

costs for the category of items or services.

(F) There have been increases in payment amounts for a category of items or services that cannot be explained by inflation or technology.

(G) The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

(2) *Establishing a limit.* In establishing a payment limit for a category of items or services, HCFA or a carrier considers the available information that is relevant to the category of items or services and establishes a payment amount that is realistic and equitable. The factors HCFA or a carrier consider in establishing a specific dollar amount or special payment method for a category of items or services may include, but are not limited to, the following:

(i) *Price markup.* This is the relationship between the retail and wholesale prices or manufacturer's costs of a category of items or services. If information on a particular category of items or services is not available, HCFA or a carrier may consider the markup on a similar category of items or services and information on general industry pricing trends.

(ii) *Differences in charges.* HCFA or a carrier may consider the differences in charges for a category of items or services made to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iii) *Costs.* HCFA or a carrier may consider resources (for example, overhead, time, acquisition costs, production costs, and complexity) required to produce a category of items or services.

(iv) *Utilization.* HCFA or a carrier may impute a reasonable rate of use for a category of items or services and consider unit costs based on efficient utilization.

(v) *Payment amounts in other localities.* HCFA or a carrier may consider payment amounts for a category of items or services furnished in another locality.

(3) *Notification of limits—(i) National limits.* HCFA publishes in the **Federal Register** proposed and final notices announcing a special payment limit described in this paragraph (g) before it adopts the limit. The notices set forth the criteria and circumstances, if any, under which a carrier may grant an exception to a payment limit for a category of items or services.

(ii) *Carrier-level limits.* A carrier proposing to establish a special payment limit for a category of items or services

must inform the affected suppliers and State Medicaid agencies of the factors it considered in determining and in establishing the limit, as described in paragraphs (g)(1) through (g)(3) of this section, and solicit comments. The carrier must evaluate the comments it receives and inform the affected suppliers, State Medicaid agencies, and HCFA of any final limits it establishes. HCFA acknowledges in writing to the carrier that it received the carrier's notification. After the carrier has received HCFA's acknowledgement, the limit may be effective for services furnished at least 30 days after the date of the carrier's notification.

(h) *Special payment limit adjustments greater than 15 percent of the payment amount.* In addition to applying the general rules under paragraphs (g)(1) through (g)(3) of this section, HCFA applies the following rules in determining and establishing a payment adjustment greater than 15 percent of the payment amount for a category of items or services within a year:

(1) *Potential impact of special limit.* HCFA considers the potential impact on quality, access, beneficiary liability, assignment rates, and participation of suppliers.

(2) *Supplier consultation.* Before making a determination that a payment amount for a category of items or services is not inherently reasonable by reason of its grossly excessive or deficient amount, HCFA consults with representatives of the suppliers likely to be affected by the change in the payment amount.

(3) *Publication of national limits.* If HCFA determines under this paragraph (h) to establish a special payment limit for a category of items or services, it publishes in the **Federal Register** proposed and final notices of a special payment limit before it adopts the limit. The notice sets forth the criteria and circumstances, if any, under which a carrier may grant an exception to the limit for the category of items or services.

(i) *Proposed notice.* The proposed notice—

(A) Explains the factors and data that HCFA considered in determining that the payment amount for a category of items or services is grossly excessive or deficient;

(B) Specifies the proposed payment amount or methodology to be established with respect to a category of items or services;

(C) Explains the factors and data that HCFA considered in determining the payment amount or methodology, including the economic justification for

a uniform fee or payment limit if it is proposed;

(D) Explains the potential impacts of a limit on a category of items or services as described in paragraph (h)(1) of this section; and

(E) Allows no less than 60 days for public comment on the proposed payment limit for the category of items or services.

(ii) *Final notice.* The final notice—

(A) Explains the factors and data that HCFA considered, including the economic justification for any uniform fee or payment limit established; and

(B) Responds to the public comments.

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

Dated: December 12, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: December 30, 1997.

Donna E. Shalala,

Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1505, 1514, 1537, 1548, and 1552

[FRL-5945-5]

Technical Amendments to Acquisition Regulation; Removal of Outdated or Unnecessary Coverage: Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On October 24, 1996 (61 FR 55118), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the removal from EPA Acquisition Regulations of outdated or unnecessary coverage on Exchange of Acquisition Information, Past Performance, Advisory and Assistance Services, and Policies and Procedures on Value Engineering. This rule established an effective date of October 24, 1996. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act. **EFFECTIVE DATE:** December 30, 1997.

FOR FURTHER INFORMATION CONTACT:
Judith Koontz at (202) 260-8608.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on October 24, 1996, by operation of law, the rule did not take effect on October 24, 1996 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act 5, U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since October 24, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve

special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 24, 1996 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule became effective on December 30, 1997. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: December 30, 1997.

Carol M. Browner,
Administrator.

[FR Doc. 98-265 Filed 1-2-98; 1:34 pm]

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**ENVIRONMENTAL PROTECTION
AGENCY**

48 CFR Part 1552

[FRL-5943-5]

**Technical Amendments to Acquisition
Regulation: Limitation of Future
Contracting: Correction of Effective
Date Under Congressional Review Act
(CRA)**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On February 5, 1997 (62 FR 5347), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the Acquisition Regulation Limitation of Future Contracting, which established an effective date of March 7, 1997. This document corrects the effective date of the rule to December 30, 1997 to be consistent with sections 801 and 808 of

the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act. **EFFECTIVE DATE:** December 30, 1997.

FOR FURTHER INFORMATION CONTACT:
Judith Koontz at (202) 260-8608.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated February 5, 1997, by operation of law, the rule did not take effect on March 7, 1997 as stated. After EPA discovered its error, the rule was submitted to both Houses of Congress and the GAO on December 11, 1997. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since February 5, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995