

#### IV. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of

Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact

that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

##### **List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 02-1945 Filed 1-24-02; 8:45 am]

BILLING CODE 4310-05-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 86**

[AMS-FRL-7132-8]

RIN 2060-AJ73

### **Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed Non-Conformance Penalties for 2004 and Later Model Year Emission Standards for Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects the preamble to a proposed rule published in the **Federal Register** of January 16, 2002, regarding non-conformance penalties for heavy-duty diesel engines and vehicles. This correction provides the correct EPA docket number for the submission of comments on the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4334; Fax:

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borushko.margaret@epa.gov.

### Correction

In the **Federal Register** of January 16, 2002, in FR Doc. 02-1109, on page 2159, in the second column, correct the **ADDRESSES** caption to read:

**ADDRESSES:** *Comments:* We must receive your comments by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. In your correspondence, refer to Docket A-2001-25. See Section VI.B for more information on comment procedures.

*Public hearing:* We will hold a public hearing on February 15, 2002 at the Washington Dulles Airport Marriott, 45020 Aviation Drive, Dulles, Virginia 20166. Phone: (703-471-9500). If you want to testify at the hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section VI.B for more information on the public-hearing procedures.

*Public docket:* EPA's Air Docket makes materials related to this rulemaking available for review in Docket No. A-2001-25 located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M. Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Dated: January 18, 2002.

**Jeffrey R. Holmstead,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 02-1880 Filed 1-24-02; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Chapter IV

[CMS-9877-P]

RIN 0938-AH53

#### Medicare and Medicaid Programs; Terms, Definitions, and Addresses: Technical Amendments

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This technical regulation would amend CMS rules—

To simplify and rationalize the system of definitions and increase uniformity in the use of terms;

To clarify which steps of the appeals process are “final” and which are “binding”;

To correct outdated addresses and organizational unit names;

To remove content that is outdated or duplicative; and

To make other editorial changes and technical corrections.

These revisions are necessary to preclude confusion regarding our regulations and to better ensure uniform understanding and application. By updating and removing content that is outdated, unnecessary, or duplicative, these changes would also shorten our rules and make them easier to use.

**DATES:** *Comment date:* We will consider all comments received at one of the addresses indicated below no later than 5 p.m. on March 26, 2002.

**ADDRESSES:** Please mail written comments (one original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: HCF-9877-FC, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received in the event of delivery delays.

If you prefer, you may deliver your written comments by courier (one original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or  
Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments mailed to the above addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS-9877-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5-12-08 of the headquarters Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone: (410) 786-7197.

**FOR FURTHER INFORMATION CONTACT:** Margaret Teeters, (410) 786-4678.

### SUPPLEMENTARY INFORMATION:

#### A Simplification and Rationalization of the System of Definitions

In revising the definitions system, we aim to ensure that each definition would meet the following conditions:

1. Is worded so as to preclude confusion or misinterpretation.
2. Is not duplicated.
3. Does not include requirements or prohibitions (which belong in the text of the rules); or personnel qualifications (which need to be identified as such).
4. If it is of general applicability, is located at the beginning of chapter IV.
5. If it is of limited applicability, is presented as a basic definition in that part of the regulations to which it is most pertinent or in which it is most frequently used. (When the term is used elsewhere, with the same meaning it has in the basic definition, we cite that basic definition and do not duplicate it. A separate definition of that term would be presented only if it is used with a special, different meaning (for example, in a broader or more limited sense).

We do not include definitions of terms that are not used in the text, are used in their ordinary, usual sense, or are used only once or twice. (In the latter case, the word is explained where used, not placed in a definitions section.)

We would keep all the acronyms for both programs in § 400.200.

Because of the great number of definitions in CMS's regulations, attempting to deal with all of them now would unduly delay issuance of this rule. That would not be desirable for a rule that includes content (updating and correcting) that must be made available promptly to those who implement our regulations and to the general public. We will be developing another technical rule to deal with the remaining definitions.

With respect to personnel qualifications, which have sometimes been presented as “definitions,” our goal has been to include in a new § 400.210, the qualifications for the practitioners whose services are most frequently used in the Medicare program. The personnel qualifications for practitioners who furnish less frequently used services would be retained in their current locations.

Qualifications that are different from the basic qualifications set forth in the new section would also be retained where they have been.

A proposed rule identified as BPD-819-P was published on March 10, 1997 at 62 FR 11005. The final rule, identified as CMS-3819-F, will revise part 484 of the CMS regulations, which