

approximately \$11.5 million per year. Therefore, the overall impact on the total industry annual receipts would be small, that is, less than 1 percent reduction in Medicare revenue. However, while the overall impact is small, some suppliers would be seriously affected as a result of the mix of DME that they furnish to Medicare beneficiaries. Namely, suppliers who specialize in furnishing respiratory assist devices would be seriously affected by this rule. To estimate how many suppliers could be seriously affected by this rule, we analyzed data for the top 30 suppliers of RADs with a back-up rate, which account for approximately 50 percent of Medicare expenditures for code K0533. Total allowed charges for code K0533 were \$77 million in 2002. Therefore, a \$10 million reduction in annual expenditures resulting from this proposed rule equates to a 13 percent reduction in revenue for suppliers for code K0533. These top 30 suppliers were ranked in terms of total allowed charges attributed to them for claims received for HCPCS code K0533 from October 1, 2002 through December 31, 2002. Five of the top 30 suppliers would not be considered small entities by SBA standards. These 5 suppliers account for approximately 40 percent of total expenditures for K0533. Twenty-five suppliers in the top 30 could be considered small entities if such a determination was based solely on Medicare expenditures (data on revenue attributed to sources other than Medicare has not been obtained for these companies as part of this analysis). Therefore, the total reduction in revenue for potential small entities as a result of this proposed rule would be approximately \$6 million. The percentage of Medicare DME business that K0533 devices represent for 9 of the 25 potential small entities is 5 percent or less. For the remaining 16 potential small entities, the percentage of Medicare DME business that K0533 devices represent ranges from 17 to 98 percent. Therefore, these 16 suppliers would be seriously affected by this rule. Other K0533 suppliers not in the list of top 30 suppliers could also be small entities and could be seriously affected by this rule. The total allowed charges per year for these suppliers for code K0533 are less than \$250,000.

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. We are not preparing a rural impact analysis since we have determined that this rule would not have a significant economic impact on the operation 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 government, in the aggregate, or by the private sector of \$110 million. This rule would not have an effect on the governments mentioned, and private sector costs would be less than the \$110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes 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 determined that this rule does not significantly affect State or local governments.

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

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 414 as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr (b)(1)).

2. In § 414.222 paragraph (a)(1) is revised to read as follows:

§ 414.222 Items requiring FSS.

(a) *Definition.* * * *

(1) Ventilators (except those that are either continuous airway pressure devices or respiratory assist devices with bi-level pressure capability with or without a back-up rate, previously referred to as intermittent assist devices

with continuous airway pressure devices).

* * * * *

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

Dated: April 15, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–21443 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET 03–158; MB 03–159; FCC 03–165]

Use of Television Channel 16 by the New York Police Department and NYMAC for Public Safety Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the rules of the Federal Communications Commission (FCC) to reallocate television channel 16 to the land mobile service in order to permit the New York Police Department and New York Metropolitan Advisory Committee (NYMAC) to utilize the channel for public safety services.

DATES: Submit comments on or before September 22, 2003. Reply comments are due on or before October 6, 2003.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT:

Dave Roberts (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rulemaking, (NPRM) FCC 03–165, adopted on July 7, 2003, and released on July 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by