

emission limitations, and the compliance schedules. *See* 60 FR 65414.

XIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this

context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 April 11, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart EE—New Hampshire

2. Section 62.7325 is amended by adding paragraphs (b)(3) and (c)(3) to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(3) Control of air emissions from existing commercial and industrial solid waste incineration units, submitted on August 12, 2002.

(c) * * *

(3) Commercial and industrial solid waste incineration units.

3. Subpart EE is amended by adding a new § 62.7455 and a new undesignated center heading to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.7455 Identification of sources.

(a) The plan applies to the following existing commercial and solid waste incineration unit:

- (1) D.D. Bean and Sons, Inc. in Jaffrey.
- (2) [Reserved]
- (b) [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§§ 63.600 to 63.1199), in § 63.1101, the definition of *Process wastewater* is added alphabetically to read as follows:

§ 63.1101 Definitions.

* * * * *

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown, water formed during a chemical reaction or used as a reactant, water used to wash impurities from organic products or reactants, equipment washes between batches in a batch process, water used to cool or quench organic vapor streams through direct contact, and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 419

[CMS-1206-CN2]

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 and to the November 15, 2002, correction notice, which added section "XVI. Waiver of Proposed Rulemaking."

EFFECTIVE DATE: January 1, 2003.

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

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 02-27548 of November 1, 2002 (67 FR 66719), there were several technical errors. The errors include

incorrect or potentially misleading responses, incorrect description of comments, and revisions to information contained in Addenda A and B. In some cases, the errors were omissions, typographical errors, mathematical miscalculations or were caused by inadvertent failure to perform calculations or perform other functions as described in the final rule. We would ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. 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. We find good cause to waive notice and comment procedures for this correction notice as set forth in section III, "Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in Effective Date," below.

II. Correction of Errors

On page 66719, in column 2, in the definition of CPT, we cited the 2002 Current Procedural Terminology (CPT), although the CPT codes used for the 2003 Hospital Outpatient Prospective Payment System (OPPS) are those found in the American Medical Association's 2003 Current Procedural Terminology. Remove 2002 and insert 2003.

On page 66724, in column 3, under the second line following "Option 2:", we incorrectly cited as a Healthcare Common Procedure Coding System (HCPCS) code 703690. This is not a HCPCS code. Remove 703690 and insert 70390.

On page 66724, in column 3, under the forth line following "Option 3:", we incorrectly cited as a HCPCS code 7036736 and we omitted one HCPCS code that was presented to the APC Panel as discussed in the preamble. Remove 7036736 and insert 70373, 70120.

On page 66729, we inadvertently included two duplicate comments and responses on the issue of whether to move endometrial ablation out of a new technology Ambulatory Payment Classification (APC) for 2003. Remove the first comment and response under the heading "New Technology APC Issues" in column 2 and the second duplicative comment and response in column 3. The comment and response on this issue appear correctly on page 66737 (column 3, 4th comment and response). The comment and response on page 66737 are the correct comment and response on this issue; those being removed were mistakenly published.

On pages 66730, 66818, and 66914, we inadvertently included incorrect information that we intended to replace with correct information before publication of the final rule.

Specifically, on page 66730, we inadvertently included an incorrect APC assignment for HCPCS codes 77523 and 77525. Remove Table 3 entries for HCPCS codes 77523, Proton Beam therapy intermediate, and 77525, Proton beam therapy complex. On page 66818, remove Addendum A entry for APC 650, Proton Beam Therapy. On page 66914, change the APC for HCPCS codes 77523 and 77525 from APC 650 to APC 712, and change payment and copayment amounts as described in corrections to Addendum B. Remove the first full response on page 66728, in column 3, and replace it with the following: "*Response:* We agree that codes for simple proton beam radiation therapy (CPT code 77522 and CPT code 77520) should be placed in a different APC than codes for intermediary (CPT code 77523) and complex (CPT code 77525) radiation therapy. However, it would be inappropriate to return codes for simple proton beam therapy to APCs for new technology services because we believe we have sufficient claims data to integrate them into the OPPS. Therefore, we have placed them in APC 664.

However, we agree that claims data are not sufficiently robust for us to move intermediate and complex proton beam therapy (CPT codes 77523 and 77525) out of APC 712. Therefore, we will retain these codes in APC 712 for the 2003 OPPS."

On page 66732, in column 1, in the first line carried over from the preceding page, we incorrectly stated that HCPCS code G0258 was effective on October 1, 2002, when it was effective April 1, 2002. Remove "October 1, 2002", and insert "April 1, 2002". HCPCS code G0258 was made effective April 1, 2002, and was removed effective January 1, 2003. The effective date of January 1, 2003, which is shown in Table 4—New G Codes for 2002 and 2003 for Which There are Final APC Assignments, is correct because January 1, 2003, is the effective date of the deletion of the code and the change of the status indicator to X. The entry in Addendum B on page 66979 correctly shows the payment amount and the minimum unadjusted copayment that will apply during the removed code's grace period.

On page 66735, in column 2, the first response under item #4, we mistakenly said that the APC payment includes both the cost of the procedure and the cost for the left ventricular lead. Remove the sentence that says: "We believe the APC placement accounts for the cost of