

Medicare enrollment. Accordingly, we are revising § 498.3(b)(17) to accurately reflect our authority to deny or revoke a provider or supplier's Medicare enrollment. Therefore, on page 20781 third column, lines 44 through 46, the paragraph "The revocation of a provider or supplier's Medicare enrollment in accordance to § 424.535 of this chapter" would be corrected to read "Whether to deny or revoke a provider or supplier's Medicare enrollment in accordance with § 424.530 or § 424.535 of this chapter."

II. Waiver 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 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.

Our policy on the requirements for providers and suppliers to establish and maintain Medicare enrollment in the April 21, 2006 final rule has previously been subjected to notice and comment procedures. This correction is consistent with the discussion of this policy in the April 21, 2006 final rule and does not make a substantive change to this policy. This correcting amendment merely corrects a technical error in the regulations text of the April 21, 2006 final rule. As a result, this correcting amendment is intended to ensure that the April 21, 2006 final rule accurately reflects the policy adopted in this final rule and does not contradict policy found at § 424.530, which did not receive any comments during the original comment period. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary.

III. Correction of Errors

■ Given the error summarized in section I. of the correcting amendment, we are making the following correcting amendment to 42 CFR part 498:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ Section 498.3 is amended by revising paragraph (b)(17) to read as follows:

§ 498.3 [Corrected]

* * * * *

(b) * * *

(17) Whether to deny or revoke a provider or supplier's Medicare enrollment in accordance with § 424.530 or § 424.535 of this chapter.

* * * * *

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

Dated: June 27, 2006.

Ann Agnew,

Executive Secretary to the Department.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158-5262-03; I.D. 090105A]

RIN 0648-AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin that Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency action; extension of effective period.

SUMMARY: The regulations contained in the temporary rule, emergency action, published on October 18, 2005, at the request of the U.S. Food and Drug Administration (FDA) and that were subsequently extended on December 28, 2005, expire on June 30, 2006. This temporary rule extends the closure through December 31, 2006. The FDA has determined that current oceanographic conditions and alga

sampling data suggests that the northern section of the Temporary Paralytic Shellfish Poison (PSP) Closure Area remain closed to the harvest of bivalve molluscan shellfish and that the southern area remain closed to the harvest of whole or roe-on scallops.

DATES: The temporary emergency action published on October 18, 2005 (70 FR 60450), is effective from October 18, 2005, through December 31, 2006.

ADDRESSES: Copies of the small entity compliance guide, the emergency rule, the environmental assessment, and the regulatory impact review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. These documents are also available via the internet at www.nero.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220, fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

This emergency closure was implemented at the request of the FDA after samples of shellfish from the inshore and offshore waters off of the coasts of New Hampshire and Massachusetts tested positive for the toxins (saxotoxins) that cause Paralytic Shellfish Poisoning (PSP). These toxins are produced by the algae *Alexandrium fundyense* that can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 10, 2005, the FDA requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA, i.e. the Temporary PSP Closure Area, through September 30, 2005. On July 7, 2005 (70 FR 39192), the emergency rule was modified to facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories through the issuance of a Letter of Authorization (LOA) from the Regional Administrator. On September 9, 2005 (70 FR 53580),

the emergency regulation was once again modified by the division of the Temporary PSP Closure Area into northern and southern components. The northern area remained closed to the harvest of all bivalve molluscan shellfish while the southern component was reopened to the harvest of Atlantic surfclams and ocean quahogs but remained closed to the harvest of whole or roe-on scallops. The rule was extended as published on September 9, 2005, on October 3, 2005 (70 FR 57517), reinstated on October 18, 2005 (70 FR 60450) to correct a technical error, and extended on December 28, 2005 (70 FR 76713) through June 30, 2006. On June 15, 2006, the FDA indicated that they could not support the re-opening of the Temporary PSP Closure Area due to insufficient analytical data from the area. Sampling of the Temporary PSP Closure Area is expected to occur in July of 2006.

The boundaries of the northern component of the temporary closure area comprise Federal waters bound by the following coordinates in the order stated: (1) 43°00' N. lat., 71°00' W. long.; (2) 43°00' N. lat., 69°00' W. long.; (3) 41°39' N. lat., 69°00' W. long.; (4) 41°39' N. lat., 71°00' W. long., and then ending at the first point. Under this emergency rule this area would remain closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops. The boundaries of the southern component of the temporary closure area comprise Federal waters bound by the following coordinates in

the order stated: (1) 41°39' N. lat., 71°00' W. long.; (2) 41°39' N. lat., 69°00' W. long.; (3) 40°00' N. lat., 69°00' W. long.; (4) 40°00' N. lat., 71°00' W. long., and then ending at the first point. Under this temporary emergency rule this southern component of the area would remain closed only to the harvest of whole or roe-on scallops.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c) (Magnuson-Stevens Act). The original emergency closure was in response to a public health emergency. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. One comment was received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. The commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA

tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center (<http://oceanservice.noaa.gov/redtide/>) which can be accessed directly or through the website listed in the **ADDRESSES** section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA has determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further to ensure the safety of human health.

The rule, as last published on October 18, 2005, was determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 26, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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