this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), or require prior consultation with State officials as also specified in Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'' (58 FR 58093, October 28, 1993). Nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), or additional OMB review in accordance with Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997).

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 20, 1998.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR part 721 is amended as follows:

## PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.9518 to subpart E to read as follows:

### § 721.9518 Sinorhizobium meliloti strain RMBPC-2.

(a) *Microorganism and significant new uses subject to reporting.* (1) The microorganism identified as *Sinorhizobium meliloti* strain RMBPC-2 (PMN P–92–403) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Commercial activities before submitting a TSCA section 5(a) notice.* For any manufacturer or importer who has not previously submitted a premanufacture notice or significant new use notice for this microorganism, the significant new use is any use.

(ii) *Commercial activities after submitting a TSCA section 5(a) notice.* For any manufacturer or importer who has previously submitted a premanufacture notice or a significant new use notice for this microorganism, the significant new use is manufacture, import, or processing greater than a maximum production volume of 500,000 lbs in any consecutive 12-month period.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture or import this substance for commercial purposes must have submitted a premanufacture notice or submit a significant new use notice.

(2) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers and importers of this substance.

(3) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–14439 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 441 and 489

**[HCFA–1152–1–F]**

**RIN 0938–AI86**

## Medicare and Medicaid Programs; Surety Bond Requirements for Home Health Agencies

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises several provisions of an earlier final rule concerning surety bond requirements published in the **Federal Register** on January 5, 1998 (63 FR 292). This rule also establishes the surety bond submission compliance date, as described in a notice of intent and in a final rule concerning surety bond requirements published in the **Federal Register** on March 4, 1998 (63 FR 10730 and 10732). The March 4 documents advised the public that we intended to

make technical revisions to the January 5, 1998 final rule and extend the February 27, 1998 compliance date for all home health agencies (HHAs) to furnish a surety bond to HCFA and/or the State Medicaid agency, or both, until 60 days after the date of publication of this final rule. In this rule, for Medicare-participating HHAs, we are establishing a new compliance date to submit a surety bond that is 60 days after the date of publication of this final rule. For Medicaid-participating HHAs, we are establishing a new compliance date to furnish a surety bond that is a date established by the State Medicaid agency up to 120 days after the date of publication of this final rule. We are also responding to comments we received in response to the January 5, 1998 final rule that pertain to the technical revisions we discussed in our March 4, 1998 notice. It is our intention to respond to all comments not addressed herein in a future **Federal Register** document. This final rule revision does not change the beginning date of the term the initial surety bond is to cover, that is, January 1, 1998.

**EFFECTIVE DATE:** This final rule is effective on July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ralph Goldberg, (410) 786–4870 (Medicare Provisions). Mary Linda Morgan, (410) 786–2011 (Medicaid Provisions).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Balanced Budget Act of 1997 (BBA '97) requires each home health agency (HHA) to secure a surety bond in an amount of at least $50,000 in order to participate in either the Medicare or the Medicaid programs. This requirement applies to all participating HHAs and those that seek to participate in the Medicare and Medicaid programs. On January 5, 1998, we published in the **Federal Register** a final rule with comment period (63 FR 292) to implement the surety bond requirements of BBA '97. The comment period for that final rule ended on March 6, 1998.

Generally, the rule requires each HHA participating in Medicare to obtain from an authorized Surety and then to furnish to HCFA a surety bond in an amount that is the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicare program, as such annual amount appears in the HHA's most recently accepted cost report.

The rule also prohibits payment to a State for home health services furnished to Medicaid recipients unless the HHA has furnished the Medicaid State agency with a surety bond similar to one that meets Medicare requirements. The amount of the Medicaid surety bond would be the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicaid State agency for home health services.

## II. Provisions of the March 4 Notice and Final Rule

As a result of technical issues concerning potential Surety liability raised by representatives of both the Surety and HHA industries after the publication of the January 5, 1998 final rule, we published a notice in the **Federal Register** on March 4, 1998 (63 FR 10732). That notice advised the public that we intended to make technical revisions to the January 5, 1998 final rule and would extend the compliance date for submitting bonds. In a final rule also published in the March 4, 1998 **Federal Register** (63 FR 10730), we removed the February 27, 1998 compliance date, and announced that we intended to establish the compliance date as 60 days after the date of publication of a subsequent (i.e., this) final rule.

Described below are our responses to the comments we received concerning our technical changes, a discussion of their intended effect, and the changes that we are making in this rulemaking. In general, these changes address concerns regarding the uncertainty of the scope of a Surety's liability under the January 5, 1998 regulation, which appears to have resulted in less than a fully robust market for underwriting bonds for HHAs in Medicare and Medicaid.

## III. Discussion of Public Comments

In response to the January 5, 1998 final rule, we received 344 timely items of correspondence. A summary of the comments that pertain to those issues discussed in our March 4, 1998 notice and our responses are set forth below. We will respond to the remaining comments on the January 5, 1998 final rule in a subsequent **Federal Register** document. The following sections generally follow the order the topics were discussed in the January 5, 1998 final rule.

### *Continuous Bond*

*Comment:* Several Surety associations suggested that we consider using a continuous bond that, when necessary, would be updated by the Surety. The continuous bond would be an alternative option to the annual bond.

*Response:* We understand that the use of a continuous bond is common practice in the surety industry. A continuous bond is one that remains in full force and effect unless it is canceled or terminated. The use of a continuous bond would significantly reduce the paperwork burden and administrative processes for the HHAs, Sureties, and the Medicare and Medicaid programs. Therefore, in 42 CFR 441.16(i)(2) and 489.67(b), we are providing that the HHA—at its option—may submit an annual bond each year or may submit a continuous bond that remains in effect from year to year. A continuous bond would be updated by the Surety at the start of a new year if the amount of the required bond increases or decreases. The updating of a continuous bond would be accomplished by the Surety issuing a ''rider,'' which is a notice issued by a Surety that a change in the bond has occurred or will occur. A continuous bond should not be misinterpreted as providing cumulative liability. For example, this does not mean that an initial bond in the amount of $50,000 would increase to $100,000 in the second year, $150,000 in the third year, etc. This change affects several regulation sections and is more fully discussed in section IV. of this preamble.

### *Government Security*

*Comment:* One commenter suggested that we consider allowing HHAs to furnish a Government security in lieu of furnishing a surety bond, in that the Department of Treasury regulations authorize such substitution.

*Response:* We are exploring the desirability of this option as well as the various means by which this option may be implemented. We will issue the result of our decision in a subsequent document.

### *Surety Liability*

*Comment:* Several commenters had concerns regarding the uncertainty of the scope of a Surety's liability under the current regulation. The commenters were specifically concerned that our ability to reach back several years to recover payments leaves the door open for almost unlimited Surety liability.

*Response:* The uncertain scope of potential liability for Sureties has made it difficult for some apparently reputable and well-run HHAs to obtain an affordable surety bond. We are addressing this concern by limiting the Surety's liability on the bond to the term during which we determine that funds owed have become unpaid, regardless of when the overpayment or other events causing such funds to be owed took place. In the Medicare program, the Surety is liable if the claim, civil money

penalty, or assessment becomes unpaid, as defined in § 489.60, and we make a written demand for payment from the Surety during the term of the bond. If the HHA fails to furnish a bond that meets our requirements for the year following expiration of the term of the bond, or if the HHA's provider agreement terminates prior to the end of the fiscal year, the last bond in effect has an additional 2-year discovery period for unpaid claims, civil money penalties, and assessments that we impose on or assert against the HHA.

Likewise, in the Medicaid program, the Surety is liable for uncollected overpayments, as defined by paragraph (a), provided such uncollected overpayments are determined during the term of the bond and regardless of when the overpayments took place. In addition, the Surety remains liable if the HHA fails to furnish a subsequent annual bond that meets the requirements of this subpart or fails to furnish a rider for a year for which a rider is required to be submitted, or if the HHA's provider agreement terminates and that the Surety's liability will be based on the last bond or rider in effect for the HHA. The Surety's period of liability will remain in effect for an additional 2 year period.

*Appeals*

*Comment:* Several commenters recommended that the Surety be given appeal rights.

*Response:* To address this concern, we are making another technical revision to the regulation. In the Medicare program, we are giving Surety bond companies the right to appeal overpayments, civil money penalties, and assessments. This change grants the Surety standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA and provided the HHA is not, itself, actively pursuing its appeal rights, and provided further that, with respect to unpaid claims, the Surety has paid HCFA all amounts owed to HCFA by the HHA on such unpaid claims, up to the amount of the bond. In order to ensure that Sureties are furnished with proper notice of matters on which an appeal right may ripen, we are further specifying that surety bonds must include the Surety's full name and address to which we can send a written notice of an overpayment, civil money penalty, or assessment. In the Medicaid program, we are directing the State Medicaid agencies to grant Sureties appeal rights. This change affects several regulation sections and is more fully discussed in section IV. of this preamble.

*Surety Reimbursement*

*Comment:* A commenter recommended that we provide for reimbursing the Surety when HCFA collects from both the HHA and the Surety on the same overpayment, civil money penalty, or assessment.

*Response:* We have provided for reimbursement to the Surety in cases where both the HHA and Surety have repaid the Medicare or Medicaid program on the same overpayment, civil money penalty, or assessment. We are adding a new subsection (m) to § 441.16 and a new § 489.73 to effectuate this change.

*HCFA Payment Demand*

*Comments:* Several commenters wanted to know the circumstances under which we will demand payment from a Surety.

*Response:* We will first seek collection from the HHA, employing available administrative collection methods, e.g., offset of interim payments, repayment schedule, etc., prior to seeking payment from the Surety under the terms of the bond.

*Computation of the 15 Percent of Annual Payments*

*Comment:* Commenters questioned the application of the 15 percent standard to the annual payments paid to the HHA by the Medicare program as reflected on the most recently accepted cost report, in determining the bond amount.

*Response:* Approximately half of the current Medicare overpayments are attributable to HHAs. In comparing overpayments to revenues paid to the HHAs for four previous years, we also found that uncollected overpayments have been rising significantly both in absolute dollar amounts and as a percentage of the original amount of overpayment.

In developing our regulation, we reviewed the Office of Inspector General's (OIG) July 1997 report *Home Health: Problem Providers and Their Impact on Medicare* (page 18), in which the OIG recommended that each HHA be required to obtain a surety bond equal to the amount of anticipated Medicare billings during the fiscal year. We also consulted with industry representatives.

We believe that a bond amount of 15 percent of payments will adequately cover the overpayment amounts, if any, for which the vast majority of HHAs would be responsible and yet would not be so high that it would prevent reputable and well-run HHAs from obtaining bonds at a reasonable cost. The 15 percent standard was also adopted in conjunction with other provisions of this rule that afford us more protection by permitting us to apply the standard to more recent payment history and by permitting us to substitute the amount of prior overpayments as the bond amount when the overpayment amount exceeds 15 percent of payments. Thus, we believe that the rules established in § 489.65 for calculating the bond amount are a reasonable starting point for implementing the bond provision. However, we will continue to monitor payments to HHAs and will modify our policy for future years if conditions warrant. Any revisions would be proposed in a **Federal Register** document. Also, we are including a provision that will sunset the 15 percent bond amount provision on June 1, 2005. Prior to that time, we will analyze available data on the impact of the surety bond requirement and the prospective payment system for HHAs to determine if the 15 percent computation is appropriate. We will publish a **Federal Register** document addressing the 15 percent amount prior to the sunset date. However, we may act sooner if we believe circumstances warrant.

## IV. Provisions of the Final Rule

In this final rule, we are revising certain sections of the January 5, 1998 final rule as a result of public comments on that rule that pertain to the issues discussed in our March 4, 1998 notice. These changes are as follows:

*A. Surety Bond Requirements Under Medicare*

In § 489.60 (''Definitions.''), we are revising the definition of ''Unpaid civil money penalty or assessment'' to add the Surety as a potential party to the administrative appeals process. We are also adding a new definition for the term ''Rider'' in this section.

In § 489.62 (''Requirement waived for Government-operated HHAs.''), we are making an editorial change by removing the word ''section'' and replacing it with the word ''subpart''.

In § 489.65(g) (''Expiration of the 15 percent provision.''), we provide that for an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this subpart to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as HCFA specifies in

accordance with paragraph (f) of this section, whichever amount is greater.

In § 489.66(b) (''Additional requirements of the surety bond.''), we specify that a Surety's liability is based on unpaid claims, unpaid civil money penalties, and unpaid assessments that are determined to have become unpaid during the term of the bond, regardless of when the payment, overpayment, or other event giving rise to the unpaid claim, civil money penalty, or assessment occurred. Also, we specify that if an HHA fails to furnish us with a subsequent annual bond that meets the requirements of this subpart, or fails to furnish us with a rider for a year for which a rider is required to be submitted, or if the HHA's provider agreement terminates prior to the end of the fiscal year, then the last bond or rider in effect for such HHA remains in effect and the Surety remains liable for an additional 2-year period.

We revise § 489.66(c) to correct a drafting error to clarify that the Surety's liability may be extinguished if the Surety furnishes us with a notice of an HHA's action to terminate or limit the scope of the bond not later than 10 days after receiving notice from the HHA of such action by the HHA, or not later than 60 days before the effective date of such action by the Surety or if the HHA has submitted to HCFA a new bond that meets our requirements.

In new § 489.66(e), we are making a technical change to specify that surety bonds must include the Surety's full name and address to which we can send a written notice of an overpayment, civil money penalty, or assessment.

In § 489.67(a) (''Submission date and term of the bond.''), we have amended this provision to specify that the initial bond must be submitted to HCFA by 60 days from the date of publication of this rule, for the term beginning January 1, 1998. An HHA that submitted an initial surety bond under the provisions of the January 5, 1998 final rule is not required to, but may, submit a substitute surety bond that conforms to the technical revisions established by this final rule. If an annual bond is submitted for the initial term, it must be effective through the ending date of the HHA's current fiscal year. For subsequent terms, an HHA must submit to us either an annual surety bond or where the HHA has submitted a continuous bond, a rider (showing the period for which the rider is effective), not later than 30 days before the beginning of the HHA's fiscal year. When an HHA has furnished a continuous bond, no action is necessary by the HHA to submit a rider as long as the continuous bond remains in full force and effect and there is no change in the bond amount.

In § 489.67(b), we specify the type of bond that an HHA must secure as either an annual or continuous bond.

In § 489.71 (''Surety's standing to appeal Medicare determinations.''), we specify that a Surety has standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA and provided the HHA, itself, is not pursuing its appeal rights, and provided further that, with respect to unpaid claims, the Surety has paid HCFA all amounts owed to HCFA by the HHA on such unpaid claims, up to the amount of the bond.

In new § 489.73 (''Effect of conditions of payment''), we specify that if the Surety has paid an amount on the basis of liability incurred under a bond obtained by an HHA, and we subsequently collect from the HHA on the same indebtedness that gave rise to the Surety's liability, we will reimburse the Surety the amount we collected from the HHA up to the amount paid to us by the Surety, provided the Surety has no other liability to us under the bond.

*B. Surety Bond Requirements Under Medicaid*

In keeping with our intent and practice of affording States flexibility in implementing these surety bond provisions, and in recognition that the States' administration of Medicaid may differ significantly from the Medicare model, we have not changed the Medicaid requirements in § 441.16 to conform to all of Medicare's changes in part 489, subpart F. We believe that allowing States the discretion to decide, for example, the means and mechanism by which the Surety is notified of any overpayment that is asserted against the HHA is the best way to retain State flexibility. Nevertheless, the Medicaid changes in part 441 that are discussed below were made generally in order to conform with changes being made to Medicare in part 489, subpart F.

In § 441.16(g)(7) (''Expiration of the 15 percent provision''), we provide that for an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this section to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as the Medicaid agency specifies in accordance with subparagraph (6) of this paragraph, whichever amount is greater.

In § 441.16(h)(2) (''Additional requirements of the surety bond''), we state that the bond must provide that the Surety is liable for uncollected overpayments as defined in paragraph (a), provided such uncollected overpayments are determined during the term of the bond and regardless of when the overpayments took place.

In addition, we state that if an HHA fails to furnish the Medicaid State agency with a subsequent annual bond that meets the requirements of this subpart, or fails to furnish a rider for a year for which a rider is required to be submitted, or if the HHA's agreement with the State Medicaid agency terminates, then the last bond or rider in effect for such HHA remains in effect for an additional 2-year period.

In § 441.16(h)(3)(i), we state that the Surety's potential liability under a bond may be extinguished if the Surety furnishes the Medicaid agency with notice of an HHA's action to terminate or limit the scope of the bond not later than 10 days after receiving notice from the HHA of such action by the HHA or not later than 60 days before the effective date of such action by the Surety, or if the HHA has submitted a new bond to the Medicaid agency and the bond meets all Federal and State requirements.

In § 441.16(i)(1) (''Submission date, term, and type of the bond''), we have amended this provision to specify that the initial bond must be submitted by a date specified by the State Medicaid agency up to 120 days following the publication of this rule. (The term of the initial bond is for a term beginning January 1, 1998.) In the preamble to the March 4, 1998 rule, we stated our intention to establish a new surety bond compliance date that would be 60 days after the date of publication of this rule. However, upon further consideration and analysis, we concluded that 60 days may not be sufficient time for all States to furnish appropriate notice to Medicaid-participating HHAs. Therefore, we are providing for each State to establish a compliance date for the submission of a surety bond up to 120 days from the date of publication of this rule.

We have also amended this provision to specify that an HHA must submit a ''rider'' to the Medicaid agency for subsequent terms in the event the HHA has previously submitted a continuous bond and the required amount of the bond changes.

In § 441.16(i)(2), we specify that the bond submitted by an HHA must be either an annual bond (that is, a bond that specifies an effective annual period corresponding to an annual period

specified by the Medicaid agency) or a continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) and which must be updated by the Surety, for a particular annual period via the issuance of a ''rider,'' when the bond amount changes. We have defined a ''rider'' to mean a notice issued by a Surety that a change in a bond has occurred or will occur. In addition, we state that if the HHA has submitted a continuous bond and there is no increase or decrease in the bond amount, no action is necessary by the HHA to submit a rider as long as the continuous bond remains in full force and effect.

In § 441.16(l) (''Surety's standing to appeal Medicaid determinations''), we specify that the Medicaid agency must establish procedures for granting appeal rights to Sureties.

In new § 441.16(m) (''Effect of conditions of payment''), we require that in the event a Surety has paid the Medicaid agency an amount on the basis of liability incurred under a bond obtained by an HHA under this section, and the Medicaid agency subsequently collects an amount on the overpayment from the HHA, which overpayment gave rise to the Surety's liability, the Medicaid agency must reimburse the Surety the amount the agency collected from the HHA up to the amount paid to the agency by the Surety, provided the Surety has no other liability under the bond.

## V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and suppliers as small entities. Individuals and States are not included in the definition of a small entity.

Also, 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. That 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 50 beds.

Publication of this rule generally limits the Surety's liability on the bond to the term when it is determined that funds owed to Medicare and Medicaid have become ''unpaid,'' regardless of when the payment, overpayment, or other action causing such funds to be owed took place; establishes that a Surety remains liable on a bond for an additional 2 years after the date an HHA leaves the Medicare or Medicaid program; gives a Surety the right to appeal, under Medicare, any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA and provided the HHA, itself, is not pursuing its appeal rights and provided the Surety has paid HCFA on amounts relating to unpaid claims; directs State Medicaid agencies to grant appeal rights to Sureties; and establishes the use of a continuous or annual bond.

While we cannot predict the effect these revisions will have on the number of HHAs having an agreement with us and with the Medicaid agencies, we believe these revisions will remove the uncertainty of the scope of a Surety's liability. The removal of this underwriting uncertainty, coupled with the fact that Sureties are provided with their own appeal rights, should result in a more robust surety bond market, thereby giving HHAs an increased opportunity to obtain a bond.

Although we are unable to estimate either savings or costs to the Medicare Trust Funds, the savings that may result from this regulation would be, principally, from recovery of overpayments that Medicare and Medicaid may collect from the Sureties and from the prevention of overpayments that would have been generated by HHAs that are unable to obtain surety bonds. In the final rule published on January 5, 1998, we estimated Medicare savings at $10 million beginning in 2000 and $20 million each year thereafter. These estimates were based on the assumption that HHAs will not repeat their past aberrant billing activities and that we will experience a reduction in unrecovered program overpayments as a result of either having debts guaranteed by a Surety company, or by high risk businesses being unable to obtain surety bonds and, thus, leaving the Medicare and/or Medicaid program. While the changes made by this rule may make it possible for some of the HHAs that were not able to obtain a surety bond that met the requirements of the January 5, 1998 rule to now obtain a bond, we do not believe that those HHAs will be the high-risk business whose departure from the program was a factor in making our savings estimates.

For these reasons, we have determined, and we certify, that this regulation does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

## VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on the proposed rule. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued.

In this final rule, we are addressing matters on which we received public comments to our January 5, 1998 final rule with comment, as well as on matters on which we received interim comments from both the Surety and HHA industries that concern the technical issues discussed in our March 5, 1998 notice.

We find good cause to waive notice-and-comment procedures for this final rule because it is impracticable to employ notice-and-comment procedures with respect to both the Medicare and Medicaid regulations and establish new, timely compliance dates for submission of surety bonds. Because a fully viable market for HHA surety bonds apparently failed to develop following the publication on January 5, 1998 of a final rule establishing surety bond requirements for HHAs, on March 4, 1998 we published a final rule to remove from the January 5th rule the date by which HHAs were required to submit surety bonds. This measure was taken in order to consider technical revisions to the rule that might be necessary in order to facilitate the development of a fully viable surety bond market for reputable and well-run HHAs. This rule includes those revisions and establishes new submission compliance dates for both

the Medicare and Medicaid bonds. We believe that the new submission compliance dates should not be so remote in time from the effective date of the initial bonds, i.e., January 1, 1998, so as, possibly, to create another market disincentive for surety bond companies and possible access problems for program beneficiaries. However, employing notice and comment procedures would substantially delay establishing new, timely submission compliance dates. Accordingly, we find it impracticable both to employ notice and comment procedures and to establish new submission compliance dates that are not temporally remote from the effective date of the term of the initial bonds.

We also find good cause to waive notice-and-comment procedures because employing such procedures for this rule would be contrary to the public interest. For the reasons just discussed, this final rule must be published as soon as possible so as to ensure a fully viable surety bond market for reputable and well-run HHAs and to establish new bond submission compliance dates. Employing notice-and-comment procedures would, as a practical matter, substantially delay the implementation of the surety bond requirement and such substantial delay would be contrary to the public interest.

For these reasons, we find good cause to waive notice-and-comment procedures and to issue this final rule.

## VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In compliance with section 3506(c)(2)(A) of the PRA, we are submitting to the OMB the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320, to ensure compliance with section 4312(b) and 4724(b) of BBA '97, which requires Medicare and Medicaid-participating HHAs to secure a surety bond, effective as of January 1, 1998, in order to continue participation in the Medicare and Medicaid programs. We cannot reasonably comply with normal clearance procedures because public harm is likely to result if the agency cannot enforce the surety bond requirements of the BBA '97 in order to protect the Federal government (especially the Medicare Trust Funds) from losses due to uncollectible debts incurred by HHAs.

Written comments and recommendations will be accepted from the public if received by the individuals designated below within 10 workings days from the date of this publication. HCFA is requesting OMB review and approval of this collection within 11 working days of this publication, with a 180-day approval period. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

The information collection requirements contained in the rule published in the **Federal Register** on January 5, 1998 have been approved by OMB under approval number 0938–0713, with an expiration date of May 31, 1998. Under the terms of OMB approval, HCFA is required to submit this revised final rule for emergency PRA clearance. As such, we are requesting an emergency review of the information collections contained in this final rule and re-approval of the information collection requirements currently approved under OMB approval number 0938–0713.

*Type of Information Request:* Revision of a currently approved collection.

*Title of Information Collection:* Surety Bond Requirements for Home Health Agencies (HHA) and Supporting Regulations in 42 CFR §§ 441.16, 489.66, and 489.67.

*Form Number:* HCFA–R–213.

*OMB Approval Number:* 0938–0713.

*Use:* In summary, these information collection requirements ensure that HHAs furnish the required surety bond and continue to demonstrate that they meet the applicable requirements set forth in 42 CFR Parts 441 and 489, in order to continue participation in the Medicare and Medicaid programs.

*Frequency:* Other; As needed.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Number of Respondents:* 8,062.

*Total Annual Responses:* 7,001.

*Total Annual Hours Requested:* 18,071.

In addition to HCFA's continued solicitation of comments on the currently approved information collection requirements we are particularly interested in obtaining comment on each of the modifications to the currently approved information collections requirements, as referenced in this regulation and summarized below.

*Section 441.16(h)(3)(i)* requires that if a Surety wants to avoid future liability with respect to a particular bond, the Surety must furnish the Medicaid agency with notice of any action by the HHA or the Surety to terminate or limit the scope or term of the bond and that such notice must be furnished not later than 10 days after the date of notice of such action by the HHA, or not later than 60 days before the effective date of the action by the Surety.

The burden associated with this requirement is the time required for a Surety to provide a State Medicaid agency with a notice of an action by the HHA or the Surety to terminate or limit the scope or term of the bond. HCFA met with surety bond industry representatives to discuss the time and effort associated with furnishing a notice to terminate or limit the scope or term of a bond. It is estimated that less than 1 percent (80 entities) of all 8,062 participating HHAs will terminate or limit the scope or term of a bond. It is also estimated that it will take a surety company 3 hours to generate and furnish a notice of such action for a total burden of 240 hours.

*Section 441.16(i)(1)(ii)* requires that, for subsequent terms of a bond, by a date as the Medicaid agency specifies, the HHA must submit to the Medicaid agency a surety bond or, if the HHA has furnished a continuous bond and the required amount of the bond has changed, a rider, that is effective for an annual period specified by the Medicaid agency.

Previously, all HHAs were required to submit, on an annual basis, a copy of an annual surety bond. However, HHAs now have the option to submit a continuous surety bond. If an HHA submits a continuous surety bond it must thereafter submit a rider to the

Medicaid agency when the amount of the continuous surety bond changes.

Therefore, the burden associated with this modified requirement is the time required to submit either an annual bond or, if necessary, a rider with a continuous bond. Since we anticipate that virtually all HHAs will obtain a continuous surety bond, but only approximately 1,100 HHAs will require a bond in a different amount each year, we estimate it will take 1 hour each for 1,100 HHAs to submit a rider on an annual basis.

*Section 489.66 (c)(1)* provides that the Surety's liability on the bond is not extinguished unless, in the event the HHA or the Surety takes any action to terminate or limit the scope or term of the bond, the Surety furnishes us with notice of such action not later than 10 days after receiving notice of such action by the HHA, or not later than 60 days before the effective date of such action by the Surety.

The burden associated with this requirement is the time required for a Surety to provide Medicare with a notice of an action by the HHA or the Surety to terminate or limit the scope or term of the bond. It is estimated that less than 1 percent (80 entities) of all 8,062 participating HHAs will terminate or limit the scope or term of a bond. It is also estimated that it will take a surety company 3 hours to generate and furnish a notice of such action for a total burden of 240 hours.

Section 489.66(e) has been modified to explicitly require that the bond provide the Surety's name, street address or post office box number, city, state, and zip code to which the HCFA notice provided for in paragraph (a) of this section is to be sent. Since this requirement was inherent to the previous surety bond submission requirement, there is no additional burden associated with this requirement.

*Section 489.67(a)(2)* now requires that not later than 30 days before the beginning of the HHA's fiscal year, a surety bond or, if necessary, a rider, effective for a term concurrent with the HHAs fiscal year, be submitted to HCFA.

Previously, all HHAs were required to submit, on an annual basis, a copy of an annual surety bond. However, HHAs now have the option to submit a continuous surety bond. If an HHA submits a continuous surety bond, it must thereafter submit a rider to HCFA when the amount of the continuous surety bond changes.

Therefore, the burden associated with this modified requirement is the time required to submit either an annual bond or, if necessary, a rider reflecting a change to a continuous bond. Since, we anticipate that virtually all HHAs will obtain a continuous surety bond, but only approximately 1,100 HHAs will require a bond in a different amount each year, we estimate it will take 1 hour each for 1,100 HHAs to submit a rider on an annual basis.

We have submitted a copy of this final rule and the revised PRA submission to OMB for its review of the information collection requirements. These revised requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 10 working days of this publication:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850 ATTN: John Burke HCFA–1152–1–F Fax number: (410) 786–1415 and,

Office of Information and Regulatory Affairs, Office of Management and Budget Room 10235, New Executive Office Building Washington, D.C. 20503 Attn.: Allison Herron Eydt, HCFA Desk Officer Fax number: (202) 395–6974 or (202) 395–5167.

**List of Subjects**

*42 CFR Part 441*

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and record keeping requirements.

*42 CFR Part 489*

Health facilities, Medicare, Reporting and record keeping requirements.

42 CFR Chapter IV is amended as set forth below:

## PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

A. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.16 is amended by adding paragraph (g)(7), republishing the introductory text of paragraph (h), revising paragraph (h)(2), republishing the introductory text of paragraph (h)(3), revising paragraph (h)(3)(i), revising the title of paragraph (i), paragraphs (i)(1)(i) and (ii), redesignating paragraphs (i)(2) through (i)(5) as (i)(3) through (i)(6), respectively and adding a new paragraph (i)(2), revising paragraph (l), and adding a new paragraph (m), to read as follows:

### § 441.16 Home health agency requirements for surety bonds; Prohibition on FFP.

(g) *Amount of the bond.*

* * * * *

(7) *Expiration of the 15 percent provision.* For an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this section to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as the Medicaid agency specifies in accordance with paragraph (g)(6) of this section, whichever amount is greater.

(h) *Additional requirements of the surety bond.* The surety bond that an HHA obtains under this section must meet the following additional requirements:

* * * * *

(2) The bond must provide that the Surety is liable for uncollected overpayments, as defined in paragraph (a), provided such uncollected overpayments are determined during the term of the bond and regardless of when the overpayments took place. Further, the bond must provide that the Surety remains liable if the HHA fails to furnish a subsequent annual bond that meets the requirements of this subpart or fails to furnish a rider for a year for which a rider is required to be submitted, or if the HHA's provider agreement terminates and that the Surety's liability shall be based on the last bond or rider in effect for the HHA, which shall then remain in effect for an additional 2-year period.

(3) The bond must provide that, except as provided in paragraph (h)(3)(i)

of this section, the Surety's liability to the Medicaid agency is not extinguished by any of the following:

(i) Any action by the HHA or the Surety to terminate or limit the scope or term of the bond. The Surety's liability may be extinguished, however, when—

(A) The Surety furnishes the Medicaid agency with notice of such action not later than 10 days after receiving notice from the HHA of action by the HHA to terminate or limit the scope of the bond, or not later than 60 days before the effective date of such action by the Surety; or

(B) The HHA furnishes the Medicaid agency with a new bond that meets the requirements of both this section and the Medicaid agency.

* * * * *

(i) *Submission date, term, and type of bond.*

(1) Each participating HHA that is not exempted by paragraph (d) of this section must submit to the Medicaid agency a surety bond for a term as follows:

(i) *Initial submission date and term.* By a date specified by the State Medicaid agency up to September 29, 1998. The initial bond is for a term beginning January 1, 1998. If an annual bond is submitted for the initial term, it must be effective for an annual period specified by the State Medicaid agency.

(ii) *Subsequent submission date and term.* By a date the Medicaid agency specifies, effective for an annual period specified by the Medicaid agency a surety bond or rider as described in subparagraph (e).

(2) *Type of bond.* The type of bond required to be submitted by an HHA, under this section, may be either—

(i) An annual bond (that is, a bond that specifies an effective annual period that corresponds to an annual period specified by the Medicaid agency); or

(ii) A continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) that is updated by the Surety for a particular period, via the issuance of a ''rider,'' when the bond amount changes. For the purposes of this section, ''Rider'' means a notice issued by a Surety that a change to a bond has occurred or will occur. If the HHA has submitted a continuous bond and there is no increase or decrease in the bond amount, no action is necessary by the HHA to submit a rider as long as the continuous bond remains in full force and effect.

* * * * *

(l) *Surety's standing to appeal Medicaid determinations.* The Medicaid agency must establish procedures for granting appeal rights to Sureties.

(m) *Effect of conditions of payment.* If a Surety has paid the Medicaid agency an amount on the basis of liability incurred under a bond obtained by an HHA under this section, and the Medicaid agency subsequently collects from the HHA, in whole or in part, on such overpayment that was the basis for the Surety's liability, the Medicaid agency must reimburse the Surety such amount as the Medicaid agency collected from the HHA, up to the amount paid by the Surety to the Medicaid agency, provided the Surety has no other liability under the bond.

## PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

B. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In section 489.60, the definition of ''Unpaid civil money penalty or assessment, the words ''90 days after the HHA'' are removed, and the words ''after the HHA or Surety'' are added in their place. Section 489.60 is further amended by adding the definition of the term ''Rider'', in alphabetical order, to read as follows:

**§ 489.60 Definitions.**

*Rider* means a notice issued by a Surety that a change in the bond has occurred or will occur.

* * * * *

**§ 489.62 [Amended]**

3. In § 489.62 introductory text, the word ''section'' is removed, and the word ''subpart'' is added in its place.

4. In § 489.65, paragraph (g) is added to read as follows:

**§ 489.65 Amount of the bond.**

* * * * *

(g) *Expiration of the 15 percent provision.* For an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this subpart to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as HCFA specifies in accordance with paragraph (f) of this section, whichever amount is greater.

5. In § 489.66, paragraph (b) is revised, paragraph (c) introductory text is republished, paragraph (c)(1) is revised, and new paragraph (e) is added, to read as follows:

**§ 489.66 Additional requirements of the surety bond.**

* * * * *

(b) The bond must provide the following:

(1) The Surety is liable for unpaid claims, unpaid civil money penalties, and unpaid assessments that are discovered when the surety bond is in effect, regardless of when the payment, overpayment, or other event giving rise to the claim, civil money penalty, or assessment occurred, provided HCFA makes a written demand for payment from the Surety during, or within 90 days after, the term of the bond.

(2) If the HHA fails to furnish a bond meeting the requirements of this subpart F for the year following expiration of the term of an annual bond, or if the HHA fails to submit a rider when a rider is required to be submitted under this subpart, or if the HHA's provider agreement is terminated, the last bond or rider, as applicable, submitted by the HHA to HCFA, which bond or applicable rider meets the requirements of this subpart, remains effective and the Surety remains liable for unpaid claims, civil money penalties, and assessments that—

(i) HCFA determines or imposes on or asserts against the HHA based on overpayments or other events that took place during or prior to the term of the last bond or rider; and

(ii) Were determined or imposed during the 2 years following the date the HHA failed to submit a bond or required rider or the date the HHA's provider agreement is terminated, whichever is later.

(c) The bond must provide that, except as provided in paragraph (c)(1) of this section, the Surety's liability to HCFA under the bond is not extinguished by any action of the HHA, the Surety, or HCFA, including but not necessarily limited to any of the following actions:

(1) Action by the HHA or the Surety to terminate or limit the scope or term of the bond. The Surety's liability may be extinguished, however, when—

(i) The Surety furnishes HCFA with notice of such action not later than 10 days after receiving notice from the HHA of action by the HHA to terminate or limit the scope of the bond, or not later than 60 days before the effective date of such action by the Surety; or

(ii) The HHA furnishes HCFA with a new bond that meets the requirements of this subpart.

* * * * *

(e) The bond must provide the Surety's name, street address or post office box number, city, state, and

zipcode to which the HCFA notice provided for in paragraph (a) of this section is to be sent.

6. In § 489.67, paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively, paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

**§ 489.67 Submission date and term of the bond.**

(a) Each participating HHA that does not meet the criteria for waiver under § 489.62 must submit to HCFA, in such a form as HCFA may specify, a surety bond as follows:

(1) *Initial submission date and term:* By July 31, 1998. The term of the initial bond is for a term beginning January 1, 1998. If an annual bond is submitted for the initial term, it must be effective through the end of the HHA's current fiscal year.

(2) *Subsequent submission date and term.* Not later than 30 days before the beginning of the HHA's fiscal year, a surety bond, or, if necessary, a rider, effective for a term concurrent with the HHA's fiscal year.

(b) *Type of bond.* The type of bond required to be submitted by an HHA under this subpart may be either—

(1) An annual bond (that is, a bond that specifies an effective annual period corresponding to the HHA's fiscal year); or

(2) A continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) that is updated by the Surety, via the issuance of a rider, for a particular fiscal year for which the bond amount has changed or will change.

* * * * *

7. Section 489.71 is revised to read as follows:

**§ 489.71 Surety's standing to appeal Medicare determinations.**

A Surety has standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA, and provided the HHA is not, itself, actively pursuing its appeal rights under this chapter, and provided further that, with respect to unpaid claims, the Surety has paid HCFA all amounts owed to HCFA by the HHA on such unpaid claims, up to the amount of the bond.

8. Section 489.73 is redesignated as § 489.74 in subpart F, and a new § 489.73 is added to read as follows:

**§ 489.73 Effect of conditions of payment.**

If a Surety has paid an amount to HCFA on the basis of liability incurred under a bond obtained by an HHA under this subpart F, and HCFA subsequently collects from the HHA, in whole or in part, on such unpaid claim, civil money penalty, or assessment that was the basis for the Surety's liability, HCFA reimburses the Surety such amount as HCFA collected from the HHA, up to the amount paid by the Surety to HCFA, provided the Surety has no other liability to HCFA under the bond.

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

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.778, Medical Assistance Program)

Dated: April 8, 1998.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: May 8, 1998.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 98–14309 Filed 5–26–98; 4:58 pm]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 1, and 80

**[CI Docket No. 95–55, FCC 98–75]**

## Inspection of Radio Installations on Large Cargo and Small Passenger Ships

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a *Report and Order* (*R & O*) which requires that large cargo vessels and small passenger ships arrange for an inspection of such ships by an FCC-licensed technician. The Commission adopted this *R & O* to incorporate changes to the Communications Act related to the inspection of ships and to improve the Commission's ship inspection process. These rules should increase the availability of competent, private sector inspectors to conduct inspections of cargo vessels and small passenger vessels required to be inspected by the Commission without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** George R. Dillon of the Compliance and Information Bureau at (202) 418–1100.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, CI Docket No. 95–55, FCC 98–75, adopted April 20, 1998, and released, May 1, 1998. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th St. NW, Washington, DC 20036, telephone (202) 857–3800.

### Summary of Report and Order

The Commission proposed rules in a *Notice of Proposed Rule Making* (*Notice*), CI Docket 95–55, 61 FR 21151, May 9, 1996, that changed the way in which the Commission inspected large cargo vessels and small passenger ships. This *Report and Order* (*R&O*) incorporates changes to the Communications Act related to the inspection of ships, improves the Commission's ship inspection process, reduces administrative burdens on the public and the Commission, and provides continued Commission oversight to ensure that vessel safety is not adversely affected. Currently, the Commission inspects the radio installations of approximately 1,110 vessels each year subject to the Communications Act or the Safety Convention. The amended rules will replace the requirement that the Commission inspect such ships with a requirement that ship owners or operators arrange for an inspection by an FCC-licensed technician.

2. *Comments.* We received 19 comments and 2 reply comments in response to the *Notice.* Most commenters supported the Commission's efforts to streamline the inspections of ships and provide faster service to the public. Two commenters opposed the proposal citing concerns about safety as reason not to permit privatization. The Coast Guard supported the Commission's efforts to streamline government regulation and reduce the regulatory burden on the maritime industry. The United States Coast Guard (Coast Guard) states that it fully supports the Commission's efforts to streamline government regulation and reduce the regulatory burden on the maritime industry wherever these efforts are consistent with the maintenance of a high level of safety. The Coast Guard notes that it has