(b) *Content of request.* The request must designate which witnesses or documents are to be produced, and describe addresses or locations with sufficient particularly to permit these witnesses or documents to be found. The request for a subpoena must state the pertinent facts that the party expects to establish by the requested witnesses or documents and whether these facts could be established by other evidence without the use of a subpoena.

(c) *Issuance.* Subpoenas are issued as provided in section 205(d) of the Act.

(d) *Payment for subpoena cost.* CMS pays for the cost of issuing subpoenas and the fees and mileage of any witness who is subpoenaed, as provided in section 205(d) of the Act.

§ 412.270 Witnesses.

Witnesses at an oral hearing testify under oath or affirmation, unless excused by the MGCRB for cause. The MGCRB may examine the witnesses and may allow the parties or their representatives to also examine any witnesses called.

§ 412.272 Record of proceedings before the MGCRB.

A complete record of the proceedings before the MGCRB is made in all cases. The record will not be closed until a decision has been issued by the MGCRB. A transcription of an oral hearing will be made at a party's request, at the expense of the requesting party.

§ 412.273 Withdrawing an application, terminating an approved 3-year reclassification, or canceling a previous withdrawal or termination.

(a) *Timing of a withdrawal.* The MGCRB allows a hospital, or group of hospitals, to withdraw its application if the request for withdrawal is submitted to the MGCRB during the following time periods:

(1) At any time before the MGCRB issues a decision on the application; or

(2) After the MGCRB issues a decision, provided that the request for withdrawal is received by the MGCRB within 45 days of publication of CMS's annual notice of proposed rulemaking concerning changes to the inpatient hospital prospective payment system and proposed payment rates for the fiscal year for which the application has been filed.

(b) *Request for termination of approved 3-year wage index reclassifications.*

(1) A hospital, or a group of hospitals, that has been issued a decision on its application for a 3-year reclassification for wage index purposes only or for redesignation to a statewide wage index and has not withdrawn that application under the procedures specified in paragraph (a) of this section may request termination of its approved 3-year wage index reclassification under the following conditions:

(i) The request to terminate must be received by the MGCRB within 45 days of the publication of the annual notice of proposed rulemaking concerning changes to the inpatient hospital prospective payment system and proposed payment rates for the fiscal year for which the termination is to apply.

(ii) A request to terminate a 3-year reclassification will be effective only for the full fiscal year(s) remaining in the 3-year period at the time the request is received. Requests for terminations for part of a fiscal year will not be considered.

(2) *Reapplication within the approved 3-year period.* (i) If a hospital elects to withdraw its wage index application after the MGCRB has issued its decision, it may cancel its withdrawal in a subsequent year and request the MGCRB to reinstate its wage index reclassification for the remaining fiscal year(s) of the 3-year period.

(ii) A hospital may apply for reclassification for purposes of the wage index to a different area (that is, an area different from the one to which it was originally reclassified for the 3-year period). If the application is approved, the reclassification will be effective for 3 years. Once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, regardless of whether the withdrawal or termination request is made within 3 years from the date of the withdrawal or termination.

(iii) In a case in which a hospital with an existing 3-year wage index reclassification applies to be reclassified

to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1.

(c) *Written request only*. A request to withdraw an application or terminate an approved reclassification must be made in writing to the MGCRB by all hospitals that are party to the application or reclassification.

(d) *Process for canceling a previous withdrawal or termination*. A hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year, as specified in § 412.256(a)(2).

(e) *Appeal of the MGCRB's denial of a hospital's request for withdrawal*. (1) A hospital may file an appeal of the MGCRB's denial of its request for withdrawal of an application to the Administrator. The appeal must be received within 15 days of the date of the notice of the denial.

(2) Within 20 days of receipt of the hospital's request for appeal, the Administrator affirms or reverses the denial.

[56 FR 25489, June 4, 1991, as amended at 56 FR 43241, Aug. 30, 1991; 57 FR 39826, Sept. 1, 1992; 66 FR 39935, Aug. 1, 2001; 67 FR 50113, Aug. 1, 2002]

§ 412.274 Scope and effect of an MGCRB decision.

(a) *Scope of decision*. The MGCRB may affirm or change a hospital's geographic designation. The MGCRB's decision is based upon the evidence of record, including the hospital's application and other evidence obtained or received by the MGCRB.

(b) *Effective date and term of the decision*. (1) For reclassifications prior to fiscal year 2005, a standardized amount classification change is effective for 1 year beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year following the Federal fiscal year in which the complete application is filed and ending effective at the end of that Federal fiscal year (the end of the next September 30).

(2) A wage index classification change is effective for 3 years beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year in which the complete application is filed.

[55 FR 36766, Sept. 6, 1990, as amended at 62 FR 46031, Aug. 29, 1997; 66 FR 39935, Aug. 1, 2001; 69 FR 49250, Aug. 11, 2004]

§ 412.276 Timing of MGCRB decision and its appeal.

(a) *Timing*. The MGCRB notifies the parties in writing, with a copy to CMS, and issues a decision within 180 days after the first day of the 13-month period preceding the Federal fiscal year for which a hospital has filed a complete application. The hospital has 15 days from the date of the decision to request Administrator review.

(b) *Appeal*. The decision of the MGCRB is final and binding upon the parties unless it is reviewed by the Administrator and the decision is changed by the Administrator in accordance with § 412.278.

[55 FR 36766, Sept. 6, 1990, as amended at 64 FR 41541, July 30, 1999]

§ 412.278 Administrator's review.

(a) *Hospitals requests for review*. A hospital or group of hospitals dissatisfied with the MGCRB's decision regarding its geographic designation may request the Administrator to review the MGCRB decision. (A hospital or group of hospitals may also request that the Administrator review the MGCRB's dismissal of an application as untimely filed or incomplete, as provided in § 412.256(d).)

(b) *Procedures for hospital's request for review*. (1) The hospital's request for review must be in writing and sent to the Administrator, in care of the Office of the Attorney Advisor. The request must be received by the Administrator within 15 days after the date the MGCRB issues its decision. A request for Administrator review filed by facsimile (FAX) or other electronic means will not be accepted. The hospital must also mail a copy of its request for review to CMS's Hospital and Ambulatory Policy Group.

(2) The request for review may contain proposed findings of fact and conclusions of law, exceptions to the