charges, which are not influenced by the Part B deductible. The volume performance standard rates of increase under this notice, however, have historically been compared to increases in expenditures, which are influenced by the Part B deductible. Section 1832(b) of the Act specifies that the Part B deductible will be $100 for calendar year 1991 and subsequent years. The effect of the deductible remaining fixed at $100 is that the overall annual increases in allowed charges for MVPS physicians' services are lower than the overall annual increases in expenditures. Although we believe it would be consistent with a literal interpretation of section 1848(f)(2)(A)(iii) of the Act, it would be inappropriate to base the volume and intensity component on the lower 5-year growth in allowed charges and compare the volume performance standards to the higher growth in expenditures, so we instead compare the standards to the growth in allowed charges.

Consistent with data contained in the Trustees' Report, we estimated Factor 3 using a definition of physicians' services that includes certain supplies and nonphysician services not otherwise included in computing the volume performance standard rates of increase (primarily durable medical equipment and ambulance services). We included data for these services because we were required to base the estimate on data contained in the Trustees' Report, and it was not feasible to recompute the data from the 5-year period to exclude these supplies and nonphysician services. We believe the inclusion of these nonphysician supplies and services in this component has a minimal effect on the estimate because the component measures rates of change. Since durable medical equipment and ambulance services constitute only about 10 percent of the total charges used in the Trustees' Report, the rate of change for these nonphysician services and supplies would have to be significantly different from the rate of change for physicians' services to have any measurable impact on this volume and intensity increase factor. (Factor 3 is the only component of the volume performance standard rate of increase that was estimated using data that included nonphysician services and supplies.) The volume increases for services performed in independent laboratories were included in the calculation of the physician increases, as were the volume increases for clinical laboratory tests performed in hospital outpatient departments.

As described earlier, the fiscal year 1996 volume performance standards were calculated using category-specific volume and intensity. The 5-year average rate of increase in volume and intensity equals 2.3 percent for surgical services, 5.3 percent for primary care services, 5.1 percent for other nonsurgical services. The weighted-average increase for all physicians' services is 4.4 percent.

Factor 4—Percentage Increase in Expenditures for Physicians' Services Resulting from Changes in Law or Regulations in Fiscal Year 1996 Compared with Fiscal Year 1995

Legislative changes enacted in OBRA 1993 and changes in the regulations required by this law, as well implementation of the physician fee schedule (including refinements made in the RVUs for 1995 and 1996) will have an impact on the volume performance standard rates of increase for fiscal year 1996.

The net effect of implementing the physician fee schedule after making the RVU refinements for 1995 and 1996 will increase payment rates and, therefore, the volume performance standard for primary care services. Similarly, the net effect of refining the RVUs and implementing the fee schedule will reduce payment rates for most surgical services and many nonsurgical services other than primary care, thus, lowering the volume performance standard rates of increase for these services. Implementing the fee schedule will have no effect on the volume performance standard rates of increase for all physicians' services because the net effect of increases in payment for certain services and decreases in payment for other services will have a budget-neutral effect on payment for all physicians' services.

The net adjustments to the physician fee schedule updates will have the effect of increasing the volume performance standard rate for surgical services and decreasing the rate for primary care services. It will have no effect on the rate for other nonsurgical services. OBRA 1993 also included a provision to lower payment for practice expenses for certain services paid under the physician fee schedule, which will have the effect of lowering the MVPS for both surgical and nonsurgical services. After taking into account these provisions, this factor equals −0.6 percent for surgical services, 5.7 percent for primary care services, and −2.4 percent for other nonsurgical services, and a weighted average of −0.5 percent for all physicians' services.

V. Inapplicability of 30-Day Delay in Effective Date

We usually provide a delay of 30 days in the effective date for final Federal Register documents. In this case, however, the volume performance standard rates of increase are required by law to be published in the last 15 days of October 1995 and are effective on October 1, 1995. Thus, the Congress has clearly indicated its intent that the rates of increase be implemented without the usual 30-day delay in the effective date and has foreclosed any discretion by us in this matter. Therefore, the requirement for a 30-day delay in the effective date does not apply to this notice. With regard to the physician fee schedule, the effective date will be January 1, 1996, which is more than 30 days beyond the publication date of this notice.

VI. Regulatory Impact Statement

A. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not entities, but we consider all physicians to be small entities.

We are not preparing a regulatory flexibility analysis since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 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.

We are not preparing a rural impact analysis since we have determined, and the Secretary certifies, that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.