

VIII. Congressional Review Act

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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.485 is amended by adding text and table to paragraph (b) to read as follows:

§ 180.485 Cyproconazole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the fungicide cyproconazole per se ((2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1H-1,2,4-triazole-1-yl)butan-2-ol) in or on soybean seed in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance will expire and be revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Soybean, seed	0.10	12/31/09

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA-HQ-OPPT-2005-0033; FRL-8103-2]

RIN 2070-AD16

Revocation of TSCA Section 4 Testing Requirements for Coke-Oven Light Oil (Coal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending the test rule entitled Testing of Certain High Production Volume Chemicals promulgated under section 4 of the Toxic Substances Control Act (TSCA). This amendment removes coke-oven light oil (coal) (CAS No. 65996-78-3) from the list of chemicals subject to the test rule. EPA is basing its decision on information it received after publication of the test rule. Also, upon the effective date of the revocation of the TSCA section 4 testing requirements for coke-oven light oil (coal), persons who export or intend to export coke-oven light oil (coal) are no longer subject to the TSCA section 12(b) export notification requirements to the extent that they were triggered by the testing requirements being revoked by this action.

DATES: This direct final rule is effective on February 6, 2007 without further notice, unless EPA receives adverse comment in writing, or a request to present comments orally, by January 8, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2005-0033, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulation.gov>. Follow the on-line instructions for submitting comments.

Mail: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Hand Delivery: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2005-0033. The DCO is open from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2005-0033. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/docket.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in EPA West, located at 1301 Constitution Ave., NW., Washington,

DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Catherine Roman, Chemical Control Division (CCD) (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-4780; e-mail address: roman.catherine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who manufacture (defined by statute to include import) or process coke-oven light oil (coal). Also, persons that export or intend to export coke-oven light oil (coal) may have an interest in this action. Upon the effective date of the revocation of the TSCA section 4 testing requirements for coke-oven light oil (coal), persons who export or intend to export coke-oven light oil (coal) are no longer subject to the TSCA section 12(b) export notification requirements to the extent that they were triggered by the testing requirements being revoked by this action. Because other persons may also be interested, the Agency has not attempted to describe all the specific persons that may be affected by this action. If you have any questions regarding the applicability of this action

to a particular person, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Requesting an opportunity to present oral comments to the Agency.* When you submit a request for an opportunity to present oral comments, this request must be in writing. If a written request is received on or before January 8, 2007, EPA will hold a public meeting on this direct final rule in Washington, DC. Submit this written request to the Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. If a written request is received, EPA will announce the scheduling of the public meeting in a subsequent **Federal Register** document. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments and data at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

3. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Pursuant to TSCA section 4, EPA published a test rule on March 16, 2006 (Ref. 1) (HPV test rule) requiring that manufacturers (including importers) and processors of 17 high production volume (HPV) chemicals conduct acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, genetic toxicity (gene mutations and chromosomal aberrations), ecotoxicity (in fish, Daphnia, and algae), and environmental fate (including 5 tests for physical chemical properties and biodegradation) testing. EPA found that each of the 17 chemicals included in the final HPV test rule is produced in substantial quantities (TSCA section 4(a)(1)(B)(i)) and that there is or may be substantial human exposure (TSCA section 4(a)(1)(B)(i)(II)) to each of them. Moreover, EPA determined that there are insufficient data to reasonably determine or predict the effects on health or the environment of the manufacture, distribution in commerce, processing, use, or disposal of the chemicals, or any combination of these activities (TSCA section 4(a)(1)(B)(ii)). EPA concluded that the testing program described in the HPV test rule is necessary and appropriate for developing such data (TSCA section 4(a)(1)(B)(iii)). Data developed under the HPV test rule will provide critical, basic information about the environmental fate and potential hazards of the chemicals included in the HPV test rule which, when combined with information about exposure and uses, will allow the Agency and others to evaluate potential health and environmental risks at the screening level and take appropriate risk management or other actions, as necessary.

To support the TSCA section 4(a)(1)(B)(i)(II) substantial human exposure finding for the 17 chemicals in the HPV test rule, EPA relied upon worker exposure data available from the National Occupational Exposure Survey

(NOES) (Ref. 2). EPA used a threshold of 1,000 workers to make such a finding for each chemical included in the HPV test rule, consistent with the policy discussed in the **Federal Register** notice entitled *TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure* (58 FR 28736, May 14, 1993). In the case of coke-oven light oil (coal), the substantial human exposure finding was supported by NOES data which indicated that 2,559 roofers were exposed to this chemical (Ref. 3). Because 2,559 workers far exceeds EPA's general threshold of 1,000 workers, EPA was confident there was support for the substantial human exposure finding for coke-oven light oil (coal) (Ref. 4).

Shortly after publication of the HPV test rule in the **Federal Register** (Ref. 1), EPA was contacted by the American Coke and Coal Chemicals Institute (ACCCI) on behalf of the Coke Oven Environmental Task Force (COETF). ACCCI did not believe there was substantial worker exposure to coke-oven light oil (coal) and, according to ACCCI, the chemical should not have been included in the HPV test rule. ACCCI had commented on the proposed HPV test rule, and had included a detailed analysis supporting its contention that only 103 workers were potentially exposed to coke-oven light oil (coal) in COETF member facilities, the two processing facilities, and the transportation companies that linked them. EPA did not reject ACCCI's argument concerning the extent of worker exposure in the manufacturing facilities, processing facilities, and transportation companies in its Response to Comments document prepared for the HPV test rule (Ref. 4). However, ACCCI's contention that there is no use of coke-oven light oil (coal) in the industry sector providing roofing services and that there also would have been no use of coke-oven light oil (coal) in that industry sector during the 1980's (Ref. 5) was at odds with the NOES data on roofer exposure. Therefore, EPA finalized its proposed finding for substantial human (worker) exposure to coke-oven light oil (coal) in the HPV test rule.

Since EPA was contacted by ACCCI after the publication of the HPV test rule, new information has come to EPA's attention. EPA asked NIOSH to investigate the underlying data obtained by NIOSH for NOES which led to the conclusion that 2,559 roofers were potentially exposed to coke-oven light oil (coal). NIOSH responded that during the data collection years for NOES, 1981

to 1983, roofers were observed being exposed to coke-oven light oil (coal) due to its presence in a coal-tar pitch product for which a Material Safety Data Sheet (MSDS) had been provided to NIOSH by the product manufacturer. EPA subsequently searched for more recent information on the composition of this product and determined that the product was apparently reformulated in the 1990's and that since its reformulation, it no longer contains coke-oven light oil (coal). The name of this product is Noah's Pitch and it is manufactured by the Jim Walter Company of the Celotex Corp. (Ref. 6).

Although the NOES data were an accurate representation of potential worker exposure to coke-oven light oil (coal) in the 1980's, subsequent review of this matter has led EPA to believe that roofers are no longer exposed to coke-oven light oil (coal) through contact. ACCCI (Ref. 7) and the two coke-oven light oil (coal) processing facilities have provided letters (Refs. 8–10) assuring EPA that they do not manufacture or sell coke-oven light oil (coal) for uses in roofing products (or other uses involving substantial worker exposure). Based upon this new information indicating a lack of potential substantial worker exposure, the Agency is revoking the requirements for coke-oven light oil (coal) from the HPV test rule.

B. What is the Agency's Authority for Taking this Action?

The HPV test rule requiring testing of coke-oven light oil (coal) (Ref. 1) was promulgated under TSCA section 4 (15 U.S.C. 2603), which mandates that EPA require that manufacturers and/or processors of chemicals and mixtures conduct testing if certain findings are made by EPA (see TSCA section 4(a)). One of the findings that EPA made in promulgating the HPV test rule was that there was substantial human (worker) exposure to each of the 17 chemicals in the HPV test rule (see TSCA section 4(a)(1)(B)(i)(II); see also Ref. 1). Information provided to EPA since finalization of the HPV test rule indicates that, at the time EPA finalized the rule, worker exposure to coke-oven light oil (coal) did not constitute "substantial human exposure" under TSCA section 4(a)(1)(B), and thus EPA does not have a basis for making the TSCA section 4(a)(1)(B)(i)(II) exposure finding.

III. Direct Final Rule

EPA is revoking the testing required by the HPV test rule (Ref. 1) for coke-oven light oil (coal) (CAS No. 65996–78–3). The testing is being revoked

because new information does not support that, at the time EPA made its TSCA section 4(a) findings with respect to the chemical, a substantial number of workers were or might be exposed to this chemical. Therefore, EPA, in this amendment, is revoking the testing requirements for coke-oven light oil (coal) (CAS No. 65996–78–3) by removing it from the list of chemicals in Table 2 in 40 CFR 799.5085(j) for which testing is required (Ref. 1).

EPA is publishing this amendment without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comment as this action revokes testing for which new information has been provided to EPA which indicates that, at the time EPA finalized the HPV test rule, potential worker exposure to coke-oven light oil (coal) did not constitute "substantial human exposure" under TSCA section 4(a)(1)(B). Despite the revocation of the testing requirements, much of the data may be made available for coke-oven light oil (coal) because COETF, acting on behalf of ACCCI and the American Iron and Steel Institute (AISI), has informed EPA that it is prepared to assist EPA in assembling a summary of existing data on coke-oven light oil (coal), after the test rule requirements for coke-oven light oil (coal) are revoked.

This amendment is effective February 6, 2007 without further notice, unless EPA receives adverse comment or a written request for an opportunity to present oral comments by January 8, 2007. If EPA receives timely adverse comment or a request for an opportunity to present oral comments on the amendment in this direct final rule, the Agency will publish a timely withdrawal in the **Federal Register** indicating the amendment is being withdrawn due to adverse comment. If the Agency does not receive adverse comment or a request for an opportunity to present oral comments on the amendment in this direct final rule, the amendment is effective February 6, 2007. If the amendment in this direct final rule is withdrawn due to adverse comment or a request for an opportunity to present oral comments, EPA will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. The Agency will address the comment or request for an opportunity to present oral comments on the amendment as part of that proposed rulemaking.

IV. Economic Analysis

In the economic analysis conducted for the HPV test rule, the Agency

estimated the total cost to industry of the testing to be \$4.03 million for all 17 chemicals, with an average of \$237,000 per chemical (Ref. 11). This total included an additional 25% in administrative costs. This amendment reduces the total testing cost by an estimated \$313,000 or approximately 8%, by eliminating the testing for coke-oven light oil (coal). In addition, the 25% administrative cost is eliminated for those tests as they relate to coke-oven light oil (coal). The new total cost of the testing is estimated to be \$3.7 million (i.e., \$4.03 million–\$313,000). The average compliance cost per chemical without coke-oven light oil (coal) is now \$232,000 (Ref. 12).

V. Export Notification

Upon the effective date of the revocation of the TSCA section 4 test rule for coke-oven light oil (coal), persons who export or intend to export coke-oven light oil (coal) are no longer subject to the TSCA section 12(b) export notification requirements to the extent that they were triggered by the testing requirements being revoked by this action. For all of the other chemicals listed as subject to the requirements of the HPV test rule (Ref. 1), the TSCA section 12(b) export notification requirements remain in effect.

VI. References

1. EPA. Testing of Certain High Production Volume Chemicals; Final Rule. **Federal Register** (71 FR 13707, March 16, 2006) (FRL–7335–2). Available on line at: <http://www.epa.gov/fedrgstr>.
2. NIOSH. National Occupational Exposure Survey (NOES). Available on line at: <http://cdc.gov/noes>.
3. NIOSH. NOES. Estimated number of employees potentially exposed to light oil by occupation within 2-digit Standard Industrial Classification (SIC). 1981–1983.
4. EPA. Response to Public Comments. Prepared by Chemical Information and Testing Branch (CITB), OPPT. May 31, 2005.
5. ACCCI. Comments on EPA's Proposed Test Rule for Testing of Certain High Production Volume Chemicals submitted to the TSCA Public Docket Office, EPA. April 25, 2001.
6. EPA. Contact report of phone conversation between Greg Schweer, Chief, CITB, Chemical Control Division (CCD) and Randy Johnson, NIOSH. April 25, 2006.
7. ACCCI. Letter from Bruce A. Steiner to Charles Auer, OPPT, EPA. Coke-Oven Light Oil. June 16, 2006.

8. Marathon Petroleum Company LLC. Letter from Harold Rinehart to Charles Auer, OPPT, EPA. June 1, 2006.

9. Marathon Petroleum. E-mail from Harold E. Rinehart to Charles Auer, EPA. Coke-Oven Light Oil Clarification. August 29, 2006.

10. Citgo Petroleum Corporation. Letter from Glenn C. Rabinak to Charles Auer, EPA. July 10, 2006.

11. EPA. Economic Analysis for the Final Section 4 Test Rule for High Production Volume Chemicals. Prepared by Lynne Blake-Hedges, EETD, OPPT. October 28, 2005.

12. EPA. E-mail from Lynne Blake-Hedges to Catherine Roman. Dropping coke-oven light oil (coal) from HPV rule and revised economic analysis conclusions. June 15, 2006.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This direct final rule implements changes to 40 CFR 799.5085 resulting in eliminating a burden and reducing cost. Because this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Because this direct final rule eliminates reporting requirements, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this revocation of certain requirements under TSCA section 4 will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132: Federalism

This direct final rule has no Federalism implications, because it will not have substantial direct effects on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This direct final rule has no tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, nor on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This direct final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 4, 2006.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 799—AMENDED

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

§ 799.5085 [Amended]

■ 2. By removing the entry "CAS No. 65996–78–3, Light oil (coal), coke-oven, in Table 2 of paragraph (j) in § 799.5085. [FR Doc. E6–20908 Filed 12–7–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 415, and 424

CMS–1321–CN

RIN 0938–AN84

Medicare Program; Revisions to Payment Policies, Five-Year Review of Work Relative Value Units, and Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Corrections

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

ACTION: Correction.

SUMMARY: This correction document corrects a limited number of technical and typographical errors in the final rule with comment period that appeared in the December 1, 2006 **Federal Register** (71 FR 69624). The final rule with comment period addressed Medicare Part B payment policy, including the physician fee schedule (PFS) that is applicable for calendar year (CY) 2007, finalized the CY 2006

interim relative value units (RVUs), and established interim RVUs for new and revised procedure codes for CY 2007.

EFFECTIVE DATE: This correction notice is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 06–9086 (71 FR 69624), the final rule with comment period entitled "Medicare Program; Revisions to Payment Policies, Five-Year Review of Work Relative Value Units, and Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Revisions to the Payment Policies of Ambulance Services Under the Fee Schedule for Ambulance Services; Ambulance Inflation Factor Update for CY 2007" (hereinafter referred to as the CY 2007 final rule with comment period), there were technical and typographical errors that are identified and corrected in this correction notice. The provisions of this correction notice are effective January 1, 2007.

II. Summary of Errors

A. Preamble

In the preamble of the CY 2007 final rule with comment period, there were a number of technical errors and omissions.

On page 69634, in step 8 of the Practice Expense (PE) methodology calculation, we erroneously stated in the parenthetical note that unadjusted work RVUs are used to calculate the service level allocators for indirect practice expenses (PEs) in this final rule.

On pages 69636 and 69637, in Table 1, "Calculation of PE RVUs under Methodology For Selected Codes", we found numerous errors that include amounts and row headings.

On page 69640, under the discussion titled, "(4) Indirect PE RVUs Methodology" in the last sentence of the first response concerning the use of budget-neutralized work RVUs, we erroneously stated that we did not use the budget-neutralized work RVUs to calculate indirect PE.

On page 69646, clarifying language was inadvertently omitted from the response.

On page 69654, in Table 6, "Practice Expense Equipment Item Additions for CY 2007", one of the equipment items is misspelled.

On page 69692, the word "a" was inadvertently omitted from a response.

On page 69694, the word "receiving" was erroneously omitted from a response.

On pages 69741 through 69743, in Table 15, "AMA RUC and HCPAC recommendations and CMS' Decisions for New and Revised 2007 CPT Codes," the title of the last column "2006 work RVUs" is incorrect.

On page 69744, in Table 16, "AMA RUC Anesthesia Recommendations and CMS Decisions for New and Revised CPT codes", the RUC-recommended base value for CPT code 00626 is incorrect.

On page 69744, under section E. "Discussion of Codes for Which There Were No RUC recommendations or For Which the RUC Recommendations Were Not Accepted", we inadvertently omitted the discussion related to CPT code 15830.

On page 69747, we incorrectly stated that pricing information for an item was not provided.

On page 69760, in section B "Anesthesia Fee Schedule Conversion Factor," the discussion concerning the adjustment factor in Table 32 did not address all the included adjustments. In addition, Table 32 did not reflect the additional adjustment.

On page 69768, in Table 35, a footnote was inadvertently omitted.

On page 69770, in Table 36, a footnote was inadvertently omitted.

These corrections are reflected in section III.A. of this correction notice.

B. Addenda

The following errors in Addenda B and C are revised under this correction notice. These addenda will not appear in the Code of Federal Regulations.

In Addendum B, pages 69796 through 70011, we are making the following corrections:

(1) An indicator "+" denoting that the published RVUs are not used was omitted from the following Physicians' Current Procedural Terminology (CPT) or alphanumeric Healthcare Procedure Coding System (HCPCS) codes:

- 11000: 11975, 11977;
- 15000: 15850;
- 37000: 37216;
- 38000: 38204, 38207, 38208, 38209, 38210, 38211, 38212, 38213, 38214, 38215;
- 43000: 43842;
- 58000: 58300;
- 61000: 61630, 61635, 61640, 61641, 61642;
- 72000: 72159, 72159–TC, 72159–26;
- 73000: 73225, 73225–TC, 73225–26;
- 76000: 76390, 76390–TC, 76390–26;
- 78000: 78350, 78350–TC, 78350–26, 78351, 78890, 78890–TC, 78890–26, 78891, 78891–TC, 78891–26;
- 90000: 90875, 90876, 90885, 90887, 90918, 90919, 90920, 90921, 90922, 90923, 90924, 90925;