

believe these changes to be insignificant. As Table C below indicates, we estimate that the total hospice payments will increase from last year by 0.6 percent, or \$24,271,000.

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). We have determined that this notice is not an economically significant rule under this Executive Order.

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 \$6 million to \$29 million in any 1 year (for details, see the Small Business Administration's regulation at 65 FR 69432, that sets forth size standards for health care industries). For purposes of the RFA, most hospices are small entities. Approximately 70 percent of Medicare certified hospices are identified as voluntary, government, or other agencies, and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that approximately 79 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, rural hospices will receive a slight increase in payment. Overall rural hospices will receive an increase of 0.9 percent and urban hospices will receive an increase of 0.6 percent. Urban hospices in New England, Middle-Atlantic, and Puerto Rico regions will experience a decrease of 0.4 percent, 1.1 percent, and 0.5 percent respectively. Middle Atlantic and Puerto Rico rural regions will also experience a decrease of 0.7 and 5.1 percent respectively. Of the urban hospices, the Pacific region will experience the greatest increase of 2.3 percent. The remaining rural regions will experience an increase in payment ranging from 0.2 in New England to a 2.6 increase in West South Central. Puerto Rico will experience decreased payment in both its urban and rural areas. Overall, Puerto Rico rural

hospices will receive the largest decrease of 5.1 percent. The Middle Atlantic rural and urban hospices will also receive decreased payment. Most regions will experience an increase in payment in both urban and rural regions. The South Atlantic urban and East North Central rural hospices will experience a slight increase of 0.1 percent respectively. Therefore, based upon analysis of the wage index changes for FY 2004, the urban and rural Puerto Rico and Middle Atlantic hospices will be negatively impacted the most. The Pacific and West South Central urban regions as well as the West South Central and South Atlantic rural regions will be positively impacted. The payment decreases in certain areas indicate that this notice will have an impact on a small number of small entities. However, nationwide, hospices will receive an overall increase in estimated payments. We estimate that total hospice payments will increase by 0.6 percent, or \$24,271,000. Rural hospices, with the exception of Puerto Rico and Middle Atlantic regions will receive the largest increase in payments for FY 2004. We estimate that rural hospice payments overall will increase by \$4,284,000. We believe the anomaly of Puerto Rico rural region, with the greatest decrease overall in payment, the West South Central rural region increase of 2.6 percent, and the Pacific urban region increase of 2.3 percent are attributable to changes in the MSA hospital wage indices.

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care days. Therefore, the number of routine home care days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. Using routine home care days as a proxy for size, our analysis indicates that the impact of the wage index update on small hospices (those that provide up to 1,754 days of routine home care) will experience a 1.3 percent increase. Rural Puerto Rico with 4 hospices and 28,000 routine care days will experience a decrease of 5.1 percent while rural West North Central with 178 hospices and 492,000 routine home care days will have an increase of 0.8 percent. However, most small entities will experience a slight increase in payment. Therefore, we certify that this rule will not have a significant impact on a substantial number of small entities, in accordance with the RFA.

Furthermore, the wage index methodology was previously determined by consensus through a negotiated rulemaking committee that

included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and it was adopted into regulation in the August 8, 1997 final rule. The committee also agreed that this was favorable for the hospice community, as well as for beneficiaries. In developing the process for updating the wage index in the 1997 final rule, we fully considered the impact of this methodology on small entities and attempted to mitigate any potential negative effects.

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 an MSA and has fewer than 100 beds. We have determined that this notice will not have a significant impact on a substantial number of small rural hospices.

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 an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$110 million or more. This notice has no substantial effect on State, local or tribal governments or on the private sector. We have determined that this notice will not have 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. We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We have compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2004 wage index and determined the current hospice rates to be budget