

§ 180.510 Pyriproxyfen; tolerances for residues.(a) *General.* (1) * * *

(2) A tolerance of 0.10 parts per million is established for all foods as a result of the proposed use of NYLAR in food handling establishments where food and food products are held, prepared, processed or served. Application is limited to space, general surface, spot, and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared and served. Space and general surface application may be used only when the facility is not in operation provided exposed food is covered or removed from the area being treated prior to application. Spot, and/or crack and crevice treatment may be used while the facility is in operation provided exposed food is covered or removed from the area being treated prior to application. Food contact surfaces should be thoroughly washed with an effective cleaning compound and rinsed with potable water after use of the product. To assure safe use of this additive, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and shall be used in accordance with such label and labeling.

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[FR Doc. 01-6330 Filed 3-13-01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****42 CFR Parts 410, 414, 424, 480, and 498**

[HCFA-3002-CN]

RIN 0938-A196

Medicare Program; Expanded Coverage for Outpatient Diabetes Self-Management Training and Diabetes Outcome Measurements**AGENCY:** Health Care Financing Administration (HCFA), HHS.**ACTION:** Final rule; correction and confirmation of effective date.

SUMMARY: In the December 29, 2000 issue of the **Federal Register** (65 FR 83130), we published a final rule that implements section 4105 of the Balanced Budget Act by expanding Medicare coverage for outpatient diabetes self-management training and establishes outcome measurements for evaluating the improvement of the

health status of Medicare beneficiaries with diabetes. The final rule provided for a 60-day delay from the publication date in implementing the expanded coverage of the diabetes training; that is, February 27, 2001. We unknowingly delayed forwarding our report on the final rule to the Congress for review under 5 U.S.C. 801(a) at the time we published the final rule. This document reaffirms that the final rule, and its expansion of Medicare coverage for outpatient diabetes self-management training, went into effect on February 27, 2001, notwithstanding the delay in forwarding our report to the Congress. It also corrects cost assumptions that were overstated in the final rule.

DATES: The effective date of the final rule published December 29, 2000 (65 FR 83130), is confirmed as February 27, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Stojak, (410) 786-6939.

SUPPLEMENTARY INFORMATION: In the December 29, 2000 issue of the **Federal Register** (65 FR 83130), we published a final rule that implements section 4105 of the Balanced Budget Act by expanding Medicare coverage for outpatient diabetes self-management training and establishes outcome measurements for evaluating the improvement of the health status of Medicare beneficiaries with diabetes. Under the congressional review provisions of 5 U.S.C. Chapter 8, the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs determined that the final rule was a "major rule" as defined in 5 U.S.C. 804(2). In accordance with 5 U.S.C. 801(a)(3), we provided a 60-day delay period for the final rule's effective date, so that the final rule was effective on February 27, 2001.

We recently learned that we inadvertently overlooked forwarding our report to the Congress under 5 U.S.C. 801(a) at the time of the final rule's publication. The Congress subsequently received our report on February 13, 2001. Therefore, under 5 U.S.C. 801(a)(3), the general consequence of this delay would be that the effective date would no longer be February 27, 2001, but instead would be April 14, 2001, which is 60 days after the Congress received our report.

Under 5 U.S.C. 808(2), however, we find, for good cause, that a second, additional 60-day delay in the final rule's effective date would be contrary to the public interest. There has already been one 60-day effective-date delay period. As we have noted, our failure to submit the report to Congress on a

timely basis was an inadvertent administrative oversight. We have reviewed and reinforced our administrative procedures to ensure that this does not occur again. An additional 60-day delay in the effective date would directly harm Medicare beneficiaries with diabetes who are eligible for the self-management training. Under the terms of the final rule, Medicare coverage for persons with diabetes was expanded on February 27, 2001. An additional 60-day delay in the effective date would therefore delay this expansion in coverage and preclude eligible beneficiaries with diabetes from receiving needed training for another 60 days. Medicare beneficiaries who have diabetes and are eligible for training should not be disadvantaged as a result of an administrative oversight. All interested parties have supported this expansion of Medicare coverage for beneficiaries with diabetes. Moreover, while the final rule was determined at its issuance to be a "major" economic rule (and thus subject to the 60-day minimum effective date), our actuaries have recently reviewed the impact analysis again. Based on this recent review, our actuaries believe that some of their cost assumptions overstated the likely costs of the rule. In particular, the actuaries believe that their previous analysis overstated the likely level of utilization by beneficiaries of the new benefit. The current estimate by our actuaries is that the final rule does not reach the \$100 million threshold for a major economic rule. Indeed, it will have an annual impact of less than \$100 million in any one year (\$45 million in FY2001, \$90 million in FY2002, \$80 million in FY2003, \$95 million in FY2004, and \$95 million in FY2005).

The Office of Management and Budget (OMB) stated in its March 30, 1999 government-wide guidance to agencies on the Congressional Review Act (OMB Memorandum M-99-13), that use of the waiver authority in section 808(2) could be considered, on a case-by-case basis, in the case of final rules for which the rulemaking agency had previously requested public comment (as occurred in this case). Based on the OMB Memorandum, and for the reasons we have outlined above, we find that delaying the effective date for this major final rule for another 60 days would be contrary to the public interest, and therefore, find that there is good cause for invoking Section 808(2) and retaining the final rule's original effective date of February 27, 2001. In arriving at this decision, we have consulted with OMB, which concurs with this conclusion.

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

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

Dated: March 8, 2001.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 01-6310 Filed 3-13-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-333; MM Docket No. 98-112, RM-9027, RM-9268, RM-9384]

Radio Broadcasting Services; Anniston and Ashland, AL, and College Park, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Preston Small directed to the *Report and Order* in this proceeding which substituted Channel 263C3 for Channel 263C at Anniston, Alabama, allotted Channel 264A to Ashland, Alabama, reallocated Channel 263C3 to College Park, Georgia, and modified the license of Station WHMA to specify operation on Channel 263C3 at College Park. See 65 FR 31498, May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418-2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 98-112, adopted February 7, 2001, and released February 9, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3805, 1231 M Street, NW., Washington, DC 20036. Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-5829 Filed 3-13-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Docket No. 001120325-1053-02, I.D. 122800B]

RIN 0648-AO77

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Aboriginal subsistence whaling quota.

SUMMARY: NMFS announces the 2001 aboriginal subsistence whaling quota for gray whales. For 2001, the quota is zero gray whales landed, but may be revised later in the year. This quota governs the harvest of gray whales by members of the Makah Indian Tribe (Tribe).

DATES: Effective March 14, 2001.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, (202) 482-2652.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*) and rules at 50 CFR part 230. The rules requires the Secretary of Commerce to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the International Whaling Commission (IWC).

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of gray whales from the Eastern stock in the North Pacific. This action by the IWC thus authorized aboriginal subsistence whaling by the Tribe for gray whales, and is discussed in greater detail in the **Federal Register** notification (64 FR 28413, May 26, 1999).

On June 9, 2000, the United States Court of Appeals for the Ninth Circuit ruled that the Department of Commerce's environmental assessment (EA) under the National Environmental Policy Act (NEPA) should have been completed before agreeing to request a gray whale quota from the IWC. The Court ordered the agency to prepare a new NEPA document under circumstances that would ensure an objective evaluation of the

environmental consequences of the gray whale harvest.

NOAA completed a draft EA on January 12, 2001 and solicited public comments. NMFS is currently preparing a final EA. NOAA set the 2000 quota at zero (65 FR 75186) and is now setting the 2001 quota at zero pending completion of the NEPA analysis.

Dated: March 5, 2001.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01-6350 Filed 3-13-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000913257-0257-01; I.D. 081800D]

RIN 0648-AO52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Prohibition of Trap Gear in the Royal Red Shrimp Fishery in the Gulf of Mexico

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

ACTION: Emergency interim rule; extension of expiration date.

SUMMARY: An emergency interim rule that prohibits the use of trap gear in the royal red shrimp fishery within the exclusive economic zone (EEZ) of the Gulf of Mexico is in effect through March 18, 2001. NMFS extends that emergency interim rule for an additional 180 days. The intended effect is to prevent gear conflict and overfishing in the royal red shrimp fishery.

DATES: The expiration date for the emergency interim rule published at 65 FR 56500, September 19, 2000, is extended from March 18, 2001, through September 14, 2001.

ADDRESSES: Copies of documents supporting this action, such as the economic analysis and environmental assessment, may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727-570-5325; fax: 727-570-5583.

Comments on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule should be directed to Rod Dalton,