

significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing Commonwealth law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### VI. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 281

Environmental protection, Administrative Practice and Procedure, Hazardous Materials, State Program Approval, and Underground Storage Tanks.

**Authority:** This document is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c.

Dated: December 10, 1997.

**Jeanne M. Fox,**

*Regional Administrator.*

[FR Doc. 98-1531 Filed 1-29-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[FRL 5938-6]

#### Underground Storage Tank Program: Approved State Program for the Commonwealth of Puerto Rico

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

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, authorizes the United States Environmental Protection Agency (EPA) to grant approval to any State to operate its underground storage tank program in the State in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities

under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the approval of the Commonwealth of Puerto Rico's underground storage tank program and incorporates by reference appropriate provisions of the Commonwealth's statutes and regulations.

**DATES:** This regulation is effective March 31, 1998, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of the Commonwealth of Puerto Rico's underground storage tank program must be received by the close of business March 2, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of March 31, 1998, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to the Mr. John Kushwara, Chief, Ground Water Compliance Section (DECA-WCB), U.S. EPA Region II, 290 Broadway, 20th Floor, New York, NY 10007-1866 or Mr. Victor Trinidad, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon, Stop 22, Santurce, Puerto Rico 00907-4127. Comments received by EPA may be inspected in the public docket, located in the EPA Region II Library, 290 Broadway, 16th Floor, New York, New York 10007-1866, from 9 a.m. to 4:30 p.m., Monday through Thursday and from 9 a.m. to 1:30 p.m. on Friday, excluding Federal holidays. Phone: (212) 637-3185 or EPA Region II, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907-4127, Phone: (787) 729-6951.

**FOR FURTHER INFORMATION CONTACT:** Madho Ramnarine Singh, U.S. EPA Region II, Water Compliance Branch (DECA-EWCB), 290 Broadway, New York, NY 10007-1866. Phone: (212) 637-4237 or Mr. Victor Trinidad, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, Santurce, Puerto Rico 00907-4127, Phone: (787) 729-6951.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c, authorizes the United States Environmental Protection Agency (EPA) to grant approval to any State, which term includes the Commonwealth of

Puerto Rico pursuant to Section 1004(31) of RCRA, 42 U.S.C. 6903(31), to operate its underground storage tank program in the State in lieu of the federal underground storage tank program. EPA is publishing a **Federal Register** document announcing its decision to grant approval to Commonwealth of Puerto Rico concurrently with this document. Approval will be effective on March 31, 1998.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Commonwealth of Puerto Rico's underground storage tank program. This codification reflects the State program in effect at the time EPA grants the Commonwealth's approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on EPA's tentative determination to approve the Commonwealth of Puerto Rico program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in the Commonwealth of Puerto Rico. Codifying and incorporating by reference the Commonwealth's statutes and regulations does not restrict in any way federal authority to promulgate new laws or regulations relating to subtitle I of RCRA or to act otherwise pursuant to federal authority. By codifying the approved Commonwealth of Puerto Rico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Puerto Rico, the status of federally approved requirements of the Commonwealth of Puerto Rico program will be readily discernible. Only those provisions of the Commonwealth's underground storage tank program for which approval has been granted by EPA may be incorporated by reference for enforcement purposes.

To codify EPA's approval of the Commonwealth of Puerto Rico's underground storage tank program, EPA has added section 282.102 to Title 40 of the CFR. Section 282.102 incorporates by reference for enforcement purposes the Commonwealth's statutes and regulations. Section 282.102 also references the Attorney General's

Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA. With regard to the statutory references contained in the Attorney General's Statement, the Commonwealth of Puerto Rico has chosen to cite to Articles in a compilation of the Commonwealth's statute in its amended form, rather than to corresponding Sections in the codified version of that amended statute.

EPA retains the authority under sections 9003(h)(1), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h)(1), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections, enforcement and corrective actions in approved States. With respect to such actions, EPA will rely on federal sanctions, federal authorities, and federal procedures rather than the State authorized analogues to these provisions. Therefore, the approved Commonwealth of Puerto Rico enforcement authorities will not be incorporated by reference. Section 282.102 lists those approved Commonwealth authorities that would fall into this category.

The public also needs to be aware that some provisions of the Commonwealth's underground storage tank program are not part of the federally approved State program, because such provisions are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in Part 282. Section 282.102 of the codification simply lists for reference and clarity the Commonwealth of Puerto Rico statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the Commonwealth of Puerto Rico, however, will continue to implement and enforce such provisions.

#### **Certification Under the Regulatory Flexibility Act**

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the Commonwealth requirements authorized by EPA under 40 CFR Part 281. EPA's codification does not impose

any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates the Commonwealth of Puerto Rico's requirements which have been authorized by EPA under 40 CFR Part 281 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### **Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector

because it merely makes federally enforceable existing requirements with which regulated entities must already comply under Commonwealth law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The requirements being codified today are the result of the Commonwealth of Puerto Rico's voluntary participation in accordance with RCRA subtitle I.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing Commonwealth program that EPA is authorizing. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to this action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA recognizes that although small governments may own and/or operate USTs, this codification incorporates into the Code of Federal Regulations the Commonwealth of Puerto Rico's requirements which are being authorized concurrently by EPA under 40 CFR part 281 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

#### **Compliance With Executive Order 12866**

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

#### **List of Subjects In 40 CFR Part 282**

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State

program approval, Underground storage tanks, Water pollution control.

Dated: December 10, 1997.

**Jeanne M. Fox,**

*Regional Administrator, Region 2.*

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

**PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

1. The authority citation for Part 282 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6991b(h)(1), 6991c, 6991d, and 6991e.

**Subpart B—Approved State Programs**

2. Subpart B is amended by adding § 282.102 to read as follows:

**§ 282.102 Puerto Rico State-Administered Program.**

(a) The Commonwealth of Puerto Rico is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The Commonwealth's program, as administered by the Commonwealth of Puerto Rico Environmental Quality Board, is approved by EPA pursuant to 42 U.S.C. 6991c and Part 281 of this chapter. EPA is publishing the notice of final determination on the approved Commonwealth of Puerto Rico underground storage tank program concurrently with this notice and it will be effective on March 31, 1998.

(b) The Commonwealth of Puerto Rico has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under sections 9003(h)(1), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h)(1), 6991d and 6991e, as well as its authority under other statutory and regulatory provisions.

(c) To retain program approval, the Commonwealth of Puerto Rico must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If the Commonwealth obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) The Commonwealth of Puerto Rico has final approval for the following elements submitted to EPA in its program application for final approval and to be published in the **Federal Register** concurrently with this notice, and to be effective on March 31, 1998. Copies may be obtained from the Underground Storage Tank Program, Puerto Rico Environmental Quality Board, 431 Ponce De Leon Avenue, Nacional Plaza, Suite 614, Hato Rey, PR 00917, Phone: (787) 767-8109.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Puerto Rico Statutory Requirements Applicable to the Underground Storage Tank Program, 1997.

(B) Puerto Rico Regulatory Requirements Applicable to the Underground Storage Tank Program, 1997.

(ii) The following specifically identified sections and rules in the Commonwealth of Puerto Rico's statutes, regulations and rules are part of the approved Commonwealth program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(1) Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Laws of Puerto Rico Annotated (L.P.R.A.) § 1121 *et seq.*

(i) Section 1131 Functions and duties [Insofar as paragraphs (10), (12), (13), (19), (22), (23), (25), (26), (29), and (30) set forth enforcement authorities.]

(ii) Section 1134 Hearings, orders and judicial proceedings

(iii) Section 1136 Penalty

(iv) Section 1139 Civil actions

(v) Section 1142 Powers [Insofar as (b)(5) sets forth enforcement authorities.]

(2) Puerto Rico Environmental Emergency Fund Act, 12 L.P.R.A. § 1269 *et seq.*

(B) The regulatory provisions include:

(1) Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

(2) Part X—General Provisions.

(i) Rule 1005 Right of Entry

(ii) Rule 1007 Notice of Violation and Compliance Order

(iii) Rule 1008 Closure of an Underground Storage Tank

(iv) Rule 1010 Penalties

(C) Other provisions include:

(1) Puerto Rico Civil Procedure Rules of 1979, 32 L.P.R.A. Appendix III

(2) Rules of Administrative Procedure for Hearings in Environmental Quality Board, Regulation Number 3672, promulgated on October 19, 1988.

(iii) The following specifically identified sections and rules in the Commonwealth of Puerto Rico's statutes, regulations and rules are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(1) Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Laws of Puerto Rico Annotated (L.P.R.A.) §§ 1121 *et seq.*

(i) Section 1131—Functions and duties [Insofar as paragraph (13) addresses permit and license requirements and associated fees, as well as the NPDES and UIC programs; and paragraph (34) relates solely to the solid and hazardous waste programs.]

(ii) Section 1132—Transfer of powers

(iii) Section 1135—Character of Board for federal purposes [Insofar as it addresses permit requirements.]

(iv) Section 1138—Effectiveness of previous documents [Insofar as it addresses permit and licensing requirements.]

(B) The regulatory provisions include:

(1) Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

(i) Part VI—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances: Rule 603—Initial Abatement Measures and Site Check [Insofar as 603(A)(5) requires owners and operators to obtain permits or franchises for drilling and installation of groundwater monitoring and/or extraction wells.]; Rule 605—Free Product Removal [Insofar as 605(A) and 605(D)(6) require owners and operators to obtain permits or franchises for drilling and installation of water monitoring and/or extraction wells.].

(ii) Part XII—Fee Rules [Insofar as fees are broader in scope than the federal program.]: Rule 1201—Applicability; Rule 1202—Annual Notification Fees; Rule 1203—Fee Relative to Transfer of Ownership; Rule 1204—Fees for Duplication of Records; Rule 1205—Fee Payments; Rule 1206—Exemptions from Fees; Rule 1207—Fees for Revision of Permanent Closure Plans; Rule 1208—Fees for Annual Re-certification of UST Facilities.

(2) *Statement of legal authority.* The Attorney General Statement, a letter

signed on July 2, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the application for approval on January 17, 1996, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the application on January 17, 1996 and supplemented on April 17, 1997, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 2 and the Puerto Rico Environmental Quality Board, signed by an authorized representative of the Environmental Quality Board on March 7, 1997 and subsequently by an authorized representative of EPA, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "Puerto Rico" and its listing.

**Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations**

\* \* \* \* \*

**Puerto Rico**

- (a) The statutory provisions include:
1. Public Policy Environmental Act of 1970, Act Number 9, June 18, 1970, as amended, 12 Laws of Puerto Rico Annotated (L.P.R.A.) § 1121 *et seq.*
  - (1) Section 1121—Short title
  - (2) Section 1122—Purpose
  - (3) Section 1123—Declaration of policy
  - (4) Section 1124—Interpretation of legal provisions
  - (5) Section 1125—Duties of governmental agencies
  - (6) Section 1126—Savings clause
  - (7) Section 1127—Complementary character
  - (8) Section 1128—Annual report of Governor
  - (9) Section 1129—Creation of Board; composition; term
  - (10) Section 1130—Duties of Chairman
  - (11) Section 1130A—Consulting Council
  - (12) Section 1131—Functions and duties [Except paragraphs (10), (12), (19), (22), (23), (25), (26), (29), and (30), insofar as they outline enforcement authorities;

paragraph (13), insofar as it addresses enforcement authorities, permit and license requirements and associated fees, as well as the NPDES and UIC programs; and paragraph (34), insofar as it relates solely to the solid and hazardous waste programs.]

- (13) Section 1133—Consultation and use of facilities
- (14) Section 1135—Character of Board for federal purposes [Except insofar as it addresses permit requirements.]
- (15) Section 1135A—Administration of the Puerto Rico Water Pollution Control Revolving Fund
- (16) Section 1137—Confidential documents
- (17) Section 1138—Effectiveness of previous documents [Except insofar as it addresses permit and licensing requirements.]
- (18) Section 1140—Limitations
- (19) Section 1141—Definitions
- (20) Section 1142—Powers [Except insofar as (b)(5) sets forth enforcement authorities.]
- (b) The regulatory provisions include:
  1. Underground Storage Tank Control Regulations, Regulation Number 4362, promulgated by the Commonwealth of Puerto Rico Environmental Quality Board on November 7, 1990.

a. Part I—Program Scope and Interim Prohibition.

- (1) Rule 101—Program Scope
- (2) Rule 102—Purpose
- (3) Rule 103—Applicability
- (4) Rule 104—Interim Prohibition for Deferred UST Systems
- (5) Rule 105—Definitions and Abbreviations [Except insofar as the Puerto Rico definition of "Underground Storage Tank or UST" does not exclude from regulation heating oil tanks used for storing heating oil for consumptive use on the premises where stored.]

b. Part II—UST Systems: Design, Construction, Installation, and Notification.

- (1) Rule 201—Performance Standards for New UST Systems
- (2) Rule 202—Upgrading of Existing UST Systems
- (3) Rule 203—Notification Requirements

c. Part III—General Operating Requirements.

- (1) Rule 301—Spill and Overfill Control
- (2) Rule 302—Operation and Maintenance of Corrosion Protection
- (3) Rule 303—Compatibility
- (4) Rule 304—Repairs Allowed
- (5) Rule 305—Reporting and Recordkeeping

d. Part IV—Release Detection.

- (1) Rule 401—General Requirements for all UST Systems
- (2) Rule 402—Requirements for Petroleum UST Systems
- (3) Rule 403—Requirements for Hazardous Substance UST Systems
- (4) Rule 404—Methods of Release Detection for Tanks
- (5) Rule 405—Methods of Release Detection for Piping
- (6) Rule 406—Release Detection Recordkeeping

e. Part V—Release Reporting and Investigation.

- (1) Rule 501—Reporting of Suspected Releases

(2) Rule 502—Investigation Due to Off-site Impacts

(3) Rule 503—Release Investigation and Confirmation Steps

(4) Rule 504—Reporting and Cleanup of Spills and Overfills

f. Part VI—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances.

- (1) Rule 601—General
- (2) Rule 602—Initial Response
- (3) Rule 603—Initial Abatement Measures and Site Check [Except insofar as 603(A)(5) requires owners and operators to obtain permits or franchises for drilling and installation of groundwater monitoring and/or extraction wells.]
- (4) Rule 604—Initial Site Characterization
- (5) Rule 605—Free Product Removal [Except insofar as 605(A) and 605 (D)(6) require owners and operators to obtain permits or franchises for drilling and installation of water monitoring and/or extraction wells.]
- (6) Rule 606—Investigation for Soil and Groundwater Clean-up
- (7) Rule 607—Corrective Action Plan
- (8) Rule 608—Public Participation

g. Part VII—Out-Of-Service UST Systems and Closure.

- (1) Rule 701—Temporary Closure
- (2) Rule 702—Permanent Closure and Changes-in-Service
- (3) Rule 703—Assessing the Site at Closure or Change-in-Service
- (4) Rule 704—Applicability to Previously Closed UST Systems
- (5) Rule 705—Closure Methods

h. Part VIII—Notification Requirements and Procedures.

- (1) Rule 801—Notification of Underground Storage System
- (2) Rule 802—Notification Requirements
- (3) Rule 803—Notification Responsibility
- (4) Rule 804—UST Notification Identification Number
- (5) Rule 805—Changes to Facility Notification Data

i. Part IX—Financial Responsibility Requirements.

- (1) Rule 901—Applicability
- (2) Rule 902—Compliance Dates
- (3) Rule 903—Definition of Terms
- (4) Rule 904—Amount and Scope of Required Financial Responsibility
- (5) Rule 905—Allowable Mechanisms and Combinations of Mechanisms
- (6) Rule 906—Financial Test of Self-Insurance
- (7) Rule 907—Guarantee
- (8) Rule 908—Insurance and Risk Retention Group Coverage
- (9) Rule 909—Surety Bond
- (10) Rule 910—Letter of Credit
- (11) Rule 911—Trust Fund
- (12) Rule 912—Standby Trust Fund
- (13) Rule 913—Substitution of Financial Assurance Mechanisms by Owner or Operator
- (14) Rule 914—Cancellation or Nonrenewal by a Provider of Financial Assurance
- (15) Rule 915—Reporting by Owner or Operator
- (16) Rule 916—Recordkeeping

- (17) Rule 917—Drawing on Financial Assurance Mechanisms  
 (18) Rule 918—Release from the Requirements  
 (19) Rule 919—Bankruptcy or Other Incapacity of Owner or Operator of Provider of Financial Assurance  
 (20) Rule 920—Replenishment of Guarantees, Letters of Credit, or Surety Bonds  
 (21) Rule 921—Suspension of Enforcement  
 j. Part X—General Provisions.  
 (1) Rule 1001—Amendments to this Regulation  
 (2) Rule 1002—Monitoring, Recordkeeping, Reporting, Sampling, and Testing Methods  
 (3) Rule 1003—Malfunction or Non-compliance, Reporting  
 (4) Rule 1004—Confidentiality of Information  
 (5) Rule 1006—Public Notice and Public Hearings  
 (6) Rule 1009—Public Nuisance  
 (7) Rule 1011—Overlapping or Inconsistent Provisions  
 (8) Rule 1012—Derogation  
 (9) Rule 1013—Separability Clause  
 (10) Rule 1014—Effectiveness  
 k. Part XI—General Prohibitions.  
 (1) Rule 1101—Purpose, Scope and Applicability  
 (2) Rule 1102—General Prohibitions

[FR Doc. 98-1532 Filed 1-29-98; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Parts 400, 405, 410, 411, and 414

[HCFA-1884-CN]

RIN 0938-AH94

#### Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998; Correction

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

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

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on October 31, 1997 entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998."

**EFFECTIVE DATE:** These corrections are effective October 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stanley Weintraub, (410) 786-4498.

#### SUPPLEMENTARY INFORMATION:

##### Background

In FR Doc. 97-28973 of October 31, 1997 (62 FR 59048), there were a number of technical errors. The errors relate to an omission in the preamble in the discussion of practice expense relative value units (RVUs) for procedures furnished in both in-office and out-of-office settings, to an inconsistency between the preamble discussion and information in the addenda for HCPCS code G0101 (Cervical or Vaginal Cancer Screening: Pelvic and Clinical Breast Examination), to inconsistencies between the preamble discussion and the regulations text for screening mammography and screening pelvic examinations, and to an omission of a reference to status indicator "I" in the explanation of the information in Addendum B. We also printed incorrect information for certain procedure codes in Addendum B, beginning on page 59103. The corrections appear in this document under the heading "Correction of Errors."

##### Correction of Errors

In FR Doc. 97-28973 of October 31, 1997 (62 FR 59048), make the following corrections:

##### Page 59078

Addendum C of the proposed rule titled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998" published in the **Federal Register** on June 18, 1997 (62 FR 33158) generally provided resource-based practice expense RVUs for both in-office and out-of-office settings. We intended to calculate final resource-based practice expense RVUs by code and for the two sites in the final rule. However, section 4505 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105-33), enacted on August 5, 1997, postponed the implementation of this provision until 1999. For the final rule, we wanted the carriers to make the same site-of-service calculations as they have done in previous years. However, we neglected to change the language in the preamble to state that the carriers will continue to calculate the differential. Therefore, on page 59078, in the second column, in the fourth full paragraph, the fourth sentence is incorrect and currently reads, "To

coordinate this policy with the site-of-service distinctions in the June 1997 proposed rule and the interaction of the provisions of section 4505 of the BBA 1997, we are listing in Addendum B the practice expense RVUs for the two sites for the 700 procedure codes instead of allowing the carrier to calculate the 50 percent reduction." Remove this sentence and replace it with the following two sentences: "Addendum B lists the practice expense RVUs for both the facility and nonfacility settings. If the code is subject to the site-of-service differential, the carrier will reduce the facility practice expense RVU by 50 percent in calculating the allowance for the code."

##### Page 59091

On page 59091, in the first column, in the first full sentence, we incorrectly stated that the RVUs assigned to HCPCS code G0101 (Cervical or Vaginal Cancer Screening: Pelvic and Clinical Breast Examination) are comparable to the RVUs assigned to a *new* patient office visit. This statement is inconsistent with the RVUs assigned to this code, which are correctly listed in Addenda B and C. We should have stated that the RVUs for HCPCS code G0101 are comparable to the RVUs assigned to an *established* patient office visit. Therefore, remove the first full sentence in the first column on page 59091 and replace it with the following: "We decided that this service is comparable to a level 2 evaluation and management established patient office visit."

##### Page 59100

On page 59100, there is an inaccuracy that needs to be corrected so that the regulations text is consistent with the preamble discussion of mammography services on pages 59078 through 59079, which states that section 4101(a) of the BBA 1997 amends section 1834(c)(2)(A) of the Social Security Act effective January 1, 1998 to simply provide that in the case of any woman over 39 years of age, payment may be made for a screening mammography if at least 11 months have passed following the month in which the last screening mammography was performed. On page 59100, we failed to state in the amendatory language in item 4 for § 410.34 (Mammography services: Conditions for and limitations on coverage) that we were removing paragraphs (d)(5) and (d)(6), which specify certain age limitations on the frequency of screening mammography before the enactment of the BBA 1997 and which are now obsolete. In addition, because we should have removed these two paragraphs, the line