

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.

XI. Submission to Congress and the Comptroller General

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: July 16, 2002.

Marcia E. Mulkey,

Director, 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), 346(a) and 374.

2. Section 180.1220 is added to subpart D to read as follows:

§ 180.1220 1-Methylcyclopropene; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of 1-Methylcyclopropene in or on fruits and vegetables when used as a post harvest plant growth regulator, i.e., for the purpose of inhibiting the effects of ethylene.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS-3074-F2]

RIN 0938-AK98

Medicare Program; End-Stage Renal Disease: Removing of Waiver of Conditions for Coverage Under a State of Emergency in the Houston, Texas Area

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

ACTION: Final rule.

SUMMARY: This final rule removes an emergency waiver of the Medicare end-stage renal disease (ESRD) conditions for coverage granted to permit the transplant team of an approved renal transplant center to furnish kidney transplant services in three specific hospitals in the Houston, Texas area during a state of emergency. The state of emergency has ceased, the primary kidney transplant center in the area is now fully operational, and the effective period of the waiver provisions has expired.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rachael Weinstein, (410) 786-6775

SUPPLEMENTARY INFORMATION

I. Provisions of This Rule

On June 20, 2001, we published a final rule in the **Federal Register** (66 FR 33030-33031) that granted an emergency waiver of the Medicare end-stage renal disease (ESRD) conditions of coverage to permit the transplant team of an approved renal transplant center to furnish covered kidney transplant services in three specific hospitals in the Houston, Texas area during a state of emergency. The state of emergency (a

natural disaster due to flooding) resulted in a severe health and safety threat to hospitals in the entire Houston, Texas area, including ESRD facilities that were approved to furnish kidney transplant services. Waivers of the conditions of coverage were granted to Memorial Hermann-Memorial City Hospital, Memorial Hermann Southwest Hospital, and Memorial Hermann Southeast Hospital to permit an approved transplant team to furnish kidney transplant services in the three hospitals, effective June 15, 2001, through the earlier of December 15, 2001, or until Memorial Hermann Hospital, the primary kidney transplant center, reopened.

Memorial Hermann Hospital is now reopened. In the June 20, 2001 final rule, we amended the Medicare regulations to include a new § 405.2175 that incorporated the waiver provisions. In § 405.2175, we specified that we would publish a rule removing the waiver provisions from the regulations after the waiver expired. The waiver has expired and we are removing the provisions from the Medicare regulations.

II. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on a proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the findings and its reasons in the rule issued.

Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date. The purpose of the 30-day waiting period between publication of an administrative agency final rule and its effective date is to give affected parties reasonable time to adjust their behavior before the final rule takes place.

The state of emergency under which we granted a waiver of the ESRD conditions of coverage is now over in the Houston, Texas area, and Memorial Hermann Hospital is reopened to furnish kidney transplant services. We announced in the June 20, 2001 final rule our intention to remove the

emergency waiver when the waiver expired, as well as our intention to publish a rule removing § 405.2175 from our regulations after the waiver expired. We find good cause to waive a notice-and-comment procedure to remove the waiver provisions from the regulation. We believe that a notice-and-comment procedure is unnecessary because the June 20, 2001 final rule puts the public on notice that the waiver of the conditions for coverage for the specifically named hospitals was created to address a public health crisis in Houston and it was to be of limited duration (it was to remain in effect until no later than December 15, 2001). This rule merely conforms the Medicare regulation to the mandate expressed by the agency on June 20. Therefore, we are waiving notice-and-comment procedures under 5 U.S.C. 553(b)(3)(B).

Given the fact that the waiver has already expired by its own terms, we find good cause to waive the 30-day delay in the effective date established by 5 U.S.C. 553(d)(3). We believe that delaying the effective date of this regulation is unnecessary since it does not require the public to adjust its behavior before the final rule takes place.

List of Subjects in 42 CFR Part 405

Administrative practice and procedures, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Part 405, Subpart U as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD)

1. The authority citation for Part 405, Subpart U continues to read as follows:

Authority: Secs. 1102, 1138, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b-8, 1365x, 1395y(a), 1395hh, 1395kk, and 1395rr, unless otherwise noted).

§ 405.2175 [Removed]

2. Section 405.2175 is removed.

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

Dated: March 15, 2002.

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

Approved: April 2, 2002.

Tommy G. Thompson,
Secretary.

[FR Doc. 02-17622 Filed 7-25-02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

CMS-1883-F3

RIN 0938-AI80

Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications; Technical Correction

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

ACTION: Technical correction.

SUMMARY: In the October 10, 2000 issue of the **Federal Register** (65 FR 60104), we published a technical correction to the August 5, 1999 issue of the **Federal Register** (64 FR 42610). This technical correction amends the regulations text to correct an inadvertent error that occurred when the Code of Federal Regulations (CFR) was published. It also explains a technical correction that is accurately reflected in the current language as it appears in the CFR, as it was intended in the correction notice of October 10, 2000.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Julie Stankivic, (410) 786-5725.

SUPPLEMENTARY INFORMATION:

Background

In the October 10, 2000 technical correction (65 FR 60104), we amended the regulations text to make technical corrections to those parts of the regulation unrelated to the skilled nursing facilities (SNFs) exception procedures that were inadvertently changed. In the regulations text corrected under 42 CFR 413.30(d), we stated that we were removing the words “the type of” from the first sentence. It was our intention to remove these words; however, we referenced the first sentence, and these words were found in the second sentence. We note that the regulations text as published in the

Code of Regulations (CFR) actually accurately reflects the change that was intended in the correction notice of October 10, 2000. Therefore, we are not amending the regulations text in this technical correction.

In addition, in the most recent publication of the CFR in § 413.30(d), the word “as” has been inadvertently removed from the third sentence. In the October 10, 2000 technical correction, we did not intend to make any changes that would have resulted in the removal of the word “as” after the phrase “has operated” in the third sentence of § 413.30(d). We are reinserting the word as no change was intended.

Provisions of the Technical Correction

We are making the necessary technical correction to the regulations text to restore the text to conform to the stated purpose of the correction notice.

Waiver of Notice 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 such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this document merely provides a technical correction to the regulations and does not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and record keeping requirements.

Corrections to the Regulations Text

Accordingly, 42 CFR part 413 is corrected by making the following correcting amendment:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883,