

government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million or less annually (for details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of \$11.5 million or less in 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this notice with comment period provides an update to all HHAs for FY 2004 as required by statute. This notice will have a significant positive effect upon small entities.

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 604 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 (MSA) and has fewer than 100 beds. We have determined that this notice with comment period will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

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. We believe this notice will not mandate expenditures in that amount.

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. We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that this notice would not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

In accordance with the requirements of section 1895(b)(3) of the Act, we publish an update for each subsequent fiscal year that will provide an update

to the payment rates. Section 1895(b)(3) of the Act requires us, for FY 2004, to increase the prospective payment amounts by the applicable home health market basket increase. The home health market basket increase for FY 2004 is 3.3 percent. Taking into account the provisions of section 1895(b)(3) of the Act, the increase for FY 2004 is 3.3 percent.

1. Effects on the Medicare Program

This notice merely provides a percentage update to all Medicare HHAs. Therefore, we have not furnished any impact tables. We increase the payment to each Medicare HHA equally by the home health market basket update for FY 2004, as required by statute. There is no differential impact among provider types. The impact is in the aggregate. We estimate that there will be an additional \$340 million in FY 2004 expenditures attributable to the FY 2004 market basket increase of 3.3 percent. Thus, the anticipated expenditures outlined in this notice exceed the \$100 million annual threshold for a major rule as defined in Title 5, USC, section 804(2).

The applicable home health market basket increase of 3.3 percent for FY 2004 applies to all Medicare participating in HHAs. We do not believe there is a differential impact due to the aggregate nature of the update.

TABLE 5

FY 2004 update to home health PPS rates required by the act	Additional FY 2004 medicare home health estimated expenditures due to annual update required by law
Section 1895(b)(3)(B) of the Act requires HH PPS rates increased by applicable home health market basket increase (3.3 percent increase).	\$340 million.

(Source: President's FY 2003 Budget)

2. Effects on Providers

This notice will have a positive effect on providers of Medicare home health services by increasing their rate of Medicare payment. We do not anticipate specific effects on other providers. This notice reflects the statutorily required annual update to the HH PPS rates. We do not believe there is a differential impact due to the consistent and aggregate nature of the update.

C. Alternatives Considered

As discussed in section II, this notice with comment period reflects an annual update to the HH PPS rates as required by statute. Due to the lack of discretion provided in the statutory requirements governing this notice with comment period, we believe the statute provides no latitude for alternatives other than the approach set forth in this notice reflecting the FY 2004 annual update to the HH PPS rates. Other than the positive effect of the market basket increase, this notice with comment will not have a significant economic impact nor will it impose an additional burden on small entities. When a regulation or notice imposes additional burden on small entities, we are required under the RFA to examine alternatives for reducing burden.

Since this notice with comment period will not impose an additional burden, we have not examined alternatives.

D. Conclusion

We have examined the economic impact of this notice with comment period on small entities and have determined that the economic impact is positive, significant, and that all HHAs will be affected. To the extent that small rural hospitals are affiliated with HHAs, the impact on these facilities will also be positive. Finally, we have determined that the economic effects described above are largely the result of the specific statutory provisions, which this notice serves to announce.

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

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

Dated: February 21, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 26, 2003.

Tommy G. Thompson,

Secretary.

ADDENDUM A.—WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX (FY 2003)

MSA name	Wage index
ALABAMA7660
ALASKA	1.2293
ARIZONA8493