

described by the Attorney General's Manual and the 30-day waiting period should be waived. See also, *Independent U.S. Tanker Owners Committee v. Skinner*, 884 F.2d 587 (DC Cir. 1989). In this case, the court found that paragraph (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. "In sum, the good cause exception must be invoked and justified; the paragraph (d)(1) exception applies automatically" (884 F.2d at 591). The facts are that the NPS is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the paragraph (d)(1) exception applies to this rule.

In accordance with the Administrative Procedure Act, this rule is also excepted from the 30-day waiting period by the "good cause" exception in 5 U.S.C. 553(d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with the 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. "The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was "to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt." S.Rep. No. 752, 79th Cong., 1st Sess.15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946)." *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

#### List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

#### PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

■ 2. Amend § 7.55 by revising the section title and adding new paragraph (c) to read as follows:

#### § 7.55 Lake Roosevelt National Recreation Area.

\* \* \* \* \*

(c) *Personal Watercraft (PWC)*. (1) PWCs are allowed on the waters within Lake Roosevelt National Recreation Area except in the following areas:

- (i) Crescent Bay Lake.
- (ii) Kettle River above the Hedlund Bridge.

(2) Launch and retrieval of PWC are permitted only at designated launch ramps. Launching and retrieval of PWC at Napoleon Bridge launch ramp is prohibited.

(3) PWC may land anywhere along the shoreline except in designated swimming areas.

(4) PWC may not be operated at greater than flat-wake speeds in the following locations:

(i) Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" to the confluence of the lake, marked by "flat wake" buoy(s).

(ii) Within 200 feet of launch ramps, marina facilities, campground areas, water skiers, beaches occupied by swimmers, or other persons in the water.

(iii) The stretch of the Spokane Arm from 200 feet west of the Two Rivers Marina on the downstream end, to 200 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: June 10, 2004.

**Paul Hoffman,**

*Deputy Assistant Secretary, Fish and Wildlife and Parks.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 50, 51, and 81

[OAR 2003-0079, FRL-7779-2]

RIN 2060-AJ99

#### Revision to the Preamble of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The EPA issued a final rule on April 30, 2004 (69 FR 23951) that set forth certain nationally-applicable requirements for implementation of the 8-hour ozone national ambient air quality standard (NAAQS)—the phase 1 rule. Section VII.L. of the preamble (69 FR 23995), provided that petitions for review challenging the final rule should be filed in the "appropriate circuit." The Clean Air Act (CAA) provides that petitions for review of any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia Circuit. This document modifies section VII.L. to clarify that petitions for review of the phase I rule must be filed in the United States Court of Appeals for the District of Columbia Circuit.

**DATES:** This document is effective on June 25, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5666, fax number (919) 541-0824 or by e-mail at [silvasi.john@epa.gov](mailto:silvasi.john@epa.gov) or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5550, fax number (919) 541-0824 or by e-mail at [gerth.denise@epa.gov](mailto:gerth.denise@epa.gov).

**SUPPLEMENTARY INFORMATION:** The EPA issued final rule on April 30, 2004 (69 FR 23951) that set forth certain requirements for implementation of the 8-hour ozone NAAQS. That action is referred to as the "phase 1 rule." Section VII.L. of the preamble (69 FR 23995) provides information regarding when challenges to the phase 1 rule may be filed in accordance with section 307(b) of the CAA. Section 307(b) of the CAA provides that challenges to any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia

Circuit. It also provides that challenges to any locally or regionally applicable rules may be filed in the United States Court of Appeals for the appropriate circuit. However, if EPA determines that a locally or regionally applicable rule is of nationwide scope and effect, then a challenge must be filed in the United States Court of Appeals for the District of Columbia Circuit.

The phase 1 rule is a nationally applicable rule. It establishes requirements for the 8-hour ozone NAAQS and those requirements apply in a consistent manner across the nation. The rule does not establish any requirements or obligations that apply only on a local or regional basis. Thus, under section 307(b), challenges to the phase 1 rule must be filed in the United States Court of Appeals for the District of Columbia Circuit. By the reference in section VI.L. to challenges being filed in the "appropriate circuit," EPA did not intend to suggest that a Court other than the United States Court of Appeals for the District of Columbia Circuit could be appropriate or that phase 1 rule is locally or regionally applicable as that phrase is used in section 307(b). However, because EPA's statement in section VI.L. could be misconstrued, we are issuing this correction to clarify the Agency's intention by replacing the clause "appropriate circuit" with "United States Court of Appeals for the District of Columbia Circuit."

The following is the corrected language:

#### Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 29, 2004.

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 CAA section 307(b)(2).

**Authority:** 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7401.

Dated: June 21, 2004.

**Robert Brenner,**  
Acting Assistant Administrator.

[FR Doc. 04-14457 Filed 6-24-04; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405 and 414

[CMS-1372-CN2]

RIN 0938-AM97

### Medicare Program; Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004: Correction

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

**ACTION:** Correction of interim 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 January 7, 2004 entitled "Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004."

**DATES:** Effective Date: This correction is effective January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**  
Diane Milstead (410) 786-3355.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 03-32323 of January 7, 2004 (69 FR 1084), there were a number of technical errors that we are identifying and correcting in section II—Correction of Errors. Additionally, there are various revisions to Addenda B and C. (The provisions in this correction notice are effective as if they were included in the document published January 7, 2004.)

##### Discussion of Addenda B and C

- There was an inadvertent omission of two supplies (Polaroid film and gonisol) from the Practice Expense Advisory Committee (PEAC) recommendations for CPT codes 76511, 76511-TC, 76512, 76512-TC, 76513, 76513-TC, 76516, 76516-TC, 76519, 76519-TC, 76529 and 76529-TC which impacts the practice expense RVUs for these codes on page 1205 of Addendum B. In addition, the supply inputs in the CPEP database for CPT code 94240 contained incorrect quantities for two supplies (oxygen and helium), resulting in incorrect practice expense RVUs on page 1229 of Addendum B for this code and for CPT

code 94240-TC. The practice expense RVUs for CPT 95144 on page 1230 were also incorrect as they reflected the wrong antigen and price. The corrected RVUs are shown in section II.2.

- In Addendum B, we assigned incorrect status indicators on page 1154 for CPT code 36416 and on page 1165 for CPT code 47133. These corrections are reflected in section II.2.

- In Addendum B, we assigned incorrect practice expense RVUs to CPT codes 61863 and 61867 on page 1179, and to CPT codes 88358, 88358-26 and 88358-TC on page 1218. The correct RVUs are reflected in section II.2.

- In Addendum B, on page 1241, an incorrect short descriptor was referenced for HCPCS code G0321, and the RVUs for G0321 and G0322 were transposed. The correct short descriptor and RVUs are shown in section II.2.

- We inadvertently omitted the following CPT codes from Addendum B: page 1218 for CPT codes 89220, 89230, and 89240. These corrections are reflected in section II.3.

- On pages 1146 and 1243 in Addenda B and C, respectively, we assigned the incorrect work RVUs to CPT 31629. We also failed to assign practice expense RVUs in the non-facility setting for this code. The corrected RVUs are shown in section II.4.

- On page 1215 of Addenda B, the practice expense RVUs for CPT codes 78804 and 78804-TC are revised to reflect the appropriate crosswalk. The correction can be found in section II.4.

#### II. Correction of Errors

- In FR Doc. 03-32323 of January 7, 2004 (69 FR 1084), make the following corrections—

- On page 1094, column one, second sentence, revise as follows to correct the specialty code referenced for urology: "Based on the 2002 data, we found that the specialties of gynecology/oncology (specialty code 98), rheumatology (specialty code 66), and urology (specialty code 34) received more than 40 percent of total Part B revenues from drugs."

- In the Table of Addendum B, the following CPT codes are corrected to read as follows: