

removed and is replaced with "physician fee schedule."

■ b. In paragraph (c), the phrase "subparts D or E, part 405 of this chapter" is removed and the phrase "subpart B, part 414 of this chapter" is added in its place.

■ 10. In § 418.306, the introductory text of paragraph (b) is republished, paragraph (b)(3) is revised, and new paragraphs (b)(4) and (b)(5) are added to read as follows:

§ 418.306 Determination of payment rates.

* * * * *

(b) *Payment rates.* The payment rates for routine home care and other services included in hospice care are as follows:

* * * * *

(3) For Federal fiscal years 1994 through 2002, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus—

- (i) 2 percentage points in FY 1994;
- (ii) 1.5 percentage points in FYs 1995 and 1996;
- (iii) 0.5 percentage points in FY 1997; and
- (iv) 1 percentage point in FY 1998 through FY 2002.

(4) For Federal fiscal year 2001, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase plus 5 percentage points. However, this payment rate is effective only for the period April 1, 2001 through September 30, 2001. For the period October 1, 2000 through March 31, 2001, the payment rate is based upon the rule under paragraph (b)(3)(iv) of this section. The payment rate in effect during the period April 1, 2001 through September 30, 2001 is considered the payment rate in effect during fiscal year 2001.

(5) The payment rate for hospice services furnished during fiscal years 2001 and 2002 is increased by an additional 0.5 percent and 0.75 percent, respectively. This additional amount is not included in updating the payment rate as described in paragraph (b)(3) of this section.

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 24, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 11, 2005.

Michael O. Leavitt,

Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

49 CFR Part 10

FAA Accident and Incident Data System Records Expunction Policy

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: The Federal Aviation Administration (FAA) has adopted a policy which, when implemented, will result in the expunction of airman identities from certain FAA accident and incident records.

DATES: This policy is effective November 22, 2005, with implementation as discussed herein.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, Aeronautical Center (AMC-7), Federal Aviation Administration, 6500 S. MacArthur, Oklahoma City, OK 73169. Telephone (405) 954-3296.

SUPPLEMENTARY INFORMATION:

Background

Under sections 40101, 40113, and 44701 of the U.S. Transportation Code, as amended, 49 U.S.C. 40101, 40113 and 44701, the FAA may maintain records of aviation accidents and incidents containing identifying information of individual airmen if safety in air commerce or air transportation and the public interest require. These records include all accidents that were investigated by the FAA and incidents reported to or investigated by the FAA. Part 10 of the Department of Transportation Regulations, 49 CFR 10.1 *et seq.*, sets forth the conditions for maintenance and access to records pertaining to individuals.

Presently, written accident and incident records are destroyed in accordance with the applicable retention guidelines contained in FAA Order 1350.15C. Certain essential information is extracted from written accident and incident records and maintained in the Accident and Incident Data System (AIDS).

Currently, computer based electronic AIDS records are maintained indefinitely by the FAA. The custodian of AIDS is the Aviation Data Systems Branch, AFS-620, at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma. AIDS records may be accessed by FAA personnel at the FAA's Headquarters in Washington, DC and the FAA's field and regional offices. See, System of Records DOT/FAA 847, 65 FR 19527 (April 11, 2000). One of the reasons the FAA maintains these records is for safety related statistical research.

Aviation Safety Inspectors may also use these records to determine whether an airman should be re-examined. AIDS records are considered to be basic qualification information and may be released to the public pursuant to the routine uses listed in DOT/FAA 847.

In 1989, the FAA conducted a System Safety and Efficiency Review (SSER) of its General Aviation Compliance and Enforcement Programs. The SSER review team comprised both FAA personnel and representatives of various industry organizations, including the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, and the National Business Aircraft Association. The establishment of an accident and incident expungement policy was one of the many topics discussed during the System Safety and Efficiency Review. However, no accident and incident expungement policy was implemented at that time.

From 1996 until the present, the FAA has expunged the identity of airmen from AIDS records on an ad hoc basis, where it was determined that their identity no longer served a relevant purpose. Those determinations were made in response to individual requests for correction of accident or incident record pursuant to the Privacy Act, 5 U.S.C. 552a. Absent a request for correction of records under the Privacy Act, the record remained in AIDS indefinitely. There has been growing concern within the FAA that this practice is unfair to those airmen who do not know their identity may be removed from an AIDS record by making a request under the Privacy Act.

In 2003, the FAA reevaluated its policy of indefinitely retaining AIDS records on individuals, and subsequently adopted a policy of expunging certain electronic AIDS records. This policy is explained in detail herein. This policy applies to individuals who have been identified in electronic AIDS records. This policy applies to individuals who hold airman certificates, as well as to those who do

not, such as passengers. This policy does not apply to the following:

Identities of air carriers, repair stations, or other organizational entities whether or not the air carrier, repair station or other organizational entity is owned or operated by an individual; records generated or maintained by entities other than the FAA such as electronic records of accidents and/or incidents maintained by the National Transportation Safety Board; this policy does not apply to written records of accidents or incidents because it is the FAA's current policy to destroy those records pursuant to the retention guidelines contained in FAA Order 1350.15C.

This policy statement is published because the subject is a matter of general interest in the aviation community.

FAA Recordkeeping

The FAA maintains records of accidents and incidents in the Accident and Incident Data System (AIDS), and with paper documents. All records contain identifying information such as name, date of birth, and certificate number. The records also contain information about each accident or incident such as the date and place of the event as well as a description of what happened.

AIDS is an automated data base system that contains summaries of all FAA accident and incident investigations. Copies of paper documents associated with an accident or incident are not included in AIDS records. AIDS is the primary source of summary information for the FAA and the public concerning any accident or incident investigated by the FAA.

Expunction Policy

Electronic accident and incident records identifying an individual will now be maintained for five years from the date of the accident or incident. In that regard, it is believed that after five years, any information about an individual's identity will be of little, if any, value. Under this expunction policy, any information which identifies the individual will be removed from the AIDS record, including the individual's name and FAA certificate number. The case report number will not be removed, nor will the rest of the information, such as the pilot's experience, the description of the event, the N number and type of aircraft involved. This information will be maintained so that the FAA will be able to research the accident history of an aircraft or conduct statistical research of data.

In all cases, if at the time an AIDS record is due to be expunged, a

subsequent AIDS record has been opened, the first record will not be expunged unless and until the subsequent record is eligible for expungement.

Implementation of the AIDS Expunction Policy

The FAA currently has several decades of records which will be expunged under this policy. It is expected that the initial expunction of eligible AIDS records will be completed in stages.

Changes will be made to the AIDS program so that AIDS data eligible to be expunged is identified and automatically expunged from the AIDS computer base. The FAA expects that the necessary hardware and software changes to the AIDS data base system will be completed by [November 1, 2005].

Once this expunction system is fully functioning, the FAA intends to expunge identifying information from eligible AIDS records on a monthly basis. An individual may expect his or her AIDS records to be expunged during the month following the eligibility for expunction under this policy. The FAA maintains a large number of records in AIDS. Therefore, it is impossible for the Agency to assure the expunction of any particular record in strict accordance with this policy. If an individual becomes aware of any AIDS data eligible for expunction that has not been expunged, he or she may request amendment of the record under the Privacy Act, 5 U.S.C. 552a(d). Any request to amend an individual's AIDS record must be made in writing to the systems manager in accordance with the procedures prescribed in 49 CFR part 10.

Issued in Washington, DC on November 17, 2005.

Marion Blakey,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 050719189-5286-03; I.D. 071405C]

RIN 0648-AT33

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2005 and 2006 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the 2005 and 2006 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in the ETP will be closed for a 6-week period beginning November 20, 2005, through December 31, 2005, and beginning November 20, 2006, through December 31, 2006. In this final rule, NMFS also announces that the longline fishery will close when a 150-mt limit has been reached. These actions are taken to limit fishing mortality on tuna stocks caused by purse seine fishing and longline fishing in the Convention Area and contribute to the long-term conservation of tuna stocks at levels that support healthy fisheries.

DATES: The 2005 tuna purse seine fishery closure is effective November 20, 2005, through December 31, 2005. The 2006 tuna purse seine fishery closure is effective November 20, 2006, through December 31, 2006. For 2006, the bigeye longline fishery will close when the bigeye tuna catch reaches 150 mt. NMFS will publish a notification in the **Federal Register** announcing the effective date of that closure.

ADDRESSES: Copies of the regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90902-4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, Sustainable Fisheries