

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 417, 422, and 423

[CMS-4157-CN]

RIN 0938-AQ86

### Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2013 and Other Changes; Corrections

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

**ACTION:** Final rule with comment period; correction.

**SUMMARY:** This document corrects technical errors and typographical errors in the final rule with comment period entitled “Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2013 and Other Changes” which appeared in the April 12, 2012 **Federal Register**.

**DATES:** *Effective date:* This document is effective June 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Jansak, (410) 786-9364.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

In FR Doc. 2012-8071 of April 12, 2012 (77 FR 22072), the final rule with comment period entitled “Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2013 and Other Changes” there were several technical errors and typographical errors that are identified and corrected in the Correction of Errors section.

#### II. Summary of Errors

##### A. Summary of Errors in the Preamble

On page 22072, in the **DATES** section, we erroneously referenced the amendments to the definitions of “other health or prescription drug coverage” at § 423.2305 and “supplemental benefits” at § 423.100 as being effective January 1, 2013. We also inadvertently omitted references to several sections of the regulation text that are effective January 1, 2013.

On page 22076, the table titled “Table 2: Finalized Revisions with Effective and/or Applicable Dates Other Than 60 Days After Publication” was inadvertently numbered “Table 2” instead of “Table 1.”

On page 22082, in the discussion regarding the effective and applicable dates of the regulatory and conforming changes to the definition of “other health or prescription drug coverage,” we inadvertently omitted language.

##### B. Summary of Errors in the Regulations Text

On page 22169, we made a typographical error in an amendatory instruction and inadvertently omitted a term in the definition of “daily cost-sharing rate” at § 423.100.

#### III. Waiver of Proposed Rulemaking and 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.

Section 553(b) 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.

This correcting document does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical errors in the effective dates and typographical errors in the regulation text of the April 12, 2012 final rule with comment period and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule with comment period. As a result, this correcting document is intended to ensure that information included in the April 12, 2012 final rule with comment period accurately reflects the policies adopted in that rule. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule with comment period would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and

finalized in our final rule with comment period. Therefore, we believe we have good cause to waive prior notice and comment.

For the same reasons, we are also waiving the 30-day delay in effective date for these corrections. We believe that it is in the public interest to ensure that the April 12, 2012 final rule with comment period accurately states our policies as of the date they take effect. Therefore, we find that delaying the effective date of these corrections beyond the effective date of the final rule with comment period would be contrary to the public interest. In so doing, we find good cause to waive the 30-day delay in the effective date.

#### IV. Correction of Errors

In FR Doc. 2012-8071 of April 12, 2012 (77 FR 22072), make the following corrections:

##### A. Correction of Errors in the Preamble

1. On page 22072, first column, “**DATES**” section, the paragraph that begins “These regulations are effective” and ends “are effective January 1, 2013” is corrected to read “These regulations are effective on June 1, 2012 unless otherwise specified in this final rule. The amendments to: the definition of “Part D drugs” at § 423.100; § 423.153(d)(1)(vii)(B); § 423.600(a) through (c); and § 423.602(a) are effective January 1, 2013. See section I.B. of this final rule with comment period and Table 1 for additional information regarding effective and applicability dates.”

2. On page 22076, bottom half of the page, the table heading, “TABLE 2—FINALIZED REVISIONS WITH EFFECTIVE AND/OR APPLICABLE DATES OTHER THAN 60 DAYS AFTER PUBLICATION” is corrected to read “TABLE 1—FINALIZED REVISIONS WITH EFFECTIVE AND/OR APPLICABLE DATES OTHER THAN 60 DAYS AFTER PUBLICATION”.

3. On page 22082, third column, second full paragraph, line 17, the phrase “existing definition will on” is corrected to read “existing definition will be applicable on”.

##### B. Correction of Errors in the Regulations Text

■ 1. On page 22169, first column—  
■ A. Fourth full paragraph, (amendments to § 423.100, amendatory instruction 24.B.) lines 5 and 6, the sentence “By revising paragraph (2)(iii) of the definition of “Incurred costs” is corrected to read “By revising paragraph (2)(ii) of the definition of “Incurred costs”.

■ B. Tenth full paragraph (paragraph (2) of the definition of “Daily cost-sharing” at § 423.100), line 2, the phrase “enrollee’s Part D” is corrected to read “enrollee’s Part D plan”.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774)

Dated: May 24, 2012.

**Jennifer M. Cannistra,**

*Executive Secretary to the Department.*

[FR Doc. 2012–13362 Filed 5–31–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 120309176–2075–02]

**RIN 0648–BB56**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 18A

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This rule modifies the current system of accountability measures for black sea bass, limits effort in the black sea bass segment of the snapper-grouper fishery, and improves fisheries data in the for-hire sector of the snapper-grouper fishery. Amendment 18A also updates the rebuilding plan and modifies the acceptable biological catch (ABC) for black sea bass. This final rule is intended to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery.

**DATES:** This rule is effective July 1, 2012.

**ADDRESSES:** Electronic copies of Amendment 18A may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>. Amendment 18A includes an Environmental Impact Statement, a

Regulatory Impact Review, and a Fishery Impact Statement.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at [OIRA.Submission@omb.eop.gov](mailto:OIRA.Submission@omb.eop.gov), or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, 727–824–5305.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On January 31, 2012, NMFS published a notice of availability for Amendment 18A and requested public comment (77 FR 4754). On March 23, 2012, NMFS published a proposed rule for Amendment 18A and requested public comment (77 FR 16991).

NMFS partially approved Amendment 18A on May 2, 2012. NMFS disapproved the action establishing transferability criteria for the black sea bass pot endorsement, explaining that the amendment identified the wrong preferred alternative selected for this action, and there were discrepancies in the record regarding the Council’s discussion of the alternatives and the text describing and analyzing this alternative in the document. Because the Council’s intent was unclear from the administrative record, NMFS was unable to implement this action in compliance with the Administrative Procedure Act. The Council is addressing transferability criteria for black sea bass pot endorsements in a separate FMP amendment, which is currently under development.

The proposed rule and Amendment 18A outline the rationale for the actions contained in this final rule. The proposed rule incorrectly indicated that it would modify the black sea bass rebuilding strategy and ABC. Although these measures are included in Amendment 18A, they are not codified in the regulations. A summary of the actions implemented by this final rule is provided here.

This rule modifies the black sea bass annual catch limit (ACL); limits participation in the black sea bass pot segment of the snapper-grouper fishery through an endorsement program;

establishes an appeals process for fishermen excluded from the black sea bass pot endorsement program; limits the number of pot tags issued to participants in the black sea bass pot segment of the snapper-grouper fishery; implements measures to reduce black sea bass bycatch; modifies accountability measures (AMs) for black sea bass; establishes a commercial trip limit for black sea bass; modifies the current commercial and recreational black sea bass size limits; and improves data reporting in the for-hire sector of the snapper-grouper fishery. The intent of this rule is to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery.

#### Comments and Responses

A total of 28 comments were received on the proposed rule and Amendment 18A from individuals, Federal agencies, and fishing associations. NMFS received 2 comments of general support and 26 individual comments opposing one or more actions contained in Amendment 18A. Several of the comments recommended alternative management measures for black sea bass. Specific comments related to the actions contained in the amendment and the rule as well as NMFS’ respective responses, are summarized below.

**Comment 1:** Several commenters stated they have recently seen more black sea bass and larger black sea bass than in previous years. Additionally, several commenters stated they are seeing black sea bass in areas where they were not previously found. For these reasons the same commenters stated the commercial and recreational ACLs for black sea bass should be significantly increased to allow for more fishing of the stock.

**Response:** Many fishery participants have indicated they are now seeing more black sea bass and larger black sea bass than in recent years, which is consistent with the finding of the most recent Southeast, Data, Assessment, and Review (SEDAR) for black sea bass which was completed in October 2011 (SEDAR 25). SEDAR 25 indicates that black sea bass are no longer overfished, but are not yet fully rebuilt, and that black sea bass was experiencing overfishing to a small extent based on data from 2009 and 2010. Amendment 17B to the FMP (Amendment 17B), which was implemented on January 31, 2011, established ACLs and AMs for black sea bass to ensure overfishing of black sea bass does not occur (75 FR 82280).

The Magnuson-Stevens Act requires rebuilding plans to rebuild a stock within 10 years except under limited