in these circumstances, under 5 U.S.C. 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction. EPA believes that where a chemical does not satisfy any of the criteria of section 313(d)(2)(A)(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

III. References

1. *American Chemistry Council* v. *Johnson*, No. 04–5189, (DC Cir. June 13, 2005).

IV. Statutory and Executive Order Reviews

This rule is not a significant regulatory action, as defined under EO 12866, and therefore does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). It also does not meet the requirements for review under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, this rule does not impose any impact on small entities and thus does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of methyl ethyl ketone from the EPCRA section 313 list will reduce the overall reporting and recordkeeping burden estimate provided for EPCRA section 313, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* until EPA decides to subtract the total burden eliminated by today's action from the EPCRA section 313 overall burden approved by OMB. At some point in the future, EPA will determine the total EPCRA section 313 burden associated with the deletion of methyl ethyl ketone, and will complete the required Information Collection Worksheet to adjust the total EPCRA section 313 estimate. The reporting and recordkeeping burdens associated with EPCRA section 313 are approved by OMB under OMB No. 2070–0093 (EPCRA section 313 base program and Form R, EPA ICR No. 1363) and under OMB No. 2070–0145 (Form A, EPA ICR No. 1704). The current public reporting burden for EPCRA section 313 is estimated to be 34.2 hours for a Form R submitter and 20.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For reporting year 2003 there were 1,515 Form Rs submitted for methyl ethyl ketone and 108 Form As submitted.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 United States prior to publication of the rule in the **Federal Register**. However, section 808 of that Act provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 30, 2005. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 2005.

Stephen L. Johnson,

Administrator.

■ Therefore, 40 CFR part 372 is amended to read as follows:

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

■ 2. Section 372.65 is amended by removing the entry for methyl ethyl ketone under paragraph (a), and removing the entire CAS No. entry for 78–93–3 under paragraph (b).

[FR Doc. 05–12928 Filed 6–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 401 and 405

[CMS–4064–IFC2]

RIN–0938–AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule

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

ACTION: Correcting amendment to an interim final rule.

SUMMARY: This amendment corrects technical errors in the interim final rule with comment period that appeared in the **Federal Register**, entitled ''Medicare Program: Changes to the Medicare Claims Appeal Procedures.''

EFFECTIVE DATE: This correcting amendment is effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Arrah Tabe-Bedward, (410) 786–7129.

SUPPLEMENTARY INFORMATION:

I. Background

We have identified technical errors and omissions that appeared in the interim final rule with comment period entitled ''Medicare Program: Changes to the Medicare Claims Appeal Procedures.'' (FR Doc. 05–4062) (*See* 70 FR 11420, March 8, 2005.) In this correcting amendment, we are correcting these technical errors and omissions.

II. Correction of Errors

A. Summary of Technical Corrections to the Preamble

On page 11436 of the preamble, we identified decisions regarding the timely submission of claims as not being initial determinations. We attempted to convey that this was true whether a provider or supplier failed to submit a timely claim for its own purposes or at the request of a beneficiary or the beneficiary's

subrogee. However, we inadvertently omitted the word ''timely'' from our discussion of the submission of a claim by a provider or supplier for its own purposes.

On pages 11456 through 11457, we discussed the requirement that administrative law judge (ALJ) hearings be conducted by videoteleconferencing (VTC) (if the technology is available and there are no special or extraordinary circumstances that would make a VTC hearing inappropriate). We also indicated, however, that a party could request an in-person hearing that the ALJ, with the concurrence of the Managing Field Office ALJ, would grant upon a finding of good cause.

The interim final rule generally requires that an ALJ conduct a hearing and render a decision within 90 days from the date the request for hearing is received. However, if the ALJ grants a party an in-person hearing upon a finding of good cause, then that 90-day time frame requirement is waived.

In the interim final rule, we inadvertently stated that the request by a party for an in-person hearing would result in a waiver of the 90-day hearing and decision making time frame requirement. Therefore, we clarify that a request by a party for an in-person hearing does not relieve the ALJ of the 90-day hearing and decision making time frame requirement. Rather, waiver of the 90-day hearing and decision making time frame requirement results only when an ALJ grants the request for an in-person hearing. In addition, we clarify that any party, not just the appellant, can object to the type of hearing scheduled by an ALJ and request an in-person hearing.

In § 405.1012(a), we provide that CMS or its contractor, including a qualified independent contractor (QIC), may be a party to an ALJ hearing. On page 11461 of the preamble, we say that it is appropriate ''to permit discovery when an ALJ hearing is adversarial (that is, whenever CMS or its contractor is a party to an ALJ hearing).'' Later, in the same response on pages 11461 through 11462, in the second column, when discussing how and when the discovery provisions apply, we refer only to CMS electing to participate as a party. To correct the inconsistency in the discussion of this issue, we clarify here our intention to permit limited discovery not only when CMS elects to participate as a party to a hearing, but also when a CMS contractor elects to participate as a party to an ALJ hearing. We also make a similar correction to the text of the regulations at § 405.1016(d) and § 405.1037(a)(1).

B. Correction of Errors in the Preamble

1. On page 11436, in the first column, line 17, in the first full paragraph, we inserted the word ''timely'' after the phrase ''submit a claim''.

2. In the third column of page 11456, in line 2 of the first full response, the word ''appellant'' is replaced with the word ''party''.

3. On page 11457, in the first column, on line 1, the word ''granted'' is inserted before ''request''.

4. On page 11461, in the second column, on line 35, in the first full response, the words ''or its contractor'' are inserted after ''CMS''.

5. On page 11461, in the third column, in lines 25, 30, 57, 61, 66, and 68 the words ''or its contractor'' are inserted after ''CMS''.

6. On page 11462, in the first column, in lines 3, 4, 47, and 53 the words ''or its contractor'' are inserted after ''CMS''.

C. Summary of Technical Corrections to the Regulations Text

In the interim final rule, we made technical omissions in § 405.926, § 405.980, § 405.990, § 405.1020, and § 405.1102. We also made typographical and editing errors in § 405.980, § 405.986, § 405.990, § 405.1016, § 405.1018, § 405.1020, § 405.1037, § 405.1042, § 405.1052, § 405.1104, § 405.1112, and § 405.1136. We are reflecting these corrections in section D of this correcting amendment.

Section 405.912 contains the new provisions regarding assignment of appeal rights. In § 405.912(g) and § 405.912(g)(1), we incorrectly referred to the ''assignee'' as the ''assignor'' and vice versa. We are reflecting these corrections in section D of this correcting amendment.

As we indicated in section A of this correcting amendment, we inadvertently omitted the word ''timely'' when we stated that determinations regarding whether a provider or supplier submitted a claim timely either for its own purposes or at the request of a beneficiary or the beneficiary's subrogee are not initial determinations. The corresponding correction to the regulation text at § 405.926(n) is made in section D of this correcting amendment.

In the interim final rule, we state that submitting evidence after an appeal is filed may result in a 14-day extension of the decision-making time frame. Although this 14-day extension applies automatically, adjudicators are not required to extend the decision-making time frame by the full 14 days. In the regulation text, we intended to convey this point in § 405.946(b), § 405.950 and § 405.970 by stating that the decision-making time frame is extended ''by up to 14 days'' each time evidence is submitted after an appeal is filed. At § 405.946(b) and § 405.950(b)(3), however, we inadvertently left out the words ''up to''. We have corrected this omission in section D of this correcting amendment.

Paragraph (a) of § 405.970 states that the QIC will transmit to the parties a written notice of ''(1) The reconsideration; (2) Its inability to complete its review within 60 days in accordance with paragraphs (c) through (e) of this section; or (3) Dismissal.'' Paragraph (c)(2), however, states that notice of the QIC's inability to complete review is mailed only to the appellant. For reasons of consistency and to decrease ambiguity, we correct this error in section D of the correcting amendment.

On page 11450 of the preamble, we stated the general rule that a remedial action taken by an appeals adjudicator to change a final determination or decision is a reopening ''even though the determination or decision may have been correct based upon the evidence of record.'' In the corresponding regulation text at § 405.980(a)(1), our use of the word ''was'', rather than the phrase ''may have been'' seems to contradict the preamble language. To ensure that the preamble and regulation text are consistent, this error is corrected in section D of this correcting amendment.

In paragraph (a)(4) of § 405.980, we inadvertently stated that adjudicators are prohibited from reopening a claim at issue until all appeal rights are exhausted. We meant to state that adjudicators are prohibited from reopening issues within a claim, if those issues are on appeal. We correct this statement in section D of this correcting amendment.

Also in § 405.980, in paragraphs (d)(2) and (e)(2), we indicated that only an ALJ can reopen an ALJ decision. These provisions, as they appear in the interim final rule, seem to contradict the policy established earlier at § 405.980(a)(iv), which states that the MAC may reopen its decision, as well as any hearing decision issued by an ALJ. This inconsistency is corrected in section D of this rule.

The good cause standard for reopening initial determinations is defined in § 405.986. As a result of an editing error, we included paragraph (d), a provision that identifies a type of determination that is not a reopening. This provision is actually part of paragraph (a)(6) of § 405.980. This editing error is corrected in section D by

deleting paragraph (d) from § 405.986 and inserting it into § 405.980(a)(6).

In § 405.1014(b)(2), we stated that the proper filing location for ALJ hearing requests is with the entity specified in the qualified independent contractor's reconsideration. However, in § 405.1046(d), we incorrectly referred to the ALJ hearing office as the proper filing location for ALJ hearing requests. Additionally, in § 405.1106, we incorrectly identified two filing locations for appeals to the Medicare Appeals Council (MAC). We are correcting these errors in section D of this correcting amendment.

In the interim final rule, appellants are permitted to request extensions to the filing deadlines. We intended to state that adjudicators could grant these extensions if appellants provided good cause for extending the deadline. To clarify this policy, we are revising § 405.1014(c)(4) and § 405.1016(b) to state that an ''ALJ'' rather than an ''ALJ hearing office'' may grant a request to extend the filing deadline.

ALJs are required to provide notice of a hearing to a number of entities, including all parties to the reconsideration. This is the policy we intended to convey in § 405.1020(c)(1), but the language we used in the interim final rule (that is, ''participated in any of the determinations in paragraphs (c) through (i) of this section'') is not sufficiently clear. Therefore, we are revising this section to clarify any ambiguities regarding this requirement and to ensure that hearing notices are issued to the appropriate entities.

Section 405.1028 discusses the pre-hearing review process for evidence submitted to the administrative law judge (ALJ). Although the heading for this section reads ''Prehearing case review of evidence submitted to the ALJ by the appellant'', this section discusses evidence submitted by certain other parties. To ensure that the heading properly reflects the content of the section, we are correcting this error in section D of this correcting amendment.

In drafting the interim final rule, we made many revisions to the regulation text, including renumbering certain provisions. When we renumbered sections of the regulation, our intent was to also update any corresponding cross-references to reflect the new numbering scheme. In § 405.1052(a)(4) and § 405.1052(a)(5), however, we inadvertently failed to update the cross-references to reflect the new numbering scheme. Therefore, we are correcting these errors in section D of this correcting amendment.

The binding authority of national coverage determinations (NCDs) is described in § 405.1060. Here, we stated that NCDs are ''binding on all Medicare contractors, including QIOs, QICs, Medicare Advantage Organizations, Prescription Drug Plans and their sponsors, HMOs, CMPs, HCPPs, ALJs, and the MAC.'' We failed to note, however, that fiscal intermediaries and carriers are also bound by NCDs and further, that some of the entities listed are not subject to all NCDs. We correct this statement in section D of this correcting amendment by revising paragraph (a)(4) to make NCDs binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs, and the MAC.

In the interim final rule, we stated a longstanding policy regarding the calculation of the receipt date of appeal notices; that is, receipt is presumed to be 5 days after the date of the notice, unless there is evidence to the contrary. In this same section, we also established the related policy that an appeal is considered filed on the date that it is received by the appropriate entity. Our intention was to restate these policies in each section where we established the filing deadlines. However, we inadvertently omitted some or all of this information from § 405.974(b), § 405.1002(a), § 405.1004(a), and § 405.1102(a). We are correcting these omissions in Section D of this correcting amendment.

In the interim final rule, we also made a single revision to part 401 regarding the applicability of CMS Rulings. In our revision, we inadvertently failed to encompass the effect of CMS Rulings on matters other than Medicare Part A and Part B. To correct this error, we have removed the specific references to Medicare Part A and Medicare Part B.

D. Correction of Regulation Text Errors

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to parts 401 and 405:

PART 401—[CORRECTED]

■ 1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

§ 401.108 [Corrected]

■ 2. In § 401.108, paragraph (c) is corrected by removing the phrase ''pertaining to Medicare Part A and Medicare Part B''.

PART 405—[CORRECTED]

■ 3. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)) and Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

§ 405.912 [Corrected]

■ 4. Section 405.912 is amended as follows—

■ A. In paragraph (g) introductory text, the word ''assignee'' is corrected to ''assignor''.

■ B. In paragraph (g)(1), the word ''assignor'', which precedes ''and'', is corrected to ''assignee''.

§ 405.926 [Corrected]

■ 5. Section 405.926 is amended by—

■ A. Revising paragraph (j).

■ B. Revising paragraph (n).

■ The revisions read as follows:

§ 405.926 Actions that are not initial determinations.

* * * * *

(j) Determinations for a finding regarding the general applicability of the Medicare Secondary Payer provisions (as opposed to the application of these provisions to a particular claim or claims for Medicare payment for benefits);

* * * * *

(n) Determinations that a provider or supplier failed to submit a claim timely or failed to submit a timely claim despite being requested to do so by the beneficiary or the beneficiary's subrogee;

* * * * *

§ 405.946 [Corrected]

■ 6. In § 405.946, paragraph (b), the words ''up to'' are inserted between ''for'' and ''14''.

§ 405.950 [Corrected]

■ 7. In § 405.950, paragraph (b)(3), the words ''up to'' are inserted between ''for'' and ''14''.

§ 405.970 [Corrected]

■ 8. Section 405.970 is amended by revising paragraph (c)(2) to read as follows:

§ 405.970 Timeframe for making a reconsideration.

* * * * *

(c) * * *

(1) * * *

(2) Notify the parties that it cannot complete the reconsideration by the

deadline specified in paragraph (b) of this section and offer the appellant the opportunity to escalate the appeal to an ALJ. The QIC continues to process the reconsideration unless it receives a written request from the appellant to escalate the case to an ALJ after the adjudication period has expired.

* * * * *

§ 405.974 [Corrected]

■ 9. Section 405.974 is amended by adding paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 405.974 Reconsideration.

* * * * *

(b) * * *

(1) * * *

(i) For purposes of this section, the date of receipt of the contractor's notice of dismissal is presumed to be 5 days after the date of the notice of dismissal, unless there is evidence to the contrary.

(ii) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the QIC indicated on the notice of dismissal.

* * * * *

§ 405.980 [Corrected]

■ 10. Section 405.980 is amended by—

■ A. Revising introductory text of paragraph (a)(1).

■ B. Revising paragraph (a)(3) introductory text.

■ D. Revising paragraph (a)(4).

■ C. Revising paragraph (a)(6).

■ D. Revising paragraph (d)(2).

■ E. Revising paragraph (e)(2).

■ The revisions read as follows:

§ 405.980 Reopenings of initial determinations, redeterminations, and reconsiderations, hearings and reviews.

(a) *General rules.* (1) A reopening is a remedial action taken to change a final determination or decision that resulted in either an overpayment or underpayment, even though the final determination or decision may have been correct at the time it was made based on the evidence of record. That action may be taken by—

* * * * *

(2) * * *

(3) Notwithstanding paragraph (a)(4) of this section, a contractor must process clerical errors (which includes minor errors and omissions) as reopenings, instead of as redeterminations as specified in § 405.940. If the contractor receives a request for reopening and disagrees that the issue is a clerical error, the contractor must dismiss the reopening request and advise the party of any appeal rights, provided the timeframe to request an appeal on the original denial has not expired. For purposes of this section, clerical error includes human or mechanical errors on the part of the party or the contractor such as—

* * * * *

(4) When a party has filed a valid request for an appeal of an initial determination, redetermination, reconsideration, hearing, or MAC review, no adjudicator has jurisdiction to reopen an issue on a claim that is under appeal until all appeal rights for that issue are exhausted. Once the appeal rights for the issue have been exhausted, the contractor, QIC, ALJ, or MAC may reopen as set forth in this section.

* * * * *

(6) A determination under the Medicare secondary payer provisions of section 1862(b) of the Act that Medicare has an MSP recovery claim for services or items that were already reimbursed by the Medicare program is not a reopening, except where the recovery claim is based upon a provider's or supplier's failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter.

* * * * *

(d) * * *

(1) * * *

(2) An ALJ or the MAC may reopen a hearing decision on its own motion within 180 days from the date of the decision for good cause in accordance with § 405.986. If the hearing decision was procured by fraud or similar fault, then the ALJ or the MAC may reopen at any time.

* * * * *

(e) * * *

(1) * * *

(2) A party to a hearing may request that an ALJ or the MAC reopen a hearing decision within 180 days from the date of the hearing decision for good cause in accordance with § 405.986.

* * * * *

§ 405.986 [Corrected]

■ 11. In § 405.986, remove paragraph (d).

§ 405.990 [Corrected]

■ 12. Section 405.990 is amended by revising paragraph (b)(1)(i)(A) to read as follows:

§ 405.990 Expedited access to judicial review.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) An ALJ hearing in accordance with § 405.1002 and a final decision of the ALJ has not been issued;

* * * * *

§ 405.1002 [Corrected]

■ 13. Section 405.1002 is amended by—

■ A. Revising paragraph (a)(1).

■ B. Adding paragraphs (a)(3) and (a)(4).

■ The revision and additions read as follows:

§ 405.1002 Right to an ALJ hearing.

(a) * * *

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the QIC's reconsideration.

(2) * * *

(3) For purposes of this section, the date of receipt of the reconsideration is presumed to be 5 days after the date of the reconsideration, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's reconsideration.

* * * * *

§ 405.1004 [Corrected]

■ 14. Section 405.1004 is amended by—

■ A. Revising paragraph (a)(1).

■ B. Adding paragraphs (a)(3) and (a)(4).

The revision and additions read as follows:

§ 405.1004 Right to ALJ review of QIC notice of dismissal.

(a) * * *

(1) The party files a written request for an ALJ review within 60 days after receipt of the notice of the QIC's dismissal.

(2) * * *

(3) For purposes of this section, the date of receipt of the QIC's dismissal is presumed to be 5 days after the date of the dismissal notice, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's dismissal.

* * * * *

§ 405.1014 [Corrected]

■ 15. In § 405.1014, the phrase ''hearing office'' is removed from paragraph (c)(4).

§ 405.1016 [Corrected]

■ 16. Section 405.1016 is amended by revising paragraphs (b) and (d) to read as follows:

§ 405.1016 Time frames for deciding an appeal before an ALJ.

* * * * *

(b) The adjudication period specified in paragraph (a) of this section begins on the date that a timely filed request for hearing is received by the entity

specified in the QIC's reconsideration, or, if it is not timely filed, the date that the ALJ grants any extension to the filing deadline.

* * * * *

(d) When CMS or its contractor is a party to an ALJ hearing and a party requests discovery under § 405.1037 against another party to the hearing, the adjudication periods discussed in paragraphs (a) and (c) of this section are tolled.

§ 405.1018 [Corrected]

■ 17. In § 405.1018, in paragraph (c), the phrase ''must be accompanied by a statement explaining why the evidence is not previously submitted'' is corrected to ''must be accompanied by a statement explaining why the evidence was not previously submitted.''

§ 405.1020 [Corrected]

■ 18. Section 405.1020 is amended by—
■ A. Revising paragraph (c)(1).
■ B. Revising the introductory heading for paragraph (i).
■ C. Revising paragraph (i)(4).
The revisions read as follows:

§ 405.1020 Time frames for deciding an appeal before an ALJ.

* * * * *

(c) * * *

(1) The ALJ sends a notice of hearing to all parties that filed an appeal or participated in the reconsideration, any party who was found liable for the services at issue subsequent to the initial determination, the contractor that issued the initial determination, and the QIC that issued the reconsideration, advising them of the proposed time and place of the hearing.

* * * * *

(i) *A party's request for an in-person hearing.*

* * * * *

(1) * * *

(2) * * *

(3) * * *

(4) When a party's request for an in-person hearing is granted, the party is deemed to have waived the 90-day time frame specified in § 405.1016.

§ 405.1028 [Corrected]

■ 19. The title of § 405.1028 is corrected to ''Prehearing case review of evidence submitted to the ALJ''.

§ 405.1037 [Corrected]

■ 20. Amend 405.1037 as follows:
■ A. In paragraph (a)(1), the words ''or its contractor'' are inserted after ''CMS''.
■ B. In paragraph (c)(1), the word ''hearing'' at the end of the paragraph is removed.
■ C. In paragraph (e)(2)(iv), the phrase ''where the MAC grants a request for review made by a party other than CMS of a ruling'' is corrected to ''where the MAC grants a request, made by a party other than CMS, to review a discovery ruling.''

§ 405.1042 [Corrected]

■ 21. In § 405.1042, paragraph (a)(3), the phrase ''[t]he appellant'' is corrected to ''[a] party''.

§ 405.1046 [Corrected]

■ 22. In § 405.1046, paragraph (d), the phrase ''when the request for hearing is received in the ALJ hearing office'' is corrected to ''when the request for hearing is received by the entity specified in the QIC's reconsideration.''

§ 405.1052 [Corrected]

23. Amend § 405.1052 as follows:

A. In paragraph (a)(4), the cross-reference to ''§ 405.1014(d)'' is corrected to ''§ 405.1014(c)''.

B. In paragraph (a)(5)(iii), the cross-reference to ''§ 405.1020'' is corrected to ''§ 405.1014''.

§ 405.1060 [Corrected]

24. Section 405.1060 is amended by revising paragraph (a)(4) to read as follows:

§ 405.1060 Applicability of national coverage determinations (NCDs).

(a) * * *

(4) An NCD is binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs, and the MAC.

* * * * *

§ 405.1102 [Corrected]

■ 25. Section 405.1102 is amended by:
■ A. Revising paragraph (a).
■ B. Redesignating paragraph (b) as paragraph (c).
■ C. Redesignating paragraph (c) as paragraph (d).
■ D. Adding a new paragraph (b).
The revisions read as follows:

§ 405.1102 Request for MAC review when ALJ issues decision or dismissal.

(a)(1) A party to the ALJ hearing may request a MAC review if the party files a written request for a MAC review within 60 days after receipt of the ALJ's decision or dismissal.

(2) For purposes of this section, the date of receipt of the ALJ's decision or dismissal is presumed to be 5 days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(3) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's action.

(b) A party requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the MAC; and

(3) It explains why the request for review was not filed within the stated time period. If the MAC finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards outlined at § 405.942(b)(2) and § 405.942(b)(3).

* * * * *

§ 405.1104 [Corrected]

■ 26. Amend § 405.1104 as follows:
■ A. The word ''latter'' is corrected to ''later'' in paragraph (a)(2).
■ B. In paragraph (c), the phrase ''and the appellant does not request escalation to the MAC'' is removed.

§ 405.1106 [Corrected]

■ 27. Section 405.1106 is amended by revising paragraph (a) to read as follows:

§ 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a MAC review is filed after an ALJ has issued a decision or dismissal, the request for review must be filed with the entity specified in the notice of the ALJ's action. The appellant must also send a copy of the request for review to the other parties to the ALJ decision or dismissal. Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. If the request for review is timely filed with an entity other than the entity specified in the notice of the ALJ's action, the MAC's adjudication period to conduct a review begins on the date the request for review is received by the entity specified in the notice of the ALJ's action. Upon receipt of a request for review from an entity other than the entity specified in the notice of the ALJ's action, the MAC sends written notice to the appellant of the date of receipt of the request and commencement of the adjudication time frame.

* * * * *

§ 405.1112 [Corrected]

■ 28. In § 405.1112, paragraph (a), the phrase ''must be made on a standard form'' is corrected to ''may be made on a standard form''.

§ 405.1136 [Corrected]

■ 29. In § 405.1136, paragraph (d)(1), in the first sentence, the words ''is filed'' are removed.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. However, we can waive this procedure if we find good cause for doing so, and incorporate a statement of this finding and the reasons for it into the rule. A finding that a notice and comment period is impracticable, unnecessary, or contrary to the public interest constitutes good cause for waiving this procedure. We also can waive the 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

Many of the corrections included in this rule are corrections of typographical errors and editorial mistakes. For example, the word ''mirror'' has been corrected to ''minor'' in § 405.980(a)(3). The rest of the corrections are made to correct inadvertent omissions and clarify inconsistencies in the preamble and regulation text. At § 405.1046(d), for example, consistent with the provision at § 405.1014(b)(2), which states that the proper filing location for ALJ hearing requests is the entity specified in the QIC's reconsideration, the regulation text has been revised to reflect the proper filing location for ALJ hearing requests.

We believe that it is unnecessary to seek public comment on the correction of typographical and editorial errors. Further, it is in the public's interest to correct inadvertent omissions and clarify apparent inconsistencies in the preamble and regulation text. These revisions help ensure that the rules governing the Medicare administrative appeals process are more understandable and less ambiguous and protect the rights of all parties to pursue Medicare claims appeals under these procedures. Therefore, we find that undertaking notice and comment rulemaking to incorporate these corrections into the interim final rule is unnecessary and contrary to the public interest.

For the same reasons, we believe that delaying the effective date of these corrections beyond July 1, 2005 would be contrary to the public interest. As a matter of good public policy, the regulations governing the Medicare claims appeals process should be as accurate and clear as possible. Thus, it would be contrary to the public interest to delay implementation of these corrections to provide for a 30-day delay in effective date. Therefore, we also find good cause to waive the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

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

Dated: June 27, 2005.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 05–12982 Filed 6–28–05; 12:44 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64

[CG Docket No. 02–278, FCC 05–132]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: In this document, the Commission delays until January 9, 2006, the effective date of the rule requiring the sender of a facsimile advertisement to obtain the recipient's express permission in writing.

DATES: The effective date of the rule amending 47 CFR Part 64, § 64.1200(a)(3)(i) published at 68 FR 44144, July 25, 2003, is delayed until January 9, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon at 202–418–2512, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in CG Docket No. 02–278, FCC 05–132, adopted on June 27, 2005 and released on June 27, 2005. The full text of this document is available at the Commission's Web site *http://www.fcc.gov* on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPA), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The *Order* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb*.

Synopsis

On July 3, 2003, the Commission revised the unsolicited facsimile advertising requirements under the Telephone Consumer Protection Act of 1991 (TCPA). On August 18, 2003, the Commission issued an *Order on Reconsideration* (68 FR 50978, August 25, 2003) that delayed until January 1, 2005, the effective date of these amended requirements. On September 15, 2004, the Commission adopted an *Order* (69 FR 62816, October 28, 2004) further extending the stay of the effective date of the requirements through June 30, 2005. On April 15, 2005, the Fax Ban Coalition (Coalition) filed a petition urging the Commission to further delay the effective date of the revised rules governing unsolicited facsimile advertisements through December 31, 2005. The Coalition maintains that a further delay is warranted to avoid irreparable injury to the members of the Coalition and negative impact on the economy. The Coalition also argues that delay is important while Congress considers legislation to amend the TCPA and the Commission considers petitions for reconsideration and requests for clarification.

We now further delay, until January 9, 2006, the effective date of the determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 CFR 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any