

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

18 CFR Part 284

[Docket No. RM96-1-008; Order No. 587-H]

Standards for Business Practices of
Interstate Natural Gas Pipelines

Issued: July 15, 1998.

AGENCY: Federal Energy Regulatory
Commission, DOE.ACTION: Final Rule and Order
Establishing Implementation Date.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is incorporating by reference the standards relating to intra-day nominations promulgated March 12, 1998 by the Gas Industry Standards Board (GISB). The Commission also is establishing the implementation date for intra-day nomination regulations adopted in Order No. 587-G published in the **Federal Register** April 23, 1998.

DATES: *Effective Date:* The rule is effective August 24, 1998.

Incorporation by Reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 24, 1998.

Implementation Date: Pipelines are to implement the intra-day nomination regulations adopted in this rule and in Order No. 587-G published at 63 FR 20072 by November 2, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208-2294; Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-1283; Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-0507.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this

document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Final Rule Adopting Standards for Intra-Day Nominations and Order Establishing Implementation Date

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations to incorporate by reference the most recent standards dealing with intra-day nominations and nomination and scheduling procedures promulgated by the Gas Industry Standards Board (GISB) on March 12, 1998. The Commission adopted regulations regarding intra-day

nominations in Order No. 587-G¹ (§ 284.10(c)(1)(i)), but deferred implementation of these regulations until GISB had considered, and the Commission had adopted, implementing standards. This rule adopts the necessary implementation standards, and, therefore, Commission is establishing November 2, 1998 as the date for pipeline implementation of the requirements of this rule and the requirements of § 284.10(c)(1)(i).

1. Background

In Order Nos. 587, 587-B, and 587-C² the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

In Order No. 587, the Commission adopted a standard requiring pipelines to permit shippers to make at least one intra-day nomination per day.³ An intra-day nomination is a nomination submitted after the initial nomination deadline at 11:30 a.m. to change a shipper's scheduled quantities for the next gas day.⁴

In Order No. 587-C, the Commission did not adopt additional standards approved by GISB concerning intra-day nominations, because the standards did not clearly outline the pipelines' obligations. The Commission further noted that pipelines had implemented GISB's previous intra-day standards in divergent ways, for instance, by establishing different times for submission of intra-day nominations. These differences prevented shippers from coordinating their intra-day nominations across the pipeline grid. The Commission gave GISB and the industry until September 1, 1997, to propose additional standards that would create the needed uniformity in intra-day procedures.

¹ Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587-G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

² Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587-B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587-C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

³ 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.10.

⁴ 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.4.

On September 2, 1997, GISB filed a report detailing its progress in reaching consensus on the intra-day standards. While GISB reported making significant progress in developing the standards, it highlighted conflicts between its members that were inhibiting completion of the standards. The disagreements concerned the circumstances under which intra-day nominations by shippers holding firm capacity should be given scheduling priority over previously scheduled interruptible service.

In Order No. 587-G, the Commission resolved these conflicts. It issued a regulation requiring pipelines to accord an intra-day nomination submitted by a firm shipper scheduling priority over nominated and scheduled volumes for interruptible shippers.⁵ The Commission, however, deferred implementation of this requirement until GISB had developed, and the

Commission had adopted, standards to implement the regulation.

On April 16, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR),⁶ proposing to adopt standards governing intra-day nominations adopted by a consensus of the GISB membership on March 12, 1998.⁷ The proposed date for implementing these standards was September 1, 1998.

The standards establish three synchronization times for shippers to coordinate their intra-day nominations: 6 p.m. to take effect the next gas day; and 10 a.m. and 5 p.m. to take effect on

the same gas day. Under the standards, the 10 a.m. intra-day nomination would become effective, if confirmed, at 5 p.m. the same day, with any bumping notice to interruptible shippers given by 2 p.m. The 5 p.m. intra-day nomination would become effective, if confirmed, at 9 p.m. the same day. No bumping is allowed at the 5 p.m. nomination. The 6 p.m. intra-day nomination would become effective, if confirmed, at 9 a.m. the next morning if all parties can be scheduled and bumping notice for the 6 p.m. intra-day nomination would be given by 10 p.m. GISB, however, did not establish the time at which a bumping intra-day nomination would become effective, leaving that determination for the Commission. The following chart illustrates the nomination timeline (with a blank for the effective time of a bumping 6 p.m. nomination).⁸

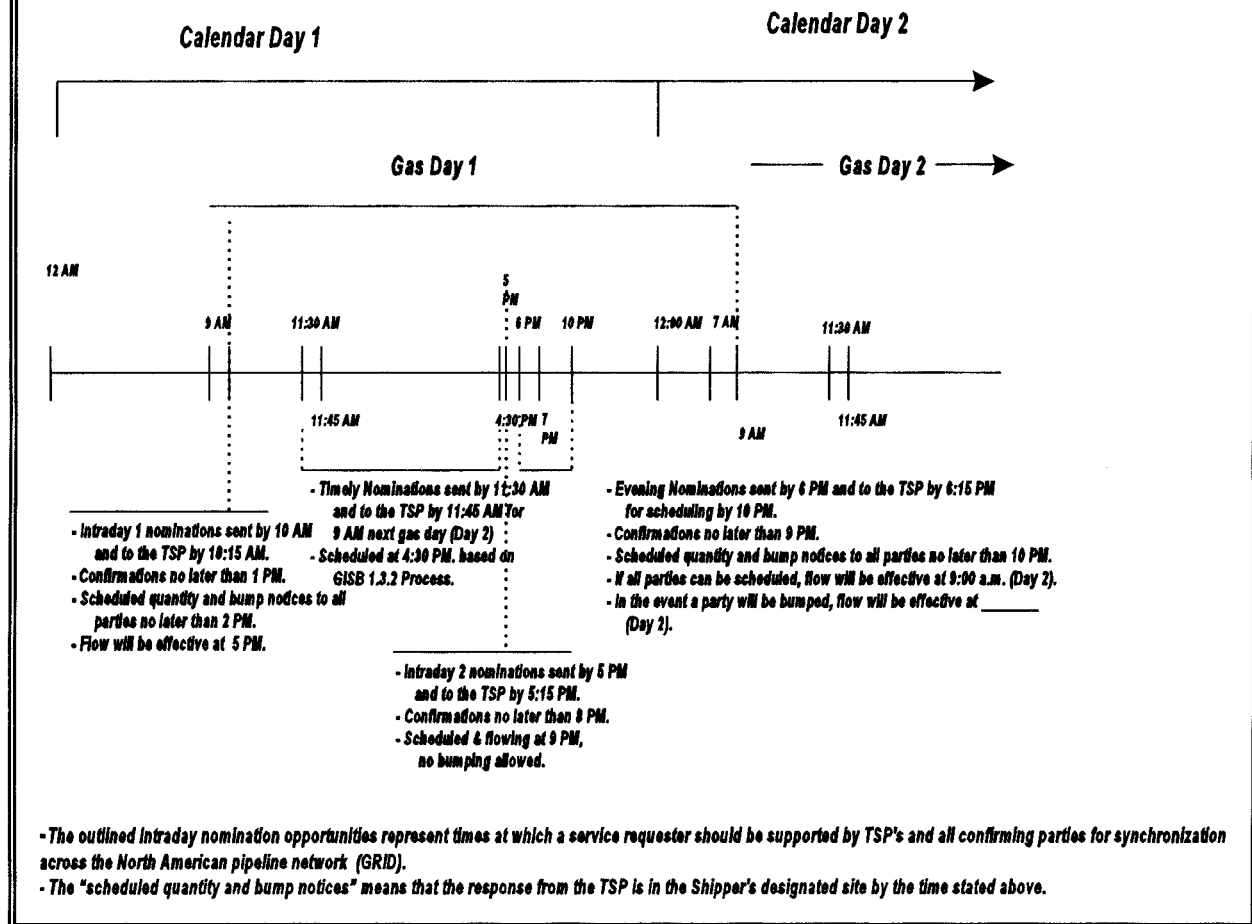
⁶Standards for Business Practices of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 63 FR 19861 (Apr. 22, 1998), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,529 (Apr. 16, 1998).

⁷The new standards are 1.1.17 through 1.1.19, 1.2.8 through 1.2.12, 1.3.39 through 1.3.44. In addition, modifications were made to existing standards. Standards 1.2.7, 1.3.10, and 1.3.12 were deleted. Standards 1.3.2, 1.3.20, 1.3.22, and 1.3.32 were revised.

⁸The term "TSP" in the chart stands for transportation service provider.

⁵Rehearing of Order No. 587-G is pending.

Timely Nomination/Intraday Nomination Model (All Times Central Clock Time)



The standards also establish protocols for pipeline processing of nominations and confirmations for both regular and intra-day nominations.

As discussed above, the standards do not establish the time at which a firm intra-day nomination submitted on the day prior to gas flow (6 p.m.), which bumps interruptible service, would take effect. The standards leave that time to be determined by the Commission. The Commission already has resolved this issue in Order No. 587-G, adopting a regulation requiring that an intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day, 9 a.m. central clock time (CCT).⁹

⁹ 18 CFR 284.10(c)(1)(i)(B). Central clock time adjusts for daylight savings time.

Comments on the NOPR were filed by American Gas Association (AGA), Enron Interstate Pipelines (Enron), Natural Gas Clearinghouse (NGC), Natural Gas Supply Association (NGSA), ProLiance Energy, LLC (ProLiance), TransCapacity Limited Partnership (TransCapacity), and Williston Basin Interstate Pipeline Company (Williston Basin).

2. Discussion

The Commission is incorporating the GIBS intra-day nomination standards into its regulations. As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the

industry.¹⁰ Moreover, since the industry itself has to conduct business under these standards, the standards should reflect those business practices that have the widest possible support. Section 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995 requires federal agencies to, whenever possible, use technical standards developed by voluntary consensus standards

¹⁰ Order No. 587, 61 FR at 39057, GIBS's III FERC Stats. & Regs. Regulations Preambles at 30,059-60. GIBS's consensus process requires a super-majority vote of 17 out of 25 members with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GIBS's general membership must ratify the standards.

organizations, like GISB, to carry out policy objectives or activities.¹¹

Adoption of these standards will further the Commission's policy of adopting regulations that create a more integrated and efficient interstate pipeline grid. The adoption of these standards will expand from one to three the number of intra-day opportunities to which shippers are entitled and will, therefore, provide them with greater opportunities to change their nominated quantities to better accord with changes in weather or other market circumstances. By creating times at which shippers can synchronize their intra-day nominations across pipelines, these standards, together with the Commission's regulations adopted in Order No. 587-G, will create the uniform process shippers need to coordinate their intra-day nominations across the pipeline grid. The standards governing nomination and confirmation procedures, further, should help create a more reliable nomination process in which pipelines will receive accurate information, so they can schedule nominations and intra-day nominations that their systems can accommodate.

The commenters all support adoption of the GISB standards, although some suggest modifications or clarifications. Enron requests that the Commission extend the implementation date from September 1, 1998, until November 1, 1998, to give those pipelines which currently do not permit firm intra-day nominations to bump interruptible nominations sufficient time to reprogram their computers to accommodate bumping. To permit pipelines to implement these standards with a minimum of errors, the Commission will defer the implementation date until November 2, 1998. This extension still will provide shippers with the additional intra-day flexibility accorded by the standards in time for the winter heating season.

NGC and NGSA request clarification of revised standard 1.3.32 which provides that:

For services that provide for intraday nominations and scheduling, there is no limitation as to the number of intraday nominations (line items as per GISB Standard 1.2.1) which a service requester may submit at any one standard nomination cycle or in total across all standard nomination cycles. Transportation Service Providers may (for an interim period expiring on April 1, 1999) limit Service Requesters to one transmittal of nominations per standard intraday nomination cycle, (excluding corrections of errors identified in the Quick Response).

They contend that the sentence permitting pipelines to limit shippers' intra-day nominations prior to April 1, 1999, to one nomination per intra-day nomination cycle should be interpreted to permit one intra-day nomination per contract.

The requested clarification comports with Commission policy. Prior to this change, Commission regulations required that the pipelines provide shippers with only one intra-day nomination opportunity.¹² The Commission's policy has been that the single intra-day nomination opportunity is available for each contract between the shipper and the pipeline and that the shipper can use this opportunity to request changes at all receipt and delivery points.¹³

NGC and NGSA further point out that the regulations provide for pipelines to notify interruptible shippers that they are being bumped, but that the regulations do not specify the form of notice. They maintain that notice limited to the scheduled quantities document is not sufficient,¹⁴ because gas producers would have to monitor pipeline web sites until 10 p.m. at night to make sure they receive the notice. They argue that the bumping notice should be provided by telephone or facsimile or, at least, by Internet E-mail or direct Internet notification to the shipper's URL address, the methods the Commission chose for pipeline notification of operational flow orders (OFOs) in Order No. 587-G.¹⁵

The Commission finds this request reasonable and will expect that, in addition to notification through the scheduled quantities statement, pipelines should provide direct notice of bumping using Internet E-mail or direct notification to a shipper's Internet URL address when they comply with the requirement in Order No. 587-G. Until that time, the pipelines should provide notice of bumping in the same manner they currently provide notice of OFOs.

TransCapacity and NGC submitted comments that are not germane to this rulemaking, but instead relate to issues resolved in Order No. 587-G. TransCapacity requests that the Commission make clear that secondary

firm transportation once scheduled has priority over primary firm intra-day nominations. As the Commission found in Order No. 587-G, its regulations provide only that firm intra-day nominations have priority over nominated and scheduled interruptible service. The Commission did not revise or change current pipeline tariffs with respect to the scheduling priority of firm primary and firm secondary transportation.¹⁶

NGC contends that the Commission should revisit its determination in Order No. 587-G that the 6 p.m. intra-day nomination should take effect at 9 a.m. or, in the alternative, that shippers be given an overnight rescheduling opportunity. These policy issues were resolved in Order No. 587-G¹⁷, which is pending rehearing. Such issues are not appropriately raised with respect to the standards adopted in this rule, which involve only the schedule for intra-day nominations.

3. Implementation Schedule for Intra-Day Nominations

In Order No. 587-G, the Commission deferred implementation of its regulations relating to intra-day nominations, § 284.10(c)(1)(i), until GISB developed, and the Commission adopted, implementing standards. This order adopts the necessary implementation standards, and the Commission is establishing a November 2, 1998 implementation date for the standards adopted in this order and § 284.10(c)(1)(i) of the Commission regulations. Pipelines must file revised tariff sheets to implement these regulations not more than 60 and not less than 30 days prior to the November 2, 1998 implementation date.

4. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

¹⁶ Order No. 587-G, 63 FR at 20079; III FERC Stats. & Regs. Regulations Preambles at 30,673-74.

¹⁷ 18 CFR 284.10(c)(1)(B) (intra-day nomination prior to gas flow will take effect at 9 a.m. CCT); Order No. 587-G, 63 FR at 20079, III FERC Stats. & Regs. Regulations Preambles at 30,673 (Commission will not require overnight rescheduling opportunity).

¹² Former 18 CFR 284.10(b)(1)(i) (1997). Nominations Related Standards 1.3.10 (1997).

¹³ See Tennessee Gas Pipeline Company, 78 FERC ¶ 61,007, at 61,019-20 (1997); Texas Eastern Transmission Corporation, 77 FERC ¶ 61,175, at 61,649 (1996).

¹⁴ The scheduled quantities document is a electronic transmittal from the pipeline showing the quantity of gas scheduled. 18 CFR 284.10(b)(1)(i) (1997).

¹⁵ 18 CFR 284.10(c)(3)(vi).

¹¹ Pub. L. 104-113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

The collections of information related to the subject of this Final Rule fall under FERC-545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902-0154) and FERC-549-C, Standards for Business Practices of

Interstate Natural Gas Pipelines (OMB Control No. 1902-0174). The following estimates of burden are related only to this rule and include only the costs of complying with GISB's new and revised standards relating to intra-day

nominations. The burden estimates are primarily related to start-up and will not be on-going costs.

Public Reporting Burden: (Estimated Annual Burden).

Data collection	Number of respondents	Number of responses per respondent	Estimated burden hours per response	Total annual hours
FERC-549C	93	1	45	4,185
FERC-545	93	1	47	4,371

The total annual hours for collection (including recordkeeping) is estimated to be 8,556. The average annualized cost for all 93 respondents is projected to be the following:

	FERC-549C	FERC-545	Totals
Annualized Capital/Startup Costs	\$220,252	\$230,041	\$450,293
Annualized Costs (Operations & Maintenance)	0	0	0
Total Annualized Costs	\$220,252	\$230,041	\$450,293

The Commission regulations adopted in this order are necessary to further the process begun in Order No. 587 of standardizing business practices and electronic communications with interstate pipelines. Adoption of these regulations will provide shippers with increased options to change their scheduled gas quantities to reflect weather and other changed conditions and enable shippers to more efficiently transact business across multiple pipelines.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. This information also will be retained for a three year period. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, 202-208-1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission 202-395-3087].

5. Environmental Analysis

The Commission is required to prepare an Environmental Assessment

or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁸ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.¹⁹ The actions taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.²⁰ Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

6. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)²¹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant

¹⁸ Order No. 486, Regulations Implementing the National Environment Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

¹⁹ 18 CFR 380.4.

²⁰ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

²¹ 5 U.S.C. 601-612.

adverse impact on a substantial number of small entities.

7. Effective Date

These regulations become effective August 24, 1998. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,
Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7532; 43 U.S.C. 1331-1356.

2. In section 284.10, paragraph (b)(1)(i) is revised to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.2, July 31, 1997), with the addition of standards 1.1.17 through 1.1.19, 1.2.8 through 1.2.12, 1.3.39 through 1.3.44 (as approved March 12, 1998), the modification of standards 1.3.2, 1.3.20, 1.3.22, 1.3.32 (as approved March 12, 1998), and the deletion of standards 1.2.7, 1.3.10, and 1.3.12;

* * * * *

[FR Doc. 98-19368 Filed 7-22-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF VETERANS

38 CFR Part 17

RIN 2900-AH66

Payment for Non-VA Physician Services Associated with Either Outpatient or Inpatient Care Provided at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) medical regulations concerning payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. Generally, when a service-specific reimbursement amount has been calculated under Medicare's Participating Physician Fee Schedule, VA would pay the lesser of the actual billed charge or the calculated amount. Also, when an amount has not been calculated or when the services constitute anesthesia services, VA would pay the amount calculated under a 75th percentile formula or, in certain limited circumstances, VA would pay the usual and customary rate. Adoption of this final rule is intended to establish reimbursement consistency among federal health benefits programs to ensure that amounts paid to physicians better represent the relative resource inputs used to furnish a service, and to achieve program cost reductions. Further, consistent with statutory requirements, the regulations continue to specify that VA payment constitutes payment in full.

DATES: Effective Date: August 24, 1998.

FOR FURTHER INFORMATION CONTACT: Abby O'Donnell, Health Administration Service (10C3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8307. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 22, 1997 (62 FR 39197),

we proposed to amend the medical regulations concerning payment (regardless of whether or not authorized in advance) for non-VA physician services associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. We provided a 60-day comment period, which ended September 22, 1997. We received comments from seven sources.

For reasons explained below, the final rule contains only one conversion factor for calculations under Medicare's Participating Physicians Fee Schedule and the proposed provisions are not made applicable for anesthesia services. Otherwise, no changes are made in response to comments and, based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted as a final rule.

Comments

All of the comments opposed the proposal based on the assertion that VA should not lessen physician fees.

- Three commenters asserted that VA should not use Medicare's Participating Physicians Fee Schedule because it was designed for Medicare patient populations and not for VA populations.

- One commenter opposed the use of Medicare's Participating Physicians Fee Schedule by asserting that VA should not use the geographic adjustment factors unless necessary "to achieve explicit policy goals (e.g., targeted adjustments for demonstrated shortfalls in access to care)."

- Two commenters opposed the use of Medicare's Participating Physicians Fee Schedule by asserting that VA should not use Medicare's conversion factors. They recommended that VA establish a conversion factor that would not lessen physician payments. One of the commenters stated that the Medicare conversion factors should not be used because they are "constrained by budget-neutrality and other considerations, such as the Medicare Volume Performance Standard system, that are not applicable to VA."

- One commenter who practices psychiatry in a semi-rural area asserted that his expenses are high and that if VA adopted Medicare's Participating Physicians Fee Schedule some procedures would be billed at rates "at or below" his overhead expense.

- Three commenters questioned whether the availability and quality of care would be lessened by the adoption of Medicare's Participating Physicians Fee Schedule.

- One commenter asserted that before VA adopt payment methodology based

on Medicare principles, VA should sponsor an independent study and consult with physician groups.

- Two commenters opposed the adoption of the Medicare fee schedule for anesthesia services.

Response to Comments

As stated in the proposed rule, one of the basic reasons for conducting this rulemaking proceeding was to achieve cost reductions. We believe, particularly in this budget-sensitive era, that it is sound policy to seek to achieve this objective. Also, we note that the Medicare formula does not merely relate to individuals eligible for Medicare. It is based on principles applicable to all individuals, including veterans. Moreover, even though we could establish different conversion factors and even though VA is not "constrained by budget-neutrality and other considerations, such as the Medicare Volume Performance Standard system," we believe that we should not have to pay more than the Department of Health and Human Services pays for physician services.

Further, regardless of whether some physicians' "overhead payments" might be out of proportion to the amount of payment received from VA, we do not believe that this final rule would cause this to be a common occurrence. In addition, we do not expect that the adoption of this final rule would lessen significantly the availability and quality of physician care for veterans, and we believe that even without additional studies, the rationale in the proposed rule and this document provide an adequate basis for this final rule.

The proposed rule was intended to provide for reimbursement based on the lesser of the actual billed charge or the amount calculated under Medicare's Participating Physician Fee Schedule. The formula for Medicare's Participating Physician Fee Schedule has been changed (see 62 FR 59048, 59261). For services other than anesthesia, the Medicare formula was changed to have one conversion factor instead of three (previously, the Medicare formula contained a separate conversion factor for surgical services, nonsurgical services, and primary care services). Accordingly, the final rule also makes this adjustment in the Medicare formula.

Anesthesia Services

The Medicare formula includes separate provisions for anesthesia services. These separate anesthesia provisions were not included in the proposed rule. We intend to publish a new proposal concerning this issue in