

(d) *Indirect or inadvertent residues.* Time-limited tolerances are established for inadvertent or indirect residues of the fungicide dimethomorph in or on

the following raw agricultural commodities when present therein as a result of the application of dimethomorph to growing crops. The

tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Cereal grains group, fodder .....	0.15	May 12, 2004
Cereal grains group, forage .....	0.05	May 12, 2004
Cereal grains group, grain .....	0.05	May 12, 2004
Cereal grains group, hay .....	0.10	May 12, 2004
Cereal grains group, straw .....	0.15	May 12, 2004

[FR Doc. 99-11565 Filed 5-11-99; 8:45 am]  
BILLING CODE 6560-50-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

42 CFR Parts 405, 410, 413, 414, 415, 424, and 485

[HCFA-1006-CN]

RIN 0938-A152

### Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999; Correction

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

ACTION: Correction of final rule with comment period.

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 2, 1998, entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999."

**EFFECTIVE DATE:** January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Diane Milstead, (410) 786-3355

#### SUPPLEMENTARY INFORMATION:

#### Background

In FR Doc. 98-29181 of November 2, 1998, (63 FR 58814), there were a number of technical errors. The errors relate to the omission of background information, an incorrect reference, the qualification requirements for nonphysician practitioners, a typographical error, a correction to a CPT code modifier in Table 6, an inconsistency in the preamble and addendum, the omission of status indicator references, the omission of a

facility type in the regulations text, and revisions to Addendum B.

The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on November 2, 1998, that is, January 1, 1999.

#### Discussion of Addendum B

1. We inadvertently omitted the professional and technical portions for the following CPT code. Entries on the page listed below are corrected as follows: Page 59073 for CPT codes 78020-26 and 78020-TC. These corrections are reflected in correction number 19 to follow.

2. We assigned incorrect status codes to the following CPT codes. Entries on pages listed below are corrected as follows: Page 59087 for CPT code 82251; page 59114 for CPT codes 90471 and 90472; page 59181 for CPT code R0070; and page 59182 for CPT code R0075. These corrections are reflected in correction number 20 to follow.

3. We assigned incorrect RVUs or modifiers for the following CPT codes. Entries on pages listed below are corrected as follows: Page 59109 for CPT code 88141; page 59132 for CPT codes 94014, 94014-26, and 94014-TC; 94015, 94015-26, 94015-TC; and 94016; page 59168 for CPT code G0124; and page 59169 for CPT code G0141. These corrections are reflected in correction number 21 to follow.

4. We stated that we would not provide a transition for codes representing services that are new beginning in 1999. The codes identified below are new CPT codes, but do not represent new services. These codes were previously reported with a different CPT code. We failed to apply the transition to these services. The corrected RVUs for the codes are as follows: Page 58965 for CPT codes 31623, 31624, and 31643; page 58977 for CPT codes 35682, and 35683; page 59133 for CPT codes 94621, 94621-26, and 94621-TC. These corrections are

reflected in correction number 22 to follow.

5. We erroneously assigned relative value units to the following CPT codes in the facility setting. By definition the following CPT codes cannot be performed in the facility setting. Columns associated with facility relative value units should be set to NA in Addendum B. Entries on pages listed below are corrected as follows: Page 59144 for CPT codes 99321, 99322, 99323, 99331, 99332, 99333, 99341, 99342, 99343, 99344, 99345, 99347, 99348, 99349, and 99350; page 59145 for CPT codes 99374 and 99375. These corrections are reflected in correction number 23 to follow.

#### Correction of Errors

In FR Doc. 98-29181 of November 2, 1998, make the following corrections:

1. On page 58814, column three, "Table of Contents", after subsection "I.B", add a new subsection "C" to read as follows:

"C. Components of the Fee Schedule Payment Amounts"

2. On page 58816, column one, add a new subsection "C", to read as follows:

"C. Components of the Fee Schedule Payment Amounts"

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid for under the physician fee schedule is the product of three factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor (GAF) for each physician fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. The CF converts the relative values into payment amounts.

For each physician fee schedule service, there are three relative values: (1) An RVU for physician work; (2) an RVU for practice expense (NOTE: This RVU will vary on a code by code basis depending upon if the service is performed in a facility or non-facility setting); and (3) an RVU for malpractice

expense. For each of these components of the fee schedule there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average for each component.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

$$\text{Payment} = [(\text{RVU work} * \text{GPCI work}) + (\text{RVU practice expense} * \text{GPCI practice expense}) + (\text{RVU malpractice} * \text{GPCI malpractice})] * \text{CF}$$

The CF for calendar year 1999 appears in Section V. "Physician Fee Schedule Update and Conversion Factor for Calendar Year 1999." The RVUs for calendar year 1999 are in Addendum B. The GPCIs for calendar year 1999 can be found in Addendum D of the October 31, 1997, final rule (62 FR 59255).

Section 1848(e) of the Act requires the Secretary to develop GAFs for all physician fee schedule areas. The total GAF for a fee schedule area is equal to a weighted average of the individual GPCIs for each of the three components of the service. Thus, the GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. In accordance with the law, however, the GAF for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average."

3. On page 58827, in column three, bullet two, line two, "REUS" is corrected to read "RVUs."

4. On page 58828, in column 1, the first full paragraph, lines 4 and 11, "REUS" is corrected to read "RVUs."

5. On page 58844, there is an inaccuracy in the discussion concerning physician direction of concurrent anesthesia services. In the discussion, we inadvertently failed to include the revisions to the policy that were made in the September 1, 1983 final rule (48 FR 39740) and currently appear in section 15018C of the Medicare Carrier Manual (MCM).

Therefore, on page 58844, column three, the second full paragraph from the top is corrected to read as follows: "If a physician is directing four concurrent surgical procedures and devotes extensive time to checking or discharging other patients in the recovery room or handling scheduling matters, this could unduly diminish physician involvement in the surgical cases. If significantly reduced, a physician's involvement in the surgical

cases would become "supervision" rather than "medical direction." Also, a physician cannot personally be extensively involved in recovery room or scheduling matters of significant duration because such personal services would diminish the scope of control necessary for medical direction."

6. On page 58874, in the second column, third paragraph beginning "Result of evaluation of comments" we discuss the qualifications required for a nurse practitioner to be eligible for Medicare Part B payment. We erred in establishing the effective date for the requirements for nurse practitioners. The date should be January 1, 2000. The provisions for nurse practitioner qualifications will not be effective until January 1, 2000. In column 2, paragraph 3, line 3, insert the words "after December 31, 1999," after the comma.

7. On page 58878, in the third column, fourth full paragraph, the first bullet, the name of the national accreditation organization was published incorrectly. Therefore, remove the word "National." Also, we inadvertently omitted the word "or" after the semicolon. The word "or" was included in the proposed rule and there was no change intended in this area. Therefore, the word "or" should be added after the semicolon. The first bullet should now read as follows: "Has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or"

In the second bullet, the third line we incorrectly stated that the national certification examination is "certified" by the National Commission on Certification of Physician Assistants. This organization "administers" the examination. Therefore, the word "certified" is removed and replaced with "administered." The second bullet should now read as follows: "Has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants; and"

8. On page 58889, in Table 6, the last line, the second column, the modifier for CPT code 94014, remove "26" and leave the column blank.

9. On page 58892, in the third column, the third bullet, line 6, remove the word "National". In line 7, remove the second use of the word "on" and add the word "of", and add the word "or" after the semicolon. Line 11, the word "certified" is replaced with "administered." The third bullet should now read as follows: "Proposed § 410.74(c) is revised to state that a physician assistant is an individual who—

- Has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or

- Has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants; and

- Is licensed by the State to practice as a physician assistant."

#### § 410.74 [Corrected]

10. On page 58908, in column one, in the regulations text, under § 410.74, paragraph (c)(1), remove the word "National" and add the word "or" after the semicolon. In paragraph (c)(2), line two, remove the word "of" and add the phrase "that is administered by."

#### § 410.75 [Corrected]

11. On page 58908, in column one, in the regulations text, under § 410.75, paragraph (b), "For" is corrected to read, "After December 31, 1999, for".

#### § 414.32 [Corrected]

12. On page 58911, in the first column, correct the amendatory language in item 5, and add paragraph (a)(6) to read as follows:

"5. In § 414.32, the heading and paragraphs (a)(6) and (b) are revised to read as follows:

(a) *Definition.* \* \* \*

(6) Skilled nursing facilities."

#### § 485.705 [Corrected]

13. On page 58913, in column one, in the regulations text, under § 485.705, paragraph (c)(8) introductory text is corrected to read as follows:

"(c) \* \* \*

(8) After December 31, 1999, a nurse practitioner is a person who must:"

14. On page 58913, column one, § 485.705(c)(10)(i) is corrected by removing the word "National" and, after the semicolon, replacing the word "and" with "or" and paragraph (c)(10)(ii) is corrected by, removing the word "certified" and adding "administered" in its place. In paragraph (c)(10)(iii), the first use of the phrase "as a physician assistant" is removed.

#### Addendum B [Corrected]

15. On page 58913, in column three, add the following after the entry for status code "G":

"H = Deleted modifier (code used to have a modifier of TC and PC)  
I = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code

for reporting of, and payment for, these services. This indicator is treated in the same manner as status

indicator "G." Its use allows for more efficient carrier processing of Medicare claims."

16. On page 58914, in columns two and three, in the definitions for "11" and "12", remove the words "for 1999."

### Addendum B

17. In the table of Addendum B, the following CPT codes are added to read as follows:

CPT1 <sup>1</sup> HCPCS <sup>2</sup>	Mod	Status	Description	Physician work RVUs <sup>3</sup>	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility Total	Transitioned facility total	Global
78020 .....	26	A	Thyroid met uptake .....	*	*	*	*	*	*	*	*	*	*	*
78020 .....	TC	A	Thyroid met uptake .....	0.60	0.02	0.02	0.02	0.02	0.02	0.64	0.64	0.64	0.64	ZZZ
78020 .....			Thyroid met uptake .....	0.00	0.15	0.15	0.15	0.15	0.06	0.21	0.21	0.21	0.21	ZZZ
				*	*	*	*	*	*	*	*	*	*	

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<sup>2</sup> Copyright 1994 American Dental Association. All rights reserved.

<sup>3</sup> Indicates RVUs are not used for Medicare payment.

18. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 <sup>1</sup> / HCPCS <sup>2</sup>	Mod	Status	Description	Physician work RVUs <sup>3</sup>	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
82251 .....		X	Assay Bilirubin .....	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471 .....		X	Immunization admin, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90472 .....		X	Immunization admin, 2+ .....	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070 .....		C	Transport portable x-ray .....	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0075 .....		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
				*	*	*	*	*	*	*	*	*	*	

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<sup>2</sup> Copyright 1994 American Dental Association. All rights reserved.

<sup>3</sup> +Indicates RVUs are not used for Medicare payment.

19. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 <sup>1</sup> / HCPCS <sup>2</sup>	Mod	Status	Description	Physician work RVUs <sup>3</sup>	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
88141 .....		A	Cytpath c/vag interpret .....	0.42	0.18	0.56	0.18	0.31	0.03	.63	1.01	0.63	0.76	ZZZ
94014 .....		A	Patient recorded spirometry	0.52	0.63	0.63	0.63	0.63	0.04	1.19	1.19	1.19	1.19	XXX
94014 .....	26	H	Patient recorded spirometry	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
94014 .....	TC	H	Patient recorded spirometry	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
94015 .....		A	Patient recorded spirometry	0.00	0.43	0.00	0.43	0.00	0.02	0.45	0.00	0.45	0.00	XXX
94015 .....	26	H	Patient recorded spirometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94015 .....	TC	H	Patient recorded spirometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94016 .....		A	Review patient spirometry ..	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
G0124 .....		A	Screen c/v thin layer by MD	0.42	0.18	0.30	0.18	0.30	0.03	0.63	0.75	0.63	0.75	XXX
G0141 .....		A	Scr c/v cyto, autosys and md.	0.42	0.18	0.15	0.18	0.15	0.03	0.63	0.60	0.63	0.60	XXX
				*	*	*	*	*	*	*	*	*	*	

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<sup>2</sup> Copyright 1994 American Dental Association. All rights reserved.

<sup>3</sup> +Indicates RVUs are not used for Medicare payment.

20. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 <sup>1</sup> / HCPCS <sup>2</sup>	Mod	Status	Description	Physician work RVUs <sup>3</sup>	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
31623 .....		A	Dx Bronchoscope/ brush ....	3.07	3.33	3.34	1.25	2.82	0.27	6.67	6.68	4.59	6.16	OOO
31624 .....		A	Dx Bronchoscope/ lavage ...	3.11	3.35	3.34	1.26	2.82	0.27	6.73	6.72	4.64	6.20	OOO
31643 .....		A	Dx Bronchoscope/ catheter	3.50	1.73	2.94	1.23	2.81	0.66	5.89	7.10	5.39	6.97	OOO

CPT1 <sup>1</sup> / HCPCS <sup>2</sup>	Mod	Status	Description	Physician work RVUs <sup>3</sup>	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal- practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
35682 .....		A	Composite bypass graft .....	7.20	2.81	7.92	2.74	7.90	2.75	12.76	17.87	12.69	17.85	ZZZ
35683 .....		A	Composite bypass graft .....	8.50	3.32	8.05	3.22	8.02	2.75	14.57	19.30	14.47	19.27	ZZZ
94621 .....		A	Plum stress/test complex ....	0.88	1.74	2.11	1.74	2.11	0.12	2.74	3.11	2.74	3.11	XXX
94621 .....	26	A	Plum stress/test complex ....	0.88	0.27	0.64	0.27	0.64	0.04	1.19	1.56	1.19	1.56	XXX
94621 .....	TC	A	Plum stress/test complex ....	0.00	1.47	1.47	1.47	1.47	0.08	1.55	1.55	1.55	1.55	XXX

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<sup>2</sup> Copyright 1994 American Dental Association. All rights reserved.

<sup>3</sup> + Indicates RVUs are not used for Medicare payment.

21. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 <sup>1</sup> / HCPCS <sup>2</sup>	Mod	Status	Description	Physician work RVUs <sup>3</sup>	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal- practice RVUs	Non-facility total	Transitioned facility total	Facility total	Transitioned facility	Global
99321 .....		A	Rest home visit, new patient.	0.71	0.38	0.40	NA	NA	0.02	1.11	1.13	NA	NA	XXX
99322 .....		A	Rest home visit, new patient.	1.01	0.59	0.56	NA	NA	0.04	1.64	1.61	NA	NA	XXX
99323 .....		A	Rest home visit, new patient.	1.28	0.74	0.78	NA	NA	0.05	2.07	2.11	NA	NA	XXX
99331 .....		A	Rest home visit, estab pat.	0.60	0.38	0.32	NA	NA	0.02	1.00	0.94	NA	NA	XXX
99332 .....		A	Rest home visit, estab pat.	0.80	0.48	0.41	NA	NA	0.02	1.30	1.23	NA	NA	XXX
99333 .....		A	Rest home visit, estab pat.	1.00	0.58	0.51	NA	NA	0.02	1.60	1.53	NA	NA	XXX
99341 .....		A	Home visit, new patient.	1.01	0.49	0.56	NA	NA	0.04	1.54	1.61	NA	NA	XXX
99342 .....		A	Home visit, new patient.	1.52	0.74	0.67	NA	NA	0.04	2.30	2.23	NA	NA	XXX
99343 .....		A	Home visit, new patient.	2.27	1.09	0.90	NA	NA	0.05	3.41	3.22	NA	NA	XXX
99344 .....		A	Home visit, new patient.	3.03	1.35	1.03	NA	NA	0.07	4.45	4.13	NA	NA	XXX
99345 .....		A	Home visit, new patient.	3.79	1.61	1.09	NA	NA	0.07	5.47	4.95	NA	NA	XXX
99347 .....		A	Home visit, estab patient.	0.76	0.41	0.47	NA	NA	0.03	1.20	1.26	NA	NA	XXX
99348 .....		A	Home visit, estab patient.	1.26	0.63	0.59	NA	NA	0.03	1.92	1.88	NA	NA	XXX
99349 .....		A	Home visit, estab patient.	2.02	0.91	0.72	NA	NA	0.04	2.97	2.78	NA	NA	XXX
99350 .....		A	Home visit estab patient.	3.03	1.24	0.93	NA	NA	0.05	4.32	4.01	NA	NA	XXX
99374 .....		B	Home health care supervision.	+1.10	1.03	0.67	NA	NA	0.03	2.16	1.80	NA	NA	XXX
99375 .....		A	Home health care supervision.	1.73	1.11	0.69	NA	NA	0.03	2.87	2.45	NA	NA	XXX

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<sup>3</sup> + Indicates RVUs are not used for Medicare payment.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w-4))

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

Dated: April 30, 1999.

Neil J. Stillman,

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 99-11511 Filed 5-11-99; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No. 950427117-9123-06; I.D. 050599D]

RIN 0648-AH97

#### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is closing, for a 2-week period, all inshore waters and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR Part 80), bounded by 32° N. lat. and 33° N. lat. within the Leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

**DATES:** This action is effective from May 7, 1999 through 11:59 p.m. (local time) on May 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, (727) 570-5312, or Barbara A. Schroeder (301) 713-1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS Pascagoula, MS laboratory by phone (228) 762-4591 or fax (228) 769-8699.

**SUPPLEMENTARY INFORMATION:** The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA

regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713 September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback conservation zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nautical miles (nm) (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on April 27, 1999, along the South Carolina coast documented 70 leatherback turtles over a total survey trackline of 327 nautical miles (nm) (606 km). The highest concentrations were noted in waters off the southern half of the state along two, parallel 46 nm (85.2 km) tracklines beginning at approximately 32°07' N. lat., 080°41' W. long. (offshore Hilton Head Island, SC) and ending at approximately 32°35' N. lat., 079°59' W. long. (offshore Kiawah Island, SC), where 35 leatherbacks were sighted along the trackline parallel to the coast at approximately 1.5 nm (2.8 km), and 17 leatherbacks were sighted along the trackline paralleling the coast at approximately 3.0 nm (5.6 km). A survey along the same tracklines on May 3, 1999, documented 1 leatherback on the 1.5 nm (2.8 km) and 11 leatherbacks on the 3.0 nm (5.6 km) from shore tracklines. The May 3 survey also observed 55 trawlers operating along the South Carolina coast. Of those 55 trawlers, 52 were located south of Cape Romain, within shrimp fishery statistical zone 32. Thirty-four trawlers were sighted between Hilton Head and Kiawah Islands, along the portion of trackline with the highest concentrations of leatherback. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), has determined that all inshore waters and

offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the Leatherback conservation zone are closed to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570-5312 for updated area closure information.

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore,