

(M.D. Ga. Jan 16, 2003), three ambulance suppliers seeking to represent a nationwide class of ambulance suppliers sued the Secretary, arguing that he has no discretion to give the FS an effective date other than January 1, 2000. The district court agreed with the plaintiff suppliers and issued an order certifying a nationwide class of ambulance suppliers and requiring the Secretary to adopt a FS for the January 1, 2000 through March 31, 2002 period. The court's decision also requires the Secretary to pay full mileage in accordance with the BIPA provision for the July 1, 2001 through March 31, 2002 period. *Id.* at 20–21.

II. Provisions of the Notice

The purpose of this notice is to comply with the court's order requiring a FS to be established for the January 1, 2000 through March 31, 2002 period. By this notice, the Secretary is establishing a FS based on the FS as described in the February 27, 2002 final rule, with a modified phase-in as follows:

Calendar year	Percentage of old payment system	Percentage of fee schedule
2000*	95	5
2001	90	10
2002	80	20

* January 1, 2002 through March 31, 2002.

Additionally, in accordance with the district court's order, the Medicare program will pay full BIPA mileage for services provided on or after July 1, 2001.

The BBA provided that the Secretary shall phase in the application of payment rates under the FS in an efficient and fair manner. As previously detailed, based on the discretion afforded the Secretary by the BBA, the final rule published on February 27, 2002 provided for a linear progression from the prior payment system to FS payments, commencing with a 20 percent/80 percent blended payment for the last three quarters of FY 2002, and ending with a 100 percent FS payment for FY 2006.

Five percent, 10 percent, and 20 percent is the most appropriate progression of blending percentages for the January 1, 2000 through March 31, 2002 period. For the first quarter of 2002, 20 percent is the same blending percentage as the percentage already used for the FS during the other 9 months in 2002. The 5 percent and 10 percent are the most appropriate percentages for 2000 and 2001, in that they comply with the statutory requirement for an efficient and fair phase-in, and are consistent with the

linear progression in blending percentages promulgated in the February 27, 2002 final rule.

The *Lifestar* court recognized the Secretary's statutory discretion to set the phase-in percentages for the January 1, 2000 through March 31, 2002 period. The court also stated that these phase-in percentages must provide meaningful relief to the *Lifestar* plaintiffs. The FS described in this notice provides meaningful relief as evidenced in more detail under the impact section, below. We estimate that 2/3 of 15,000 suppliers will be receiving a total of \$81 million for this period.

The statute at 42 U.S.C. 1395(m)(l)(3)(B) provides that FS payment amounts in subsequent years to the first year of the FS be set equal to the FS payment amounts from the previous year increased by a statutorily prescribed inflation factor. The FS final rule used data from 1998 and inflated it using the statutorily prescribed inflation factors to obtain the 2002 amounts. See 67 FR 9100, 9125. To determine the FS amounts for earlier years (that is, the period of January 1, 2000 through December 31, 2001), we have deflated the FS amounts for 2002 by the same statutorily prescribed ambulance inflation factors. These deflation factors are:

Calendar year	Deflation percentage
2000/2001	3.7
2001/2002	2.2

III. Appeal of Lifestar Decision/Recoupment

The Secretary has appealed the *Lifestar* decision. In the event the district court's decision is reversed on appeal, any FS or BIPA mileage payment made in accordance with this notice for the January 1, 2000 through March 31, 2002 period will be subject to recoupment.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of

the finding and its reasons in the rule issued.

The court's January 16, 2003 order in *Lifestar* requires establishment of a FS for the January 1, 2000 through March 31, 2002 period within 90-days of the date of the order. It would be impracticable to provide a period for prior notice and comment and still meet the 90-day deadline. In fact, the Congress has recognized the impracticability of providing prior notice and comment where a statutory provision must be implemented within 150 days. See 42 U.S.C. 1395hh(b)(2)(B) (providing that a notice of proposed rulemaking is not required if a statute establishes a specific deadline for implementation that is less than 150 days from enactment).

Therefore, we find good cause to waive the notice of proposed rulemaking and comment period with respect to the issuance of this notice.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 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.

There are approximately 15,000 suppliers nationwide that submit claims to Medicare for ambulance services. The Medicare program pays approximately \$2.1 billion in Medicare benefits per year for these services. We estimate that approximately two-thirds of suppliers will benefit from this January 1, 2000 through March 31, 2002 FS and that the aggregate amount of program spending will be approximately \$81 million. The break out of this expenditure is as follows:

Calendar year	Program expenditures (in millions)
2000	\$16
2001	\$43
2002	\$22
Total	\$81