provides that a facility must request a hearing within the time specified in § 498.40 for a SNF, a dually participating facility, or State-operated NF. We inadvertently omitted from the list, "non-State operated NF against which HCFA is imposing remedies. Similarly, in $\S 488.432(a)(1)(ii)$, we are correcting an error by clarifying that a facility must request a hearing on the determination of noncompliance that is the basis for imposition of the civil money penalty within the time specified in § 431.153 for a non-State operated NF "that is not subject to imposition of remedies by HCFA.'

In § 488.434, with regard to written notice of our intent to impose a civil money penalty, we are removing the phrase, "intent to impose." The proposed rule provided that the effective date of a civil money penalty would be the 10th day after the last day of the survey in immediate jeopardy situations, and the 20th day after the last day of the survey in non-immediate

jeopardy situations.

Consequently, the proposed rule referred to "the intent" to impose a civil money penalty because a provider always had a window of opportunity in which to correct the noncompliance and avoid the imposition of the civil money penalty. (If a facility corrected the deficiency before the 10th or 20th day, we would not impose a civil money penalty.) However, on page 56200 of the preamble to the final rule, we noted that a notice of imposition of the penalty is not required before a civil money penalty can begin to accrue, since the Act permits the imposition of a civil money penalty for past violations that have been corrected, and the civil money penalty may start accruing as early as the date that the facility was first out of compliance, as determined by HCFA or the State. For these reasons, we are removing the phrase, "intent to impose," (the civil money penalty) in § 488.434.

In § 488.442(c)(2), we correct an inadvertent error regarding the Medicare rate of interest assessed on the unpaid balance of a civil money penalty. Paragraph (c)(2) should have specified that the Medicare rate of interest is "the higher of" the rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of the notice of the penalty amount due (published quarterly in the Federal Register by HHS under 45 CFR 30.13(a)), or the current value of funds (published annually in the Federal Register by the Secretary of the Treasury, subject to quarterly revisions). Our intention to use "the higher of" the

two amounts is indicated in the discussion of § 488.442(c) on page 56209 of the preamble.

Section 488.442 (d) and (e) concerns the disposition of civil money penalties and interest collected from long term care facilities. It was brought to our attention that the law specifically requires that, for Medicare-participating facilities, we deposit the funds as miscellaneous receipts of the U.S. Treasury (rather than "return them to the Medicare Trust Fund"), and, for Medicaid-participating facilities, that we return the funds to the State. Section 488.442(e) concerns disposition of civil money penalties and interest collected from facilities that participate in both Medicare and Medicaid programs (dually participating facilities). Again, we believe it is more correct legally to refer not to the Medicare Trust Fund, but to "miscellaneous receipts of the U.S. Treasury." Therefore, we have made these changes to § 488.442 (d) and (e). In addition, in § 488.442(f), we are making an editorial change by revising the term "deficient" with regard to facilities to "noncompliant.

In § 488.454, regarding the duration of remedies, paragraph (d) provides that, if the facility can supply documentation acceptable to us or the State that it was in substantial compliance, and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that we or the State can verify that the facility achieved substantial compliance. We inadvertently left off at the end of the sentence "the facility demonstrated that it could maintain substantial compliance, if necessary."

In § 489.3, we are correcting an error in the definition of immediate jeopardy, which is inconsistent with the definition of immediate jeopardy in § 488.301. As corrected, "immediate jeopardy" means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident. We are removing the phrase, "immediate corrective action is necessary because".

In § 489.53, we removed the entire paragraph (b) in error, and should have removed only paragraph (b)(2) because it is no longer applicable. Paragraph (b)(1), which concerns termination of a provider agreement for a hospital or rural primary care hospital that has an emergency department, was inadvertently removed. Consequently, we are correcting this by reinstating the content of paragraph (b)(1) as paragraph (b).

Finally, we are correcting an error, which inadvertently gave the impression (by our not changing part 498) that judicial review of a civil money penalty was available to a facility in the United States District Courts. In fact, through the incorporation of parts of section 1128A of the Social Security Act (the Act) in sections 1819(h) and 1919(h) of the Act, judicial review of such actions may occur only in the appropriate United States Court of Appeals. Therefore, we are revising § 498.90 to reflect this fact. In addition, we are revising § 498.90 to make it conform to § 498.1(h), which makes it clear that Appeals Council decisions on civil money penalty cases are final once the Appeals Council makes a decision, regardless of whether judicial review occurs.

II. Other Corrections

In this document, we are making numerous corrections resulting from typographical errors, errors in cross references, omissions and conflicts within the November 10, 1994 rule.

III. Corrections to the Regulations Text of the November 10, 1994 Final Rule (59 FR 56116)

PART 431—[CORRECTED]

1. On page 56232, column three, § 431.153(a), line two, "Medicaid agency" is corrected to read "State".

PART 440—[CORRECTED]

§440.40 [Corrected]

2. On page 56234, column one, § 440.40(a)(2), line one, "includes" is corrected to read "include".

PART 442—[CORRECTED]

- 3. We make the following corrections to § 442.13:
- a. On page 56235, column three, § 442.13(b), in the sixth line, "survey" is corrected to read "survey,". b. On page 56235, column three,
- b. On page 56235, column three, § 442.13(c)(3)(ii) is corrected to read as follows:

§ 442.13 Effective date of agreement.

* * * * * (c) * * *

(c) * * * * (3) * * * *

(ii) Submits, if applicable, an approvable waiver request.

§ 442.30 [Corrected]

4. On page 56235, column three, in the amendatory language to item 10, the word "and is inserted before "(a)(4)" in line two, and the words "introductory paragraph of" are inserted before "(a)(7)" in line three.