

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *J. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 5, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the CFR is amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart F—California**

2. Section 52.244 is added to read as follows:

##### **§ 52.244 Motor vehicle emissions budgets.**

(a) Approval of the motor vehicle emissions budgets for the following ozone rate-of-progress and attainment SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and

EPA has found the budgets to be adequate for conformity purposes.

(1) Antelope Valley, approved January 8, 1997;

(2) Coachella, approved January 8, 1997;

(3) Kern, approved January 8, 1997;

(4) Mojave, approved January 8, 1997;

(5) Sacramento, approved January 8, 1997;

(6) South Coast, approved April 10, 2000;

(7) Ventura, approved January 8, 1997.

(b) Approval of the motor vehicle emissions budgets for the following ozone maintenance SIP will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) Monterey, approved January 17, 1997.

(2) [Reserved].

(c) Approval of the motor vehicle emissions budgets for the following carbon monoxide maintenance SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) Bakersfield, approved March 31, 1998;

(2) Chico, approved March 31, 1998;

(3) Fresno, approved March 31, 1998;

(4) Lake Tahoe-North, approved March 31, 1998;

(5) Lake Tahoe-South, approved March 31, 1998;

(6) Modesto, approved March 31, 1998;

(7) Sacramento, approved March 31, 1998;

(8) San Diego, approved March 31, 1998;

(9) San Francisco Bay Area, approved March 31, 1998;

(10) Stockton, approved March 31, 1998.

(d) Approval of the motor vehicle emissions budgets for the following nitrogen dioxide maintenance SIP will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) South Coast, approved on July 24, 1998.

(2) [Reserved].

[FR Doc. 02-28919 Filed 11-14-02; 8:45 am]

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Parts 405 and 419**

[CMS-1206-CN]

RIN 0938-AL19

#### **Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Correction**

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

**ACTION:** Correction of final rule with comment period.

**SUMMARY:** This document corrects errors that appeared in the final rule with comment period published in the **Federal Register** on November 1, 2002 entitled "Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports." This notice is a supplement to the November 1, 2002 final rule with comment period.

**EFFECTIVE DATE:** November 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Anita Heygster, (410) 786-0378.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. 02-27548 of November 1, 2002 (67 FR 66718), we omitted addresses and instructions for submitting public comments and language that justified waiving notice and comment procedures for two specific policies. This notice is a supplement to the November 1, 2002 final rule with comment period, and sets forth our rationale for waiving the notice and comment period for certain provisions. More detail regarding this correction is provided in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published November 1, 2002. Accordingly, the corrections are effective January 1, 2003.

##### **II. Correction of Errors**

In FR Doc. 02-27548 of November 1, 2002 (67 FR 66719), make the following corrections:

1. On page 66718, at the top of the second column, immediately preceding the heading **FOR FURTHER INFORMATION CONTACT**, insert the following language: "**ADDRESSES:** In commenting, please refer to file code CMS-1206-FC.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1206-FC, P.O. Box 8018, Baltimore, MD 21244-8018.

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

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

*Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786-7197."

2. On page 66813, at the end of the first column, insert the following section:

#### **"XVI. Waiver of Proposed Rulemaking**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public

interest and incorporates a statement of the finding and its reasons in the rule issued.

While this final rule with comment finalizes provisions set forth in the August 9, 2002 proposed rule (67 FR 52092), the following policies were not included in that rule and are subject to comment. We are issuing APC assignments for codes that are new for 2003 as final with comment because we believe that it is necessary to avoid harm to hospitals and beneficiaries and because it is necessary to implement the requirements of the HIPAA when it becomes effective for all providers and payers in October 2003. Specifically, APC assignments for new codes are necessary for hospitals to be able to report the services they furnish and to be properly paid for them. To do otherwise would leave hospitals no other option but to report incorrect codes and to receive incorrect payments for the services that should be reported under the new codes. New HCPCS codes for the forthcoming year are not announced by the American Medical Association (with regard to the current procedural terminology, CPT portion of HCPCS) and by CMS (with regard to the alpha numeric portion of HCPCS) until September of each year for the forthcoming year. Hence, CMS is not able to include most new codes and proposed APC assignments in its annual notice of proposed rulemaking for OPSS. Where possible, we do include mid year G codes and proposed codes in the proposed rule but these represent a very limited subset of the many changes that occur in HCPCS coding each year.

Similarly, recognition of new codes for 2003 is necessary for both CMS and hospitals to comply with the requirements of HIPAA that will require all providers to use HCPCS codes no later than October 16, 2003. For CMS to not recognize HCPCS codes that are new for 2003 until 2004 would be to violate these requirements.

We are issuing the change to our policy regarding influenza and pneumococcal pneumonia vaccines as final with comment because we believe that this change in policy is necessary to protect the health of the Medicare population. As we discussed previously this notice is a supplement to the November 1, 2002 final rule with comment period. In this preamble, we have had considerable discussions in which we have been advised by providers that OPSS payment was insufficient for them to be able to guarantee that they would be able to offer these important vaccines to the

Medicare patients they treat. They cited the timing of updates to the OPSS (which go into effect in January, 9 months before the start of the flu and PPV immunization season) and the volatility of the costs as a result of irregular supplies as their main concern. Each year a new vaccine is produced; the cost of the vaccine is frequently higher than the previous year's cost. Thus from September through December, providers paid under the OPSS for administering flu vaccines (which include home health agencies, which immunize many beneficiaries, homebound and otherwise) do not receive benefit of the update that will occur the following January. We believe that paying for influenza and PPV vaccines based on reasonable cost is the best way we can ensure that we maximize the potential for providers to secure the vaccine they need to immunize the Medicare population and that therefore, implementing this change as a final policy with public comment is justified.

Therefore, we find good cause to waive notice and comment procedures and to implement these policies as final with a comment period. We are providing a 60-day public comment period.

#### **III. Waiver of Proposed Rulemaking**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the rule issued.

For the two policies addressed above in Section II., Correction of Errors, and for the reasons set forth in that section, we find it unnecessary to undertake notice and comment rulemaking. Therefore, we find good cause to waive notice and comment procedures.

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

Dated: November 6, 2002.

**Ann Agnew,**

*Executive Secretary to the Department.*

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