

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry under OK for “Fourth Street Abandoned Refinery”, “Oklahoma City”.

[FR Doc. E8–19419 Filed 8–20–08; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Parts 405, 413, and 417**

[CMS–1727–CN]

RIN 0938–AL54

Medicare Program; Provider Reimbursement Determinations and Appeals; Correction

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on May 23, 2008 entitled “Provider Reimbursement Determinations and Appeals.”

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Morton Marcus, (410) 786–4477. Donald Romano, (410) 786–1401.

SUPPLEMENTARY INFORMATION:**I. Background**

In FR Doc. E8–11227 of May 23, 2008 (73 FR 30190), there were a number of typographical and technical errors that are identified and corrected in the Correction of Errors section in section III. of this notice. The provisions of this correction notice are effective as if they had been included in the final rule published on May 23, 2008. Accordingly, the corrections are effective August 21, 2008.

II. Summary of Errors

We note that in section III. of this notice, we correct a number of typographical and technical errors. We note that the following are the more significant corrections:

On pages 30211 and 30250, we are correcting an error relating to the usage

and filing of mandatory group appeals. We stated in the preamble and regulations text of § 405.1835(b)(4)(i) that a commonly-owned provider must state in its request for Board hearing that: “* * * sano other provider related to it by common ownership or control has an individual or group appeal pending before the Board on the same issue for a cost reporting period that *falls* within the same calendar year.” This statement was incorrect. To provide consistency with the regulations text at § 405.1837(b)(1)(i), the word “falls” needs to be replaced with the word “ends.”

On page 30243, we are correcting a technical error in the regulations text at § 405.1801(b)(2). Following the publication of the final rule, we discovered that the regulations at § 405.1801(b)(2) failed to reference the longstanding exception at § 413.200(g). In the regulations text at § 405.1801(b)(2), we stated that a nonprovider entity is not entitled to an intermediary hearing or a Board hearing. (We discussed this issue in the preamble to the proposed rule published on June 25, 2004 (69 FR 35721).) However, the current text at § 413.200(g) reflects that an OPO (organ procurement organization) or histocompatibility laboratory is entitled to an intermediary hearing in accordance with the intermediary hearing procedures contained in subpart R. While OPOs (formerly referred to as organ procurement agencies or OPAs) and histocompatibility laboratories are nonprovider entities and not entitled to a hearing under section 1878 of the Act, they have always been an exception to the rule with respect to intermediary hearings and historically have received intermediary hearings under subpart R of the regulations. (See December 14, 1978, 43 FR 58370 through 58371, referencing the legislative history of Public Law 95–292 that Congress intended to provide an intermediary hearing for the OPOs and histocompatibility laboratories, and S. Rep. No. 95–714, 95th Cong. 2d Sess., 12–13 (1978); H. Rep. No. 95–549, 95th Cong. 1st Sess. 14 (1977)). We wanted to assure OPOs that they will continue to have intermediary hearing rights as they have always had in the past. Therefore, we are correcting § 405.1801(b)(2) by adding a reference to the exception for OPOs and histocompatibility laboratories at § 413.200(g) and thus clarifying that OPO hearing rights do not derive from section 1878 of the Act.

On page 30263, we are correcting an error in the regulations text for § 405.1875(d). In the final rule, we

inadvertently included the sentence “[T]he Administrator does not consider any communication that does not meet these requirements or is not submitted with the required time limits” as the last sentence of paragraph (d)(3)(ii). However this statement is applicable to all of the provisions of paragraph (d). Therefore, we have removed the sentence from paragraph (d)(3)(ii) and after changing the word “these” to “the following” have added the sentence to the introductory text of paragraph (d).

We also note that the May 23, 2008 final rule referenced a First Circuit Court of Appeals decision, *MaineGeneral Medical Center v. Shalala*, 205 F. 3d 493 (1st Cir. 2000). In a number of instances throughout the preamble of the final rule, we misspelled “*MaineGeneral*” as “*Maine General*.” We are acknowledging these errors without specifically itemizing each error in the Correction of Errors section of this notice.

III. Correction of Errors

In FR Doc. E8–11227 of May 23, 2008 (73 FR 30190), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 30192, second column, second paragraph, line 3, the phrase, “CMS Reviewing official procedure” is corrected to read “CMS reviewing official procedure.”

2. On page 30197, third column, a. First partial paragraph, line 4, the phrase “are more appropriately borne by fiscal intermediaries” is corrected to read “are more appropriately borne by intermediaries.”

b. First full paragraph, lines 9 through 11, the phrase “In *Maine General Medical Center v. Shalala*, 205 F. 3d 493 (1st Cir. 2000), the majority” is corrected to read “In *MaineGeneral*, the majority.”

3. On page 30206, first column, second paragraph, line 19, the phrase “determinations are governed” is corrected to read “determinations is governed.”

4. On page 30208, first column, fourth paragraph, line 17, the phrase “Rather, we believe that intermediary officers” is corrected to read “Rather, we believe that intermediary hearing officers.”

5. On page 30211, first column, first partial paragraph, line 32, the phrase “a cost reporting period that falls within” is corrected to read “a cost reporting period that ends within.”

6. On page 30214, second column, first full paragraph, paragraph heading, “K. Expediting Judicial Review (§ 405.1842)” is corrected to read “K.

Expedited Judicial Review (§ 405.1842)."

7. On page 30216, second column, third paragraph, line 6, the phrase "which provides agency review of an" is corrected to read "which provides for agency review of an."

8. On page 30219, first column, second paragraph, line 3, the phrase "the requirement in section § 405.1853(a)" is corrected to read "the requirement in § 405.1853(a)."

9. On page 30222, second column, second paragraph, line 11, the phrase "to 120 days of the" is corrected to read "to 120 days before the."

10. On page 30237,

a. First column, second paragraph heading, that reads "D. Provider Hearing Rights (§ 405.1803(d), § 405.1811, and § 405.1835))" is corrected to read "D. Provider Rights (§ 405.1803(d), § 405.1811, and § 405.1835)."

b. Third column, fifth bullet, line 2, the phrase "revised § 405.1834(e)(1) to state" is corrected to read "revised § 405.1834(e)(1)(i) to state."

11. On page 30239,

a. First column, first bulleted paragraph, line 3, the phrase "(unless the time is extended by the Board)" is corrected to read "unless the time is extended by the Board."

b. Third column, last bulleted paragraph, lines 1 and 2, the phrase "Clarifying language has been added" is corrected to read "We added clarifying language"

12. On page 30240, second column, third bulleted paragraph, beginning with the phrase "++Sixty days after" and ending with the phrase "§ 405.1835(c) apply" is corrected to read as follows:

"++Sixty days after the expiration of the applicable 180-day period prescribed in § 405.1811(a)(3) (for intermediary hearing officer hearings) or § 405.1835(a)(3) (for Board hearings).

++Sixty days after the effective date of this rule.

• For appeals filed on or after the effective date of this rule, the provisions of § 405.1811(c) and § 405.1835(c) apply."

B. Correction of Errors in Regulations Text

■ 1. On page 30243, third column, last paragraph,

■ a. Line 1, the phrase "non-provider" is corrected to read "nonprovider."

■ b. Line 5, the phrase "These nonprovider entities" is corrected to read "Except as provided at § 413.200(g), these nonprovider entities."

■ 2. On page 30246,

■ a. Third column, first paragraph, line 6, the word "extend" is corrected to read "extends."

■ b. Third column, seventh paragraph, line 3, the phrase "the Secretary" is corrected to read "HHS."

■ 3. On page 30247,

■ a. First column, last paragraph, line 5, the phrase "or in part if applicable," is corrected to read "or in part; if applicable."

■ 4. On page 30248,

■ a. First column, third paragraph, line 4, the phrase "conducts a hearing the intermediary" is corrected to read "conducts a hearing, the intermediary."

■ b. Second column, first partial paragraph, lines 2 and 3, the phrase "hearing and the intermediary unless" is corrected to read "hearing and on the intermediary, unless."

■ c. Third column, third paragraph, line 6, the phrase "section or § 405.1821(d)(2)" is corrected to read "section or in § 405.1821(d)(2)."

■ 5. On page 30250,

a. First column,

(1) Eighth paragraph, line 9, the phrase "reporting period that falls within the" is corrected to read "reporting period that ends within the."

(2) Ninth paragraph, lines 1 and 2, the phrase "Such a pending appeal(s) exist(s), the" is corrected to read "Such a pending appeal(s) exist(s), and the."

■ b. Second column, fifth paragraph, line 3, the phrase "in writing it can" is corrected to read "in writing it could."

■ 6. On page 30252, third column, sixth paragraph, line 12, the phrase "appeal increases" is corrected to read "appeal would increase."

■ 7. On page 30253,

■ a. First column, first partial paragraph, line 8, the phrase "issue recurs in the appeal" is corrected to read "issue in the appeal recurs."

■ b. First column, first paragraph, line 9, the phrase "appeal increases" is corrected to read "appeal would increase."

■ 8. On page 30254, second column,

■ a. First partial paragraph, line 6, the phrase "this subpart explains" is corrected to read "this subpart, which explains."

■ b. First full paragraph, line 5, the word "Board" is corrected to read "Board."

■ 9. On page 30255,

■ a. Second column, 11th paragraph, line 6, the phrase "§ 405.1875(a)(2)(iii) and § 405.1875(e) or" is corrected to read "405.1875(a)(2)(iii), § 405.1875(e), and."

■ b. Third column,

(1) Second paragraph, line 11, the phrase "rendered nonfinal" is corrected to read "nonfinal."

(2) Seventh paragraph, lines 4 and 5, the phrase "Board (or the Administrator) is corrected to read "Board or the Administrator."

■ 10. On page 30258, first column,

■ a. Sixth paragraph, line 9, the phrase "is directed or" is corrected to read "is directed, or."

■ b. Seventh paragraph, line 4, the phrase "of documents must" is corrected to read "of documents, must."

■ c. Eighth paragraph, line 5, the phrase "appeal and any nonparty subject to a discovery request a" is corrected to read "appeal, and any nonparty subject to a discovery request, a."

11. On page 30259,

■ a. First column,

(1) First paragraph, the phrase "for purposes of a—" is corrected to read "for purposes of—."

(2) Second paragraph, the phrase "(i) Discovery subpoena, 90 days" is corrected to read "(i) Discovery, 90 days."

(3) Third paragraph, the phrase "(ii) Hearing subpoena, whether" is corrected to read "(ii) An oral hearing, whether."

■ c. Third column, last paragraph, line 5, the phrase "until the time" is corrected to read "until such time."

■ 12. On page 30260,

■ a. Second column,

(1) First paragraph,

(a) Line 5, the phrase "materials to the" is corrected to read "materials submitted to the."

(b) Line 11, the phrase "Attorney Advisor and" is corrected to read "Attorney Advisor, and."

(2) Third paragraph, lines 5 and 6, the phrase "as well as, CMS Rulings" is corrected to read "as well as CMS Rulings."

■ b. Third column, last paragraph, line 7, the phrase "of this subpart or" is corrected to read "of this subpart, or."

■ 13. On page 30261, first column, second paragraph, line 4, the phrase "Board information" is corrected to read "Board, information."

■ 14. On page 30262, second column, sixth paragraph, line 4, the phrase "policy, and rules" is corrected to read "policy, or rules."

■ 15. On page 30263, first column,

■ a. Tenth paragraph, "(d) *Ex parte communications prohibited*. All communications from any party, CMS, or other affected nonparty, concerning a Board decision (or other reviewable action) that is being reviewed or may be reviewed by the Administrator must—" is corrected to read "(d) *Ex parte communications prohibited*. The Administrator does not consider any

communication that does not meet the following requirements or is not submitted within the required time limits. All communications from any party, CMS, or other affected nonparty, concerning a Board decision (or other reviewable action) that is being reviewed or may be reviewed by the Administrator must—”

■ b. Last paragraph, lines 1 through 3, through the second column, first paragraph, lines 1 through 4, the paragraph “(ii) Written submissions regarding review submitted under paragraph (c)(4) of this section. The Administrator does not consider any communication that does not meet these requirements or is not submitted within the required time limits.” is corrected to read “(ii) Written submissions regarding review submitted under paragraph (c)(4) of this section.”

■ 16. On page 30267, first column, sixth full paragraph, lines 2 and 3, the phrase “revising the last sentence in each of paragraphs (c)(1) and (c)(2)” is corrected to read “removing the last two sentences in paragraphs (c)(1) and (c)(2) and adding one sentence in their place in paragraphs (c)(1) and (c)(2).”

IV. Waiver of Proposed Rulemaking and 30-Day Delay in Effective Date

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 in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides typographical and technical corrections. The revisions do not represent changes in policy, nor do they have a substantive effect, and the public interest would be best served by timely correction of these technical and typographical errors. Therefore, we find good cause to waive notice and comment procedures.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency

incorporates a statement of the findings and its reasons in the rule issued.

Because this correction notice does not make substantive changes to the final rule, and the public interest is served by quickly correcting these technical errors in order to improve the clarity of the regulation, we find good cause under section 553(d)(3) of the APA to waive the 30-day delay in effective date.

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

Dated: August 15, 2008.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E8–19295 Filed 8–20–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 315

[Docket No. MARAD 2008 0076]

RIN 2133–AB73

U.S. Citizenship for Contracts on RRF Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking clarifies Maritime Administration regulations which require that Agents (including Ship Managers) for the National Defense Reserve Fleet (NDRF) appointed by the Maritime Administration be United States citizens.

DATES: Effective August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Jay Gordon, Office of the Chief Counsel, at (202) 366–5173, via e-mail at Jay.Gordon@dot.gov, or by writing to: Jay Gordon, Office of the Chief Counsel, Maritime Administration, MAR–221, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking clarifies title 46 CFR part 315.5, Appointment of an Agent, which requires that Agents (including Ship Managers) for the National Defense Reserve Fleet (NDRF) appointed by the Maritime Administration be United States citizens, as defined in § 315.3(b). This action is taken on the Maritime Administration's initiative.

Under existing authority, the Department of Defense (DOD) transfers

vessels to the custody of the Maritime Administration for inclusion in the NDRF. Pursuant to that authority, eight Fast Sealift Ships (FSS) are being transferred from the Military Sealift Command (MSC) into the Ready Reserve Force (RRF) component of the NDRF, effective October 1, 2008. The eight FSS vessels are currently operated by Maersk Lines Limited (MLL) under contract with MSC. Under the terms of this transfer, MSC has delegated procuring contracting officer authority for the FSS contract to the Maritime Administration, which will provide oversight and direction for the remainder of the contract. Since the transferred vessels are being maintained and operated under a contract awarded by another federal agency, administration of that contract does not constitute the appointment of an Agent by the Maritime Administration under 46 CFR part 315.5.

This regulation clarifies the limited duration of performance under such contracts.

Program Description

In this rulemaking, the Maritime Administration is clarifying the U.S. citizenship requirements for certain contacts between the owners of vessels in the RRF program of the NDRF and the Maritime Administration, by the addition of a new section to 46 CFR part 315.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. We believe that the economic impact of this rulemaking does not warrant the preparation of a full regulatory evaluation since the rulemaking clarifies existing regulations set forth in 46 CFR part 315.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial