

§ 1005.22

the date of service will be deemed to be 5 days from the date of mailing.

(k) (1) Any petition for judicial review must be filed within 60 days after the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the DAB will be sent by certified mail, return receipt requested, to the Chief Counsel to the IG. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the Chief Counsel to the IG receives two or more petitions within 10 days after the DAB issues its decision, the Chief Counsel to the IG will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

[57 FR 3350, Jan. 29, 1992, as amended at 63 FR 46691, Sept. 2, 1998; 65 FR 24419, Apr. 26, 2000]

§ 1005.22 Stay of initial decision.

(a) In a CMP case under section 1128A of the Act, the filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b) (1) After the DAB renders a decision in a CMP case, pending judicial review, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

§ 1005.23 Harmless error.

No error in either the admission or the exclusion of evidence, and no error

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or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties, including Federal representatives such as Medicare carriers and intermediaries and Quality Improvement Organizations, is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

PART 1006—INVESTIGATIONAL INQUIRIES

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AUTHORITY: 42 U.S.C. 405(d), 405(e), 1302 and 1320a-7a.

SOURCE: 57 FR 3354, Jan. 29, 1992, unless otherwise noted.

§ 1006.1 Scope.

(a) The provisions in this part govern subpoenas issued by the Inspector General, or his or her delegates, in accordance with sections 205(d) and 1128A(j) of the Act, and require the attendance and testimony of witnesses and the production of any other evidence at an investigational inquiry.

(b) Such subpoenas may be issued in investigations under section 1128A of the Act or under any other section of the Act that incorporates the provisions of section 1128A(j).

(c) Nothing in this part is intended to apply to or limit the authority of the Inspector General, or his or her delegates, to issue subpoenas for the production of documents in accordance with 5 U.S.C. 6(a)(4), App. 3.

§ 1006.2 Contents of subpoena.

A subpoena issued under this part will—

(a) State the name of the individual or entity to whom the subpoena is addressed;

(b) State the statutory authority for the subpoena;

(c) Indicate the date, time and place that the investigational inquiry at which the witness is to testify will take place;

(d) Include a reasonably specific description of any documents or items required to be produced; and

(e) If the subpoena is addressed to an entity, describe with reasonable particularity the subject matter on which testimony is required. In such event, the named entity will designate one or more individuals who will testify on its behalf, and will state as to each individual so designated that individual's name and address and the matters on which he or she will testify. The individual so designated will testify as to matters known or reasonably available to the entity.

§ 1006.3 Service and fees.

(a) A subpoena under this part will be served by—

(1) Delivering a copy to the individual named in the subpoena;

(2) Delivering a copy to the entity named in the subpoena at its last principal place of business; or

(3) Registered or certified mail addressed to such individual or entity at its last known dwelling place or principal place of business.

(b) A verified return by the individual serving the subpoena setting forth the manner of service or, in the case of service by registered or certified mail, the signed return post office receipt, will be proof of service.

(c) Witnesses will be entitled to the same fees and mileage as witnesses in the district courts of the United States (28 U.S.C. 1821 and 1825). Such fees need not be paid at the time the subpoena is served.

§ 1006.4 Procedures for investigational inquiries.

(a) Testimony at investigational inquiries will be taken under oath or affirmation.

(b) Investigational inquiries are non-public investigatory proceedings. Attendance of non-witnesses is within the discretion of the OIG, except that—

(1) A witness is entitled to be accompanied, represented and advised by an attorney; and

(2) Representatives of the OIG are entitled to attend and ask questions.

(c) A witness will have an opportunity to clarify his or her answers on the record following the questions by the OIG.

(d) Any claim of privilege must be asserted by the witness on the record.

(e) Objections must be asserted on the record. Errors of any kind that might be corrected if promptly presented will be deemed to be waived unless reasonable objection is made at the investigational inquiry. Except where the objection is on the grounds of privilege, the question will be answered on the record, subject to the objection.

(f) If a witness refuses to answer any question not privileged or to produce requested documents or items, or engages in conduct likely to delay or obstruct the investigational inquiry, the OIG may seek enforcement of the subpoena under § 1006.5.

(g)(1) The proceedings will be recorded and transcribed.

(2) The witness is entitled to a copy of the transcript, upon payment of prescribed costs, except that, for good cause, the witness may be limited to inspection of the official transcript of his or her testimony.

(3)(i) The transcript will be submitted to the witness for signature.

(ii) Where the witness will be provided a copy of the transcript, the transcript will be submitted to the witness for signature. The witness may submit to the OIG written proposed corrections to the transcript, with such corrections attached to the transcript. If the witness does not return a signed copy of the transcript or proposed corrections within 30 days of its being submitted to him or her for signature, the witness will be deemed to have agreed that the transcript is true and accurate.

(iii) Where, as provided in paragraph (g)(2) of this section, the witness is limited to inspecting the transcript, the witness will have the opportunity at the time of inspection to propose corrections to the transcript, with corrections attached to the transcript. The