseout rule that will make minor adjustments to the provisions for exports to Article 5 countries.

which potential production allowances were granted.

IV. Proposed Production Levels

EPA proposes that companies that produced methyl bromide in 1991 be allowed to produce up to 10 percent of their baseline allowances for Article 5 countries for the control periods starting January 1, 1994, and ending before January 1, 2001. EPA is setting the level at 10 percent to be consistent with Article 2H of the Montreal Protocol, and to be consistent with the approach used for all Class I controlled substances except for Group VII, the hydrobromofluorocarbons (no additional production for Article 5 countries is granted under the Protocol for these chemicals).

Although EPA considered setting the level of additional production at less than 10 percent, EPA believes that a more stringent level would be disadvantageous to U.S. producers, with no added environmental benefit. If U.S. companies were limited to additional production of less than 10 percent for export to Article 5 countries, producers from other countries would easily meet the existing demand of Article 5 countries. In other words, the total potential supply that the Protocol allows all developed countries to produce for Article 5 countries is much greater than the demand of all the developing countries that are Parties to the Protocol. Thus, if U.S. companies do not produce the methyl bromide for Article 5 countries, another Party will. Since the same amount of methyl bromide will be consumed by the developing countries, whether the U.S. or another Party produces it, a U.S. reduction in the percent of additional production would have no environmental impact.

EPA believes it is important that the network of United States exports of methyl bromide be maintained in order to continue market contacts. EPA presumes that United States producers will be leaders in developing alternative pesticides to methyl bromide. EPA believes that it is U.S. producers of methyl bromide who will quickly develop alternative pesticide practices, and therefore provide Article 5 countries with the alternatives necessary to eliminate the use of this controlled substance. The current international sales networks of U.S. methyl bromide producers will serve as a conduit for disseminating to Article 5 countries alternatives to methyl bromide once they are developed.

In today's rule, EPA clarifies that under the current regulations, the production allowances for Article 5 countries may be retroactive to the beginning of the control period starting January 1, 1994. The current regulations refer to control periods and do not prohibit companies from seeking authorizations for potential production allowances already exported, as long as that export occurred and the potential production allowance is used in the same control period.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under sections 604 and 606. An examination of the impacts on small entities was discussed in the final rule (58 *FR* 65018 and 58 *FR* 69235). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the accelerated phaseout rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: September 30, 1994.

Carol M. Browner,

Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7671–671q.

Subpart A—Production and Consumption Controls

2. Section 82.9 is amended by revising paragraphs (a) introductory text, and (a)(1) and (a)(2) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (f) is granted potential production allowances equal to:

(1) 10 percent of his apportionment under § 82.5 for each control period

ending before January 1, 2000 (January 1, 2001 for methyl bromide); and

(2) 15 percent of his apportionment under § 82.5 for each control period beginning after December 31, 1999, and ending before January 1, 2011 (January 1, 2013 in the case of methyl chloroform; except for methyl bromide which is reserved).

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[FR Doc. 94–25200 Filed 10–13–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD–820–N]

RIN 0938–AG93

Hospice Services Under Medicare Program; Intent To Form Negotiated Rulemaking Committee

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

ACTION: Notice of intent.

SUMMARY: We are considering establishing a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate the wage index used to adjust payment rates for hospice services under the Medicare program. The Committee would consist of representatives of interests that are likely to be significantly affected by the proposed rule. The Committee would be assisted by a neutral facilitator.

We request public comment on whether:

- We should establish a Federal Advisory Committee;
- We have properly identified interests that will be affected by key issues listed below;
- Negotiated rulemaking is appropriate for this issue.

EFFECTIVE DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 14, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–820–N, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–820–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT:

Randal S. Ricktor, (410) 966–5650—For issues related to hospice payment.

Maryann Troanovitch, (202) 690–7890—For issues related to the establishment of the committee or administrative matters.

Judith Ballard, (202) 690–7419—Convener.

SUPPLEMENTARY INFORMATION:

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Public Law 101–648, 5 U.S.C. 581–590) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(1) can adequately represent the interests identified; and

(2) are willing to negotiate in good faith to reach a consensus on the proposed rule;

- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the agency's proposal. The process does not affect otherwise applicable procedural requirements of the FACA, the Administrative Procedure Act and other statutes.

II. Subject and Scope of the Rule

A. Need for the Rule

The Medicare hospice benefit was enacted in the Tax Equity and Fiscal Responsibility Act of 1982 and implemented effective November 1, 1983. The statutory authority for payment to Medicare hospices is contained in section 1814(i) of the Social Security Act (the Act). Final regulations for Medicare hospice care services were published in the **Federal Register** on December 16, 1983 (48 FR 56008), effective for hospice services furnished on or after November 1, 1983, and are codified at 42 CFR part 418. These regulations provide for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each rate category. Our regulations at 42 CFR 418.306(c) authorize adjustment to the payment rates to reflect local differences in area wage levels. Since hospice care is labor intensive, this local adjustment is necessary to permit payment of higher rates in areas with high wage levels and proportionately lower rates in areas with wage levels below the national average.

In the preamble to the final rule, we specified that the wage index used to adjust the hospice payment rates is the wage index published in the **Federal Register** on September 1, 1983 (48 FR 39871) for purposes of determining Medicare inpatient hospital prospective payment rates. This hospital wage index, which is still in use for hospices, was based on calendar year 1981

hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS) ES 202 Employment, Wages and Contributions file for hospital workers. In applying the hospital wage index to the hospice rates, our rules provide for the use of a "floor" index value of 0.8 if a particular hospital wage index value is lower than 0.8. The use of the "floor" on the index reflected our belief that use of an index below 0.8 would unduly jeopardize the availability of the benefit in rural areas by preventing hospices from attracting and retaining sufficient skilled staff to provide the hospice benefit.

While Medicare hospice payment rates have been periodically updated since the inception of the Medicare hospice program in late 1982, we have never updated the wage index. Previous attempts to begin to develop an updated wage index through rulemaking brought to our attention the divergent views within the hospice industry itself and between the industry and HCFA on how best to update the index. During discussions preliminary to developing a new wage index, the industry voiced concerns over the adverse financial impact of a new wage index on individual hospices and a possible reduction in overall Medicare hospice care payments, the effect of overarching Federal budgetary constraints. The end result is that, in the absence of agreement, we continue to use a wage index to geographically adjust payment to Medicare hospices that is over a decade old and clearly obsolete.

We believe it is appropriate and desirable to take prompt steps to update the hospice wage index. We believe the index must be changed through the rulemaking process because a specific wage index was named in the initial Medicare hospice regulations and there will be a significant impact on hospices when we adopt a new wage index. Any new index developed through this proposed negotiated rulemaking would be subject to public notice and comment procedures.

We believe that the hospice wage index is an appropriate subject for development through the negotiated rulemaking process. With the assistance of a neutral facilitator, we believe it may be possible to reach consensus with hospice industry groups and other affected interests on how best to propose an update of the present outdated hospice wage index. We also believe a new wage index based on consensus would be less controversial and easier to administer. We solicit comment on the appropriateness of this issue for negotiated rulemaking.

B. Subject and Scope of the Rule

The current hospice wage index is based on 1981 BLS data that contained serious deficiencies. In fact, those deficiencies led us to construct our own survey-based hospital wage index for use in geographically adjusting Medicare hospital payments. We have periodically updated the hospital wage index and the survey database since that time. The most recent survey is based on hospital wage data beginning in fiscal year 1991 (that is, cost reporting periods beginning October 1, 1990 and ending before October 1, 1991). Those survey data are the basis for the current HCFA Fiscal Year 1995 hospital wage index, which was published in the **Federal Register** on September 1, 1994.

We are considering pursuing an update to the Medicare hospice wage index based on the HCFA hospital wage index. We are considering using the hospital wage index since hospice-specific data have been unreliable. We believe the HCFA hospital wage index provides a good measure of area wage differences, not only for hospitals, but also for hospices since hospitals and hospices generally compete in the same labor market. The HCFA hospital wage index and related information data base are available and we will share that information with negotiation participants.

While recognizing that it is difficult to predict the end product of negotiated rulemaking on the hospice wage index, we anticipate that the scope of the proposed rule resulting from negotiations will include a specific recommended wage index, adjustments to that index, a decision on retaining a floor index value, and a possible phase-in schedule.

C. Issues and Questions To Be Resolved

Hospice wage index rulemaking will address a limited number of specific issues. Issues that we anticipate are outlined below. We also invite public comment on other wage index issues not identified.

Since Medicare regulations require only that the hospice rates be adjusted to reflect local differences in wages, there is a range of wage index options that could potentially be acceptable. We believe the well-developed hospital wage data base will enhance meaningful discussion and resolution of these issues.

1. What Data Should Be Used for a Wage Index for Hospices?

We propose to use hospital data for a hospice wage index since previous efforts to collect hospice cost data have resulted in unreliable data. Hospices contend that there are differences in the way hospices and hospitals operate that are relevant in determining geographic differences in wages. If hospital data are used, the negotiations would address whether such differences exist, whether they are relevant to the wage index, and, if so, whether there should be adjustments to the hospital data to account for such differences.

We also invite discussion on and encourage participants to share any alternative data upon which a hospice wage index can be constructed. The Committee will need to ascertain how those data might be adaptable and whether they may be appropriate to the hospice setting.

2. How Would a New Wage Index Be Phased In?

Projections by both HCFA and the industry indicate that most hospices would have their wage indices lowered if a new wage index were based on unadjusted current hospital data. These decreases would occur for any hospices in areas where the current indices are artificially high due to flaws in the 1981 BLS data or where wages have gone down relative to other geographic areas. The negotiations would address what phase-in period, if any, is appropriate (1) to enable these hospices to plan and implement strategies to reduce costs or obtain other funding; or (2) to offset decreases in reimbursement due to a lower index by automatic yearly increases in hospice payment rates provided for by statute. (These automatic increases are based on the rate of increase in the hospital market-basket index, but recent legislation reduces the increase by 2 percent in fiscal year 1994, and by 1.5 percent in 1995 and 1996.) For those hospices whose wage index would be increased, the negotiations may also address what phase-in period is appropriate. A related issue to discussions on the phase-in period is what should be the effective date of any new index.

3. Should the 0.8 Floor Be Retained?

The wage index uses a value of one (1.0) for national average wages. The current hospice rule provides for the use of a "floor" index value of 0.8 if the applicable wage index value for any particular area is lower than 0.8. The rationale for the "floor" was that hospices needed to attract and retain sufficient skilled staff to provide the hospice benefit, and use of an index below 0.8 would unduly jeopardize the availability of the benefit in rural areas. We anticipate that retaining, replacing, or eliminating this "floor" will be a

discussion issue. Also, if participants agree to retain a "floor," discussion may arise on the appropriateness and methods of adjusting the wage index to offset the cost of the "floor" wage index value of 0.8 against wage index values above the "floor."

4. How Can Budget Neutrality Be Achieved?

As mentioned above, we are considering pursuing an update to the Medicare hospice wage index based on the HCFA hospital wage index. Since the latest HCFA hospital wage index generally results in lower payments to hospices in the aggregate than the existing hospice wage index, whether to adjust the new index and addressing its aggregate budget impact are likely to be a key issue. We anticipate discussion on the budget impact of the new wage index and on acceptable methodologies to compute and apply an adjustment factor to the baseline hospital wage index data, if participants agree that an adjustment factor is appropriate. We consider it a given parameter of negotiations that any revised wage index would have to be at least budget neutral; that is, total aggregate payments for the same services could not be more using the revised wage index than if such payments were made using the current index.

5. Should the Wage Index Be Updated More Frequently?

We anticipate discussion addressing future updates to the Medicare hospice wage index, including which data sources will be used and the frequency of updates.

D. Issues and Questions Not Open to Negotiation

Two additional issues have been raised which are related to hospice payments, but which we have determined cannot be resolved as part of the proposed negotiations because no reliable data exist.

Occupational Mix Issue

The occupational mix issue refers to the argument of some in the industry that the mix of occupations represented in the hospital wage data differs from that encountered in the hospice setting, and, therefore, these critics argue, adjustments to the hospital wage data may be necessary and appropriate to adapt such data to the hospice setting. We believe any adjustment to the underlying wage data of hospital workers to isolate hospice-type services is impractical. We believe attempts to compare hospital services with hospice services may be difficult because of differences in the palliative rather than curative approach to care unique to the hospice setting. Also, Medicare experience with the collection of practitioner-level hospital wage data has shown that such data have been highly unreliable. Presently, we do not possess reliable national practitioner-level hospital wage data. We are open to the possibility of a separate study of this issue in the future provided reliable data become available. We plan to provide an explanation of the occupational mix issue to Committee members when appropriate to the discussion of other wage index issues. We do not, however, intend to negotiate an occupational mix adjustment based on practitioner-level hospital wage data.

Possible Changes to Labor-Related Portion of the Hospice Rates

Final hospice regulations published in 1983 established labor and non-labor components of the Medicare hospice rates for purposes of determining what portion of the rates would be subject to adjustment by the wage index. These labor/non-labor components were established in 1983, using existing Medicare program data. The same ratios reflected in the original labor/non-labor breakdown have been applied to all subsequent updates to the hospice rates. We plan to explain the labor/non-labor breakdown to the Committee. We have determined, however, that it would be impractical to include in these negotiations a change to the labor/non-labor proportions of the hospice rates based on hospice-specific data. Including this issue would require examining the entire spectrum of hospice costs and divert resources from discussions on the wage index.

III. Affected Interests and Potential Participants

The Convener has proposed and we agree to accept the following individuals as negotiation participants. We believe these individuals represent an appropriate mix of interests and backgrounds:

Donna Bales, Kansas Hospice Association
Janice Casey, Hospice of Stamford, Connecticut
Kate Colburn, Hospice of Des Moines, Iowa
Randall DuFour, Hospice of Louisville, Kentucky
Thomas Hoyer, Bureau of Policy Development, HCFA
Mary Labiak, Hospice of the Florida Suncoast, Florida
John J. Mahoney, National Hospice Organization
Janet Neigh, Hospice Association of America
Mark Sterling, VITAS Healthcare
Claire Tehan, Hospital Home Health and Hospice, Torrance, California

We also propose to include Mary Ellen Bliss, a representative of the American Association of Retired Persons. We invite public comment on this list of negotiation participants.

The intent in establishing the negotiating committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represents all interests associated with adoption of a new wage index for hospices. The proposed participants include the two major hospice associations, as well as hospice organizations representing differences in geographic location (the major characteristic related to the wage index) and other differences in the hospice community (such as proprietary versus non-profit). One participant is with a State association which has been active with rural hospices and understands their concerns. Consumers and hospice employees were also identified as being potentially affected by any change in the wage index. This effect would be relatively minimal, however, and would vary depending on whether the wage index in any particular area is increased or decreased. Because of our strong commitment to obtaining consumer input, we nonetheless are proposing a consumer representative for the committee. We preliminarily determined that any employee interest could best be represented by the hospices themselves, who have an even stronger interest in the wage index, and by the hospice associations. Both associations have employee members.

IV. Schedule for the Negotiation

We have set a deadline of 6 months beginning with the date of the first meeting for the Committee to complete work on the proposed rule. We intend to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with HCFA's rulemaking needs.

If we make a final decision to negotiate, the first meeting is scheduled for Wednesday, November 30, 1994 through Friday, December 2, 1994 at the Comfort Inn, 6921 Baltimore Annapolis Blvd., Baltimore Maryland, 21225. The first day's meeting will begin at 10 a.m. The purpose of this meeting will be to discuss in detail how the negotiations will proceed and how the Committee will function. Also, HCFA will present technical information related to the rule. The Committee will agree to

groundrules for Committee operation, will determine how best to address the principal issues, and, if time permits, will begin to address those issues.

A second meeting is scheduled for Tuesday, January 17, 1995 through Wednesday, January 18, 1995. We expect that by this meeting the Committee can complete action on any procedural matters outstanding from the organizational meeting and either begin or continue to address the issues.

Subsequent meetings of the Committee would be held approximately once a month in the Baltimore, Maryland/Washington, D.C. area.

V. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-federal members as a source of advice. Under FACA, an advisory committee is established only after both consultation with the General Services Administration and receipt of a charter. We have prepared a charter and initiated the requisite consultation process. Only upon successful completion of this process and the receipt of the approved charter will we form the Committee and begin negotiations. Notice of approval of the charter will be published in the **Federal Register**.

B. Participants

The number of participants in the group is estimated to be 10 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, we, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. We will make that decision based on whether the individual or interest:

- Would be significantly affected by the rule; and
- Is already adequately represented in the negotiating group.

D. Establishing the Committee

After reviewing any comments on this Notice and any requests for representation, we will take the final steps to form the Committee unless the comments and other relevant considerations convince us that such action is inappropriate or our charter request is disapproved.

VI. Negotiation Procedures

If a committee is formed, the following procedures and guidelines will apply, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may best be accomplished by selection of senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoint of their organizations. This applies to HCFA as well, and we are designating Thomas Hoyer, Director, Office of Coverage and Eligibility Policy, Bureau of Policy Development, to represent HCFA.

C. Administrative Support

We will supply logistical, administrative and management support. If it is deemed necessary and appropriate, we will provide technical support to the Committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the Committee. We will announce Committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the term is defined otherwise by the committee. We expect the participants to fashion their working definition of this term.

G. Failure of Advisory Committee To Reach Consensus

If the Committee is unable to reach consensus, HCFA will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and HCFA will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, we will keep minutes of all Committee meetings. The minutes will be placed in the public rulemaking record.

I. Other Information

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

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 11, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: October 12, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–25638 Filed 10–13–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31, 32, 34, 35, 70, 72, 76, 77, 78, 90, 92, 95, 190, and 193

[CGD 83–026]

RIN 2115–AB36

Fire Protection Regulations (CGD 83–026)

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to align Coast Guard regulations with the requirements of the International Convention for Safety of Life at Sea (SOLAS) 1974, as amended. It has been overtaken by the Coast Guard's broader Maritime Regulatory Reform (MRR) effort. Therefore, the Coast Guard is terminating further rulemaking under docket number 83–026.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Kirchner, Marine Technical and Hazardous Materials Division, U.S. Coast Guard Headquarters, (202) 267–0168.

SUPPLEMENTARY INFORMATION: On October 1, 1984 (49 FR 38672), the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM). In that ANPRM, the Coast Guard announced that it was considering revisions to the fire protection regulations in 46 CFR subchapters D, H, and I. In part, the amendment under consideration were intended to conform the regulations with the requirements of the International Convention for Safety of Life at Sea (SOLAS) 1974, as amended.

Recently, under its Maritime Regulatory Reform (MRR) effort, the Coast Guard has undertaken a broad review of its existing regulations and applicable international standards. Part of this effort will involve a review of domestic and international fire protection provisions. Existing fire protection regulations will be amended, as necessary, through one or more future rulemaking projects. Therefore, this rulemaking is no longer necessary, and the Coast Guard is terminating further rulemaking under docket number 83–026.

Dated: October 4, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 94–25414 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket Nos. 94–06; 94–21]

Financial Responsibility Requirements for Nonperformance of Transportation; Inquiry Into Alternative Forms of Financial Responsibility for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Proposed Rule in Docket No. 94–06 is held in abeyance, pending an Inquiry into alternative methods of establishing financial responsibility. The Inquiry's purpose is to determine whether an acceptable alternative can be fashioned that will address the industry objections to the Proposed Rule, yet ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

DATES: Comments due on or before November 28, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") administers section 3, Pub. L. 89–777, 46 U.S.C. app. 817e ("Section 3"). Section 3 requires certain passenger vessel operators ("PVOs") to establish financial responsibility for nonperformance of transportation.[1] The Commission's regulations implementing section 3, contained in 46 CFR part 540, subpart A, generally provide that a PVO may evidence its financial responsibility by one or more of the following methods: A guaranty, escrow arrangement, surety bond, insurance or self-insurance. The amount required must equal 110 percent of the PVO's highest UPR over a two-year period.[2] The maximum coverage amount currently required is $15 million, subject to a sliding scale.[3]

By Notice of Proposed Rulemaking published in the **Federal Register** on March 31, 1994 ("NPR" or "Proposed Rule"),[4] the Commission proposed to remove the $15 million unearned passenger revenue ("UPR") ceiling now applicable to passenger vessel financial responsibility requirements for nonperformance of transportation. The Commission initiated this proposal in part because there is an estimated $700 million in UPR without section 3 coverage, raising concern that there could be insufficient financial responsibility to indemnify the travelling public for nonperformance. The Commission also proposed to revise the current UPR sliding scale accordingly—and to require coverage of 110 percent of UPR up to $25 million per operator, with coverage of 90 percent of UPR for amounts exceeding $25 million. The NPR also put forth an alternative proposal which would require coverage of 110 percent of UPR up to $25 million per operator; 75 percent of UPR between $25 million and $50 million per operator; and 50 percent coverage for UPR over $50 million per operator. Additionally, the Commission proposed to remove self-insurance as an option for section 3 coverage (except for state or federal entities). Existing self-insured commercial operators would be provided one year following the effective date of any final rule in this matter to obtain other evidence of financial responsibility. In issuing the Proposed Rule, the Commission stated that it considered these changes to be necessary to ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

Comments on the NPR were originally due by May 2, 1994. The comment period was subsequently extended to

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] UPR is defined under 46 CFR 540.2(i) as:

. . . that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

[3] The Commission, in Docket No. 92–19, Revision of Financial Responsibility Requirements for Non-Performance of Transportation, amended 46 CFR Part 540, Subpart A, to (1) institute this sliding scale formula for determining the amount of financial responsibility coverage required for operators meeting certain requirements; (2) exclude, under certain conditions, revenue from "wholeship" arrangements from being considered UPR; and (3) publish a suggested form escrow arrangement as a guideline for the industry (57 FR 51887 (September 14, 1992)).

[4] 59 FR 15149.