

so that it accurately reflects the amendments carried out.

**DATES:** Effective March 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326-3355.

**SUPPLEMENTARY INFORMATION:** An amendatory instruction in our final rule entitled “Freedom of Information Act” published February 28, 2013 (78 FR 13472) erroneously included a paragraph that was not affected. In the amendments to § 4.9 of the Commission’s Rules of Practice, instruction 2 included paragraph (b)(9) in its revisions. That paragraph was not revised by the rule. Therefore, we issue the following correction to the February 28 final rule:

■ 1. In the **Federal Register** of Thursday, February 28, 2013, in FR Doc. 2013-04479, on page 13474, in the first column, amendatory instruction 2 is correctly revised to read as follows: “2. Amend § 4.9 by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(iii), (b)(3)(iii), (b)(10)(xiv) and (xv), and by adding (b)(10)(xvi) to read as follows:”

**Richard C. Donohue,**  
*Acting Secretary.*

[FR Doc. 2013-05619 Filed 3-15-13; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-2012-0738; FRL-9791-4]

#### National Oil and Hazardous Substances Pollution Contingency Plan; Revision To Increase Public Availability of the Administrative Record File

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action on an amendment that was withdrawn in a January 22, 2013, **Federal Register** withdrawal notice. The amendment that is the subject of today’s final rule adds language to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public.

**DATES:** This final rule is effective on April 17, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-SFUND-2012-0738. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Superfund Docket (Docket ID No. EPA-HQ-SFUND-2012-0738). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Superfund Docket telephone number is (202) 566-0276. EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Melissa Dreyfus at (703) 603-8792 ([dreyfus.melissa@epa.gov](mailto:dreyfus.melissa@epa.gov)), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460-0002, Mail Code 5204P.

#### SUPPLEMENTARY INFORMATION:

##### I. Why is EPA publishing this final rule?

On November 7, 2012, EPA published in the **Federal Register** a Direct Final rule entitled *National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File* (77 FR 66729) (hereafter the Direct Final rule). This Direct Final rule added language to 40 CFR 300.805(c) of the NCP to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public. At the same time, EPA also published a parallel Proposed rule (77 FR 66783) that requested comment on the same change to the NCP. We stated in that Direct Final rule that if we received adverse comment on the amendment by December 7, 2012, the affected amendment would not take effect and we would publish a timely withdrawal in the **Federal Register** of the amendment. We received one adverse comment and as a result withdrew the amendment on January 22, 2013 (78 FR 4333). EPA is publishing today’s Final rule to address the adverse comment received on the

amendment listed above and to finalize this amendment.

## II. Background

### A. What does this amendment do?

In the November 7, 2012, Direct Final rule, 40 CFR 300.805(c)—“Location of the Administrative Record File” in Subpart I—“Administrative Record for Selection of Response Action” of the National Oil and Hazardous Substances Pollution Contingency Plan, was revised to acknowledge advancements in technologies used to manage and convey information to the public. Specifically, this revision to the NCP added language to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public regarding documents that form the basis for the selection of a response action. This amendment to the NCP does not limit the lead agency’s ability to make the administrative record file available to the public in traditional forms such as paper and microform. Based on the preferences of the community and the lead agency’s assessment of the site-specific situation, the lead agency will determine whether to provide: (1) Traditional forms (e.g. paper copies; microform) (2) electronic resources, or (3) both traditional forms and electronic resources. The lead agency should assess the capacity and resources of the public to utilize and maintain an electronic- or computer telecommunications-based repository to make a decision on which approach suits a specific site.

### B. What comment did EPA receive and how is it addressed?

While three comments were submitted in a timely manner, only one of them is considered to be substantive. This comment, submitted anonymously, stated that “This modification to the current methods of conveying information to the general public is prudent and likely to increase public awareness of activities relating to the National Contingency Plan.” However, the commenter was “\* \* \* curious as to how the ‘preferences of the community and the lead agency’s assessment of the site-specific situation’ will be determined.”, as “Within any single community, there is probably going to be a range of capabilities and preferences regarding the delivery of a record file.” The commenter went on to explain “In determining community preference, the Agency should be cautious, again, of allowing the

overrepresentation of special interests, for these interests may attempt to project a community preference for traditional microform files so that public participation does not increase. But, as the Proposed rule explains, the lead agency will be free to determine that both electronic and traditional microform information be available, which, when faced with competing views, is best for effectuating the purpose of this necessary and wise amendment.”

In response to this comment, EPA agrees that the amendment being promulgated today is a useful and important change that will give the lead agency the ability to serve the information needs of a broader population. In the Direct Final rule (and parallel Proposed rule), EPA explained that the lead agency should assess the capacity and resources of the public to utilize and maintain an electronic- or computer telecommunications-based repository to make a decision on which approach suits a specific site. Based on the preferences of the community and the lead agency’s assessment of the site-specific situation, the lead agency will determine whether to provide: (1) Traditional forms (e.g. paper copies; microform) (2) electronic resources, or (3) both traditional forms and electronic resources.

Further, EPA agrees with the commenter’s remark that “In determining community preference, the Agency should be cautious, again, of allowing the overrepresentation of special interests, for these interests may attempt to project a community preference for traditional microform files so that public participation does not increase.” Community preferences and access to technological resources may be gleaned through community interviews conducted as part of the planning for the Community Involvement Plan (CIP) at a site.<sup>1</sup> A CIP is a site-specific strategy to enable meaningful community involvement throughout the Superfund cleanup process. Consistent with the NCP [300.415(n)(3)(ii); 300.415(n)(4)(i); and 300.430(c)(2)(ii)(A–C)], the lead agency prepares a Community Involvement Plan (formerly called a Community Relations Plan) “\* \* \* based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the remedial response.” In addition,

consistent with the NCP [40 CFR 300.415(n)(3)(i); 40 CFR 300.415(n)(4)(i); and 300.430(c)(2)(i)] the lead agency conducts “interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process.”

EPA generally recommends that interviews be conducted with at least 25 community members, though a complex site may warrant 100 or more interviewees, and a small or remote site might warrant less than 25 interviewees.<sup>2</sup> Conducting community interviews typically is a particularly effective way to gather information about community needs, questions, and concerns, as well as expectations and unique needs or cultural behaviors, customs, and values. Community interviews also give the lead agency the opportunity to hear the preferences of community members that may have otherwise hesitated to share during a public meeting or availability session. The information and insights gained from community interviews will help the lead agency to assess the capacity and resources of the community to utilize and maintain an electronic- or computer telecommunications-based repository, and to make a decision on which approach suits a specific site and best encourages the community’s participation.

In addition, in accordance with Section 508 of the Rehabilitation Act of 1973, as amended, the lead agency is responsible for ensuring that all electronic and information technology is accessible to persons with disabilities. This typically involves procuring, creating, maintaining and using electronic and information technology, including, Web sites, software, hardware, video and multimedia, and telecommunications, that is Section 508 compliant,<sup>3</sup> as well as incorporating other techniques to ensure accessibility.

Thus, the amendment being promulgated today is a useful and important change that will give the lead agency the ability to serve the information needs of a broader population, while maintaining the ability to provide the administrative record file to the public as: (1) Traditional forms (e.g. paper copies;

microform) (2) electronic resources, or (3) both traditional forms and electronic resources. EPA is today promulgating the change to add language to 40 CFR 300.805(c) as was proposed.

### III. Statutory and Executive Order Reviews

As explained above, this rule takes final action on an amendment for which we received adverse comment in response to our November 7, 2012, *National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File* Direct Final rule (and parallel Proposed rule).

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.805(c) of the NCP to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public. This action will enable the lead agency to serve the information needs of a broader population while maintaining the ability to provide traditional means of public access, such as paper copies and microform, to the administrative record file. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885,

<sup>1</sup> U.S. Environmental Protection Agency. 2011. Superfund Community Involvement Toolkit. Community Involvement Plans. Available online: <http://www.epa.gov/superfund/community/pdfs/toolkit/ciplans.pdf>.

<sup>2</sup> U.S. Environmental Protection Agency. 2011. Superfund Community Involvement Toolkit. Community Interviews. Available online at <http://www.epa.gov/superfund/community/pdfs/toolkit/5cominterv.pdf>.

<sup>3</sup> Further information on Section 508 is available online: <http://www.section508.gov>.

April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 11, 2013.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 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. Section 300.805 is amended by revising paragraph (c) to read as follows:

#### § 300.805 Location of the administrative record file.

\* \* \* \* \*

(c) The lead agency may make the administrative record file available to the public in microform, computer telecommunications, or other electronic means.

[FR Doc. 2013–06189 Filed 3–15–13; 8:45 am]

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405, 411, 412, 419, 424, and 489

[CMS–1455–NR]

#### Medicare Program; Medicare Hospital Insurance (Part A) and Medicare Supplementary Medical Insurance (Part B)

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

**ACTION:** Notice of CMS ruling.

**SUMMARY:** This notice announces a CMS Ruling that establishes a policy that revises the current policy on Part B billing following the denial of a Part A inpatient hospital claim by a Medicare review contractor on the basis that the inpatient admission was determined not reasonable and necessary. This revised policy is intended as an interim measure until CMS can finalize a policy to address the issues raised by the Administrative Law Judge and Medicare Appeals Council decisions going forward. To that end, elsewhere in this issue of the **Federal Register**, we published a proposed rule entitled, “Medicare Program; Part B Inpatient Billing in Hospitals,” to propose a permanent policy that would apply on a prospective basis.

**DATES:** The CMS ruling announced in this notice is effective on March 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ann Marshall, (410) 786–3059, for issues related to payment of Part B inpatient and Part B outpatient services.

David Danek, (617) 565–2682, for issues related to general appeals policy.

If you have a question about a pending appeal, please contact the entity (that is, Medicare contractor, Qualified Independent Contractor (QIC), Administrative Law Judge (ALJ) or the Appeals Council) where your appeal is pending. For those cases that were remanded from an ALJ to a QIC, HHS’ Office of Medicare Hearings and Appeals (OMHA) will post further information on its public Web site at [www.hhs.gov/omha](http://www.hhs.gov/omha). The contact names listed will not have any information about specific, pending appeals.

**SUPPLEMENTARY INFORMATION:** The CMS Administrator signed Ruling CMS–1455–R on March 13, 2013. This CMS Ruling, as well as other CMS Rulings are available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/>

[Rulings/index.html](#). For the readers’ convenience, the text of the CMS Ruling 1455–R is set forth in the Appendix to this notice of CMS ruling:

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

Dated: March 13, 2013.

**Marilyn Tavenner,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### Appendix

##### CMS Rulings

*Department of Health and Human Services*

Centers for Medicare & Medicaid Services

Ruling No.: CMS–1455–R.

Date: March 13, 2013.

Centers for Medicare & Medicaid Services (CMS) Rulings are decisions of the Administrator of CMS that serve as precedential final opinions, orders and statements of policy and interpretation. They provide clarification and interpretation of complex provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. They are published under the authority of the Administrator.

CMS Rulings are binding on all CMS components, Part A and Part B Medicare Administrative Contractors (MACs), Qualified Independent Contractors (QICs), the Provider Reimbursement Review Board, the Medicare Geographic Classification Review Board, and on the Medicare Appeals Council and Administrative Law Judges (ALJs) who hear Medicare appeals. Rulings promote consistency in interpretation of policy and adjudication of disputes.

In light of numerous recent Medicare Appeals Council and ALJ decisions on a recurrent Medicare payment issue and in association with this Ruling, CMS is concurrently issuing a proposed rule, entitled “Medicare Program; Part B Billing in Hospitals” addressing the policy of billing under Medicare Part B following a denial of a Medicare Part A hospital inpatient claim by a Medicare review contractor for the reason that an inpatient admission was not reasonable and necessary under section 1862(a)(1)(A) of the Social Security Act (the Act). This Ruling is effective as of the issuance date, and addresses the treatment of such claims and associated appeals until the effective date of the final regulations for the proposed rule entitled, “Medicare Program; Part B Billing in Hospitals”.

##### Medicare Program

Medicare Hospital Insurance (Part A) and Medicare Supplementary Medical Insurance (Part B).