ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0001; FRL–7698–9]

Peanuts, Tree Nuts, Milk, Soybeans, Eggs, Fish, Crustacea, and Wheat; Exemption From the Requirement of a Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of January 7, 2005 (70 FR 1357) (FRL–7694–5), establishing a tolerance exemption for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat. This document is being issued to correct the inadvertent omission of the date by which objections and requests for hearings must be received.

DATES: This technical correction is effective on January 7, 2005.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of January 7, 2005 (70 FR 1357).

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule of January 7, 2005, a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET at *http://www.epa.gov/edocket/*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Does this Correction Do?

FR Doc. 05–344 published in the **Federal Register** of January 7, 2005 (70 FR 1357) (FRL–7694–5) is corrected as follows: On page 1357, in the second column, under **DATES**, the sentence by which objections and requests for hearing must be received was inadvertently omitted. It reads:

''Objections and requests for hearings must be received on or before March 8, 2005.''

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely inserting language that was inadvertently omitted from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule implements a technical amendment to the Code of Federal Regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a significant regulatory action subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This 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.*, or 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). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since this action does not require the issuance of proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect 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). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the

relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. 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 in 40 CFR Part 180

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

Dated: February 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–3684 Filed 2–24–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 421

[CMS–1219–F]

RIN 0938–AL76

Medicare Program; Durable Medical Equipment Regional Carrier Service Areas and Related Matters

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

ACTION: Final rule.

SUMMARY: This final rule provides a mechanism for us to expeditiously make changes to the durable medical equipment regional carrier (DMERC) service area boundaries without notice and comment rulemaking. Through this mechanism, we can change the geographical boundaries served by the regional contractors that process durable medical equipment claims through issuance of a **Federal Register** notice and make other minor changes in the contract administration of the DMERCs. The mechanism provides a method for increasing or decreasing the number of DMERCs, changing the boundaries of DMERCs based on criteria other than the boundaries of the Common Working File sectors, and awarding new contractors to perform statistical analysis or maintain the national supplier clearinghouse. We will publish these changes and their justifications in a **Federal Register** notice, rather than through notice and comment rulemaking.

Although we may change the number and configuration of regional carriers, we are not altering the criteria and factors that we use in awarding contracts.

Through this final rule, we are improving the contracting process so that we can swiftly meet the challenges of the changing healthcare industry and address the changing needs of beneficiaries, suppliers, and the Medicare program.

DATES: Effective Date: These regulations are effective on March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Pat Williams, (410) 786–6139.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is available from the **Federal Register** online database through *GPO access*, a service of the U.S. Government Printing Office. The Web site address is *http://www.gpoaccess.gov/fr/index.html*.

I. Background

A. Legislative Overview of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Claims Administration Covering 1966 Through 1992

Medicare has covered medically necessary items of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) under Part B since the inception of the Medicare program in 1966. In the original authorizing legislation for the Medicare program, coverage was provided under sections 1832 and 1861(s) of the Social Security Act (the Act) (Pub. L. 89–97). Since that time, the coverage and payment rules for DMEPOS, which may now be found in sections 1832, 1834, and 1861 of the Act and their implementing regulations, have changed significantly.

From 1986 to 1992, the number of complaints about fraud and abuse in the DMEPOS benefit began to increase markedly, and a variety of government investigations identified specific weaknesses in the program. We sought solutions to known claims processing problems, including the increasing level of fraud and abuse in billing. Subsequently, the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Pub. L. 100–203), enacted on December 22, 1987, authorized the Secretary to designate, by regulation, regional carriers to process DMEPOS claims. (See sections 1834(a)(12) and 1834(h)(3) of the Act.)

Before 1993, Medicare Part B claims for DMEPOS items and services were assigned to each of the more than 30 local Medicare carriers and represented, on average, only 5 percent of each carrier's overall workload. After further review, we concluded that this was not the most effective structure for administering DMEPOS claims under the Medicare program. It was difficult for carriers to devote significant administrative review resources to this small percentage of claims.

In addition, DMEPOS claims were generally complex and time-consuming to process. The protocol for suppliers to obtain a Medicare billing number was ill-defined and required little identifying information or compliance with any particular business or operational standards.

Furthermore, carriers' medical review policies varied significantly and contributed to inconsistent claims processing decisions. Finally, certain DMEPOS suppliers who engaged in unethical practices were able to exploit our local Medicare carriers by electing to submit claims to carriers that provided more generous coverage, paid more than other carriers, or both. As documented in program audits and congressional hearings, fraudulent suppliers manipulated our then existing ''point of sale'' claims jurisdiction rule; these suppliers could simply locate their business offices where conditions were most favorable. The collective impact of these issues resulted in significant abuse of the Medicare program by a subset of the DMEPOS supplier community, without any measurable improvement in patient care and outcomes.