

charges to Medicare and State health care programs. This behavior, the commenters noted, could result in increased health care costs across the health care industry.

C. Determination Not To Promulgate a Final Rule

We have carefully reviewed the public comments and considered the issues raised by promulgating a final rule that would define the terms “substantially in excess” and “usual charges,” and clarify the “good cause” exception in the manner proposed in the notice of proposed rulemaking. For the reasons set forth below, we decline to promulgate a final rule.

First, we have concluded that we do not have sufficient information at this time to establish a single, fixed numerical benchmark for “substantially in excess” that could be applied equitably across health care sectors and across items and services, as we originally proposed. Our intent in proposing the 120 percent benchmark was to create a bright line standard by which all providers could evaluate their usual charges. Upon reviewing the comments, we believe that a single benchmark for “substantially in excess” is unadvisable at this time. We believe it is more appropriate to continue to evaluate billing patterns of individuals and entities on a case-by-case basis.

Second, based on our review of the comments, we have determined that there is insufficient information at this time to assure ourselves that a final rule would not have the unintended effect of increasing health care costs across the industry.

OIG remains concerned about disparities in the amounts charged to Medicare and Medicaid when compared to private payers. While Medicare pays for many items and services using fee schedules that serve as payment ceilings, many of these fee schedules are infrequently updated or may be updated using methods that do not adequately capture prevailing market rates for the same items and services. We recognize that, in most cases, these fee schedules are intended to approximate a reasonable payment amount. However, fee schedules are administered prices that, in some situations, may quickly become out-dated. As we noted in the preamble to the September 15, 2003 proposed rule:

“When market forces cause a provider’s usual charge to most of its customers to drop substantially below the Medicare fee schedule allowance, some providers continue to charge Medicare at least the fee schedule amount. In this situation, the provider creates a two-tier pricing structure with Medicare

paying more than other customers. Unless the price differential can be justified by costs that are uniquely associated with the Medicare program, the provider is simply overcharging Medicare. In such circumstances, section 1128(b)(6)(A) of the Act obligates providers to either charge Medicare and Medicaid approximately the same amount as they usually charge their other purchasers for the same items or services or risk exclusion from all Federal health care programs.” (68 FR 53939, 53940).

While the principal protection against overpaying for items and services furnished to Medicare and Medicaid beneficiaries is timely and accurate updating of the fee schedules, OIG continues to believe that section 1128(b)(6)(A) of the Act provides useful backstop protection for the public fisc from providers that routinely charge Medicare or Medicaid substantially more than their other customers (68 FR 53939, 53941). We will continue to evaluate billing patterns of individuals and entities on a case-by-case basis and to use all tools available to OIG to address instances where Medicare or Medicaid are charged substantially more than other payors, without good cause.

D. Application of Section 1128(b)(6)(A) of the Act to Discounts to the Uninsured

In the past, some providers have expressed concern that offering discounts to uninsured patients or other patients who cannot afford their care might skew the provider’s “usual charges” for purposes of section 1128(b)(6)(A) of the Act and possibly subject them to exclusion. OIG has never excluded or contemplated excluding any provider for offering *bona fide* discounts to uninsured patients or to other patients who cannot afford the provider’s care. OIG believes that section 1128(b)(6)(A) of the Act can be reasonably interpreted to allow providers to carve out discounts to these patients when calculating their “usual charges” to other customers. To this end, the September 15, 2003 proposed rule made clear that free or substantially reduced prices offered to such patients would not be factored into a provider’s usual charges for purposes of the exclusion authority (68 FR 53939, 53941). To further assure the industry, we issued guidance on our Web site on February 19, 2004 specifically providing that, pending a decision with respect to the September 15, 2003 proposed rule, it would continue to be OIG’s enforcement policy “that, when calculating their ‘usual charges’ for purposes of section 1128(b)(6)(A), individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-

paying patients for the items or services furnished.” (<http://oig.hhs.gov/fraud/docs/alertsandbulletins/2004/FA021904hospitaldiscounts.pdf>)

Nothing in this withdrawal notice affects OIG’s long-standing interpretation of the statute in this regard, and it continues to be OIG’s position that, when calculating their “usual charges” for purposes of section 1128(b)(6)(A) of the Act, individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-pay patients for the items or services furnished.

II. Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published in the **Federal Register** on September 15, 2003 (68 FR 53939) is withdrawn.

III. Regulatory Impact Analysis

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule, and therefore, is not covered under Executive Order 12866 or the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

Dated: May 10, 2007.

Daniel R. Levinson,
Inspector General.

Approved: May 25, 2007.

Michael O. Leavitt,
Secretary.

[FR Doc. E7–11663 Filed 6–15–07; 8:45 am]

BILLING CODE 4150-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-D-7802]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for

the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Polk County, North Carolina and Incorporated Areas				
Bear Creek	At the confluence with North Pacolet River	None	+1,395	Polk County (Unincorporated Areas).
	Approximately 870 feet upstream of Charleston Harbor Drive.	None	+1,564	
Big Fall Creek	At the confluence with North Pacolet River	None	+1,102	Polk County (Unincorporated Areas).
	Approximately 1,270 feet upstream of railroad	None	+1,682	
Brights Creek	At the confluence with Green River	None	+922	Polk County (Unincorporated Areas).
	Approximately 700 feet upstream of the confluence of Rash Creek.	None	+937	
Britten Creek	At the confluence with Green River	None	+838	Polk County (Unincorporated Areas).
	Approximately 170 feet upstream of Lake Adger Road (State Road 1138).	None	+1,108	
Broad River	On the upstream side of Poors Ford Road (State Road 1004).	None	+732	Polk County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Green River.	None	+739	
Collinsville Creek	At the confluence with Hughes Creek	None	+858	Polk County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Landrum Road (State Road 1520).	None	+996	
Tributary 4	At the confluence with Collinsville Creek	None	+961	Polk County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Collinsville Creek.	None	+982	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Green River	At the confluence with Broad River	None	+736	Polk County (Unincorporated Areas).
Tributary 17	At the Polk/Henderson County boundary	None	+1,442	
	At the confluence with Green River	None	+784	Polk County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Green River.	None	+798	
Tributary 29	At the confluence with Green River	None	+810	Polk County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Green River.	None	+868	
Tributary 30	At the confluence with Green River	None	+817	Polk County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Green River.	None	+839	
Tributary 36	At the confluence with Green River	None	+835	Polk County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Green River.	None	+854	
Tributary 38	At the confluence with Green River	None	+844	Polk County (Unincorporated Areas).
	Approximately 1,220 feet upstream of Katydid Lane ...	None	+856	
Green River Tributary of Tributary 30.	At the confluence with Green River Tributary	None	+817	Polk County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Green River Tributary 30.	None	+844	
Greens Creek	At the confluence with White Oak Creek	None	+745	Polk County (Unincorporated Areas).
	Approximately 350 feet upstream of East Green Creek Drive (State Road 1340).	None	+772	
Hensons Creek	At the Rutherford/Polk County boundary	None	+823	Polk County (Unincorporated Areas).
	Approximately 60 feet upstream of the Polk/Rutherford County boundary.	None	+824	
Hooper Creek	Approximately 500 feet downstream of the most downstream North Carolina/South Carolina State boundary.	None	+811	Polk County (Unincorporated Areas).
	Approximately 320 feet upstream of Henderson Road (State Road 1525).	None	+1,034	
Horse Creek	At the confluence with North Pacolet River	None	+879	Polk County (Unincorporated Areas)
	Approximately 70 feet downstream of Three Bridges Drive.	None	+2,594	
Hughes Creek	At the North Carolina/South Carolina State boundary.	None	+803	Polk County (Unincorporated Areas).
	Approximately 270 feet upstream of Landrum Road (State Road 1520).	None	+894	
Joels Creek	At the confluence with North Pacolet River	None	+1,675	Polk County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Person Falls Road (State Road 1102).	None	+1,891	
Little Creek (into North Pacolet River).	At the confluence with North Pacolet River	None	+893	Polk County (Unincorporated Areas).
	Approximately 300 feet upstream of North Trade Street.	None	+1,005	
Little Creek (into Vaughn Creek).	At the confluence with Vaughn Creek	None	+972	Town of Tryon.
Little White Oak Creek	Approximately 1,020 feet upstream of Jervey Road	None	+1,022	Polk County (Unincorporated Areas).
	At the confluence with White Oak Creek	None	+838	
Machine Creek	Approximately 550 feet upstream of NC Highway 9	None	+974	Polk County (Unincorporated Areas).
	At the confluence with White Oak Creek	None	+827	
Mill Creek (into White Oak Creek).	Approximately 500 feet upstream of U.S. Highway 74.	None	+848	Polk County (Unincorporated Areas).
	At the confluence with White Oak Creek	None	+755	
	Approximately 1,250 feet upstream of Coxe Road (State Road 1005).	None	+756	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
North Pacolet River	At the North Carolina/South Carolina State boundary.	None	+837	Polk County (Unincorporated Areas). Town of Tryon.
	Approximately 0.5 mile upstream of the confluence of Joels Creek.	None	+1,761	
Tributary 18	At the confluence with North Pacolet River	None	+917	Polk County (Unincorporated Areas). Town of Tryon.
	Approximately 120 feet downstream of Howard Gap Road (State Road 1122).	None	+924	
Tributary 20	At the confluence with North Pacolet River	None	+935	Polk County (Unincorporated Areas).
	Approximately 300 feet upstream of Baker Road (State Road 1124).	None	+948	
Ostin Creek	At the confluence with Green River	None	+919	Polk County (Unincorporated Areas).
	Approximately 200 feet upstream of Cow Crossing Lane.	None	+1,022	
Rash Creek	At the confluence with Brights Creek	None	+935	Polk County (Unincorporated Areas).
	Approximately 750 feet upstream of the confluence with Brights Creek.	None	+938	
South Branch Little White Oak Creek.	At the confluence with Little White Oak Creek	None	+876	Polk County (Unincorporated Areas).
	Approximately 2.3 miles upstream of NC Highway 9 ..	None	+926	
Vaughn Creek	At the confluence with North Pacolet River	None	+889	Polk County (Unincorporated Areas). Town of Tryon.
	Approximately 630 feet upstream of the confluence of Little Creek (into Vaughn Creek).	None	+989	
Tributary 1	At the confluence with Vaughn Creek	None	+904	Town of Tryon.
	Approximately 0.8 mile upstream of Vaughn Street	None	+973	
Tributary 2	At the confluence with Vaughn Creek	None	+972	Town of Tryon.
	Approximately 850 feet upstream of Jervey Road	None	+997	
Walnut Creek	At the confluence with Green River	None	+802	Polk County (Unincorporated Areas).
	Approximately 60 feet upstream of NC Highway 9	None	+1,058	
Wheat Creek	At the confluence with Green River	None	+768	Polk County (Unincorporated Areas).
	Approximately 500 feet upstream of Ponder Road (State Road 1329).	None	+817	
White Oak Creek	At the confluence with Green River	None	+743	Polk County (Unincorporated Areas).
	Approximately 40 feet downstream of Smith Dairy Road (State Road 1528).	None	+902	
Wolfe Creek	At the confluence with North Pacolet River	None	+842	Polk County (Unincorporated Areas).
	Approximately 460 feet upstream of Interstate Highway 26.	None	+877	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

City of Saluda

Maps are available for inspection at Saluda City Hall, 6 East Main Street, Saluda, North Carolina.

Send comments to The Honorable Lee H. Clippard, Sr., Mayor of the City of Saluda, P.O. Box 248, Saluda, North Carolina 28773.

Town of Columbus

Maps are available for inspection at Columbus Town Hall, 95 Walker Street, Columbus, North Carolina.

Send comments to The Honorable Kathleen McMillian, Mayor of the Town of Columbus, P.O. Box 146, Columbus, North Carolina 28722.

Town of Tryon

Maps are available for inspection at Tryon City Hall, 301 North Trade Street, Tryon, North Carolina.

Send comments to The Honorable J. Alan Peoples, Mayor of the Town of Tryon, 301 North Trade Street, Tryon, North Carolina 28782.

Polk County (Unincorporated Areas)

Maps are available for inspection at Polk County Planning Department, 40 Courthouse Street, Columbus, North Carolina.

Send comments to Mr. Ryan Whitson, Polk County Manager, P.O. Box 308, Columbus, North Carolina 28722.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 4, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7-11640 Filed 6-15-07; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648-AX72

Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources

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

ACTION: Notice of public input sessions; request for comments.

SUMMARY: NMFS published an advanced notice of proposed rulemaking (ANPR) to announce that it is developing certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources pursuant to the High Seas Driftnet Fishing Moratorium Protection Act. This notice is to announce three public input sessions to discuss and collect comments on the issues described in the ANPR.

DATES: Public input sessions will be held in July of 2007. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Public input sessions will be held in Silver Spring, MD; Long Beach, CA; and Seattle, WA. For details, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers (ph. 301-713-9090, fax 301-713-9106, e-mail christopher.rogers@noaa.gov).

SUPPLEMENTARY INFORMATION: On June 11, 2007 (72 FR 32052), NMFS published an advance notice of proposed rulemaking to announce that it is developing certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources pursuant to the High Seas

Driftnet Fishing Moratorium Protection Act.

Request for Comments

NMFS is seeking advance public comment on the development of these procedures and on the sources and types of information to be considered in the process. Three opportunities for public input have been arranged to provide the public an opportunity to comment. Comments received on the ANPR will assist NMFS in developing a proposed rule.

Dates, Times, and Locations

The public input sessions will be held as follows:

1. Monday, July 2, 2007, 3-5 p.m. NMFS Headquarters Science Center, SSMC4, 1310 East-West Highway, Silver Spring, MD 20910; phone 301-713-9090.
2. Thursday, July 5, 2007, 3-5 p.m. NMFS Southwest Regional Office, 501 West Ocean Boulevard, Room 3470, Long Beach, CA 90802; phone 562-980-4040.
3. Thursday, July 5, 2007, 3-5 p.m. NMFS Northwest Regional Office, 7600 Sand Point Way NE, Building 9 Auditorium, Seattle, WA 98115; phone 206-526-6150.

Special Accommodations

The sessions are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Christopher Rogers (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the session.

Dated: June 12, 2007.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E7-11624 Filed 6-15-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070522149-7154-01; I.D. 020607C]

RIN 0648-AV10

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes to amend the regulations governing the North and South Atlantic swordfish fisheries to implement two recommendations by the International Commission for the Conservation of Atlantic Tuna (ICCAT) (Recommendations 06-02 and 06-03). These recommendations establish baseline quotas for North and South Atlantic swordfish, respectively, and set caps on underharvest carryover.

Additionally, recommendation 06-02 allows a contracting party (CPC) with a total allowable catch (TAC) allocation to make a transfer within a fishing year of up to 15 percent of its baseline allocation to other CPCs, as long as the transfer is conducted in a manner that is consistent with domestic obligations and conservation considerations. This action, if adopted, would remain in effect until ICCAT provides new recommendations for the U.S. swordfish fisheries. In addition, NMFS proposes to modify the North and South Atlantic swordfish quotas for the 2006 fishing year to account for updated landings information from the 2004 and 2005 fishing years. Finally, NMFS proposes to include the option of an internet Web site as an additional method for complying with the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category's 24 hour reporting requirement. Currently, reporting is by telephone only. NMFS solicits written comments and will hold public hearings in July 2007 to receive oral comments on these proposed actions.

DATES: Written comments on the proposed rule must be received by 5 p.m. on July 18, 2007.

The public hearing dates and times are:

1. Monday, July 9, 2007, 3-5 p.m., Silver Spring, MD.
2. Tuesday, July 10, 2007, 6-8 p.m., Fort Pierce, FL.
3. Thursday, July 12, 2007, 3-5 p.m., Gloucester, MA.

Additional public hearings will be considered upon request and must be received by 5 p.m. on June 29, 2007 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The public hearing locations are:

1. Silver Spring—National Oceanic and Atmospheric Administration, SSMC III, 1311B, 1301 East-West Highway, Silver Spring, MD 20910;
2. Fort Pierce—Fort Pierce Library, 101 Melody Lane, Fort Pierce, FL 34950; and
3. Gloucester—National Oceanic and Atmospheric Administration, Northeast