

will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

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

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

Dated: July 21, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### 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.

#### Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under California (“CA”) by removing the entry for “Ralph Gray Trucking Co.”

[FR Doc. 04–17299 Filed 7–29–04; 8:45 am]

BILLING CODE 6560–50–P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL–7794–7]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion for the Niagara County Refuse Superfund site from the National Priorities List.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) Region II Office announces the deletion of the Niagara County Refuse Superfund site from the National Priorities List (NPL). The Niagara County Refuse site is located in the Town of Wheatfield, Niagara County, New York. The NPL

constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and New York State, through the Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions have been implemented and no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and the NYSDEC have determined that the remedial action taken at the Niagara County Refuse site is protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** July 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4278.

**SUPPLEMENTARY INFORMATION:** To be deleted from the NPL is: the Niagara County Refuse Superfund site, Town of Wheatfield, Niagara County, New York.

A Notice of Intent to Delete for the Niagara County Refuse site was published in the **Federal Register** on March 17, 2004. The closing date for comments on the Notice of Intent to Delete was April 16, 2004. EPA received two comments on the proposed deletion during the public comment period. Both comments were from local residents opposed to the deletion due to historical flooding problems experienced at their homes associated with wetlands adjacent to the landfill and their properties. The commentors assigned a portion of the blame for the flooding to the presence of the landfill and EPA’s actions at the landfill. In response, EPA notes that research shows that poor drainage and flooding were evident at least as far back as the 1970s and that both federal and State designated wetlands located to the north of the site have been regulated since the late 1970s. Steps were taken during the remediation of the landfill to minimize or reduce the impacts of increased surface water drainage to an already existing flood prone environment. EPA’s decision to propose the site for delisting is based on the successful implementation of the multi-layered cap remedy to contain landfill wastes to prevent the migration of contaminants into the surrounding environment, thereby mitigating risks to human health and the environment. The monitoring

data collected on a regular basis since the construction of the remedy was completed in December 2000 confirm that the remedy is operating as designed and is protective of human health and the environment. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

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

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

Dated: July 6, 2004.

**Walter Mugdan,**

*Acting Regional Administrator, Region II.*

■ For the reasons set out in the preamble, part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

#### PART 300—[AMENDED]

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

**Authority:** 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

#### Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing “Niagara County Refuse, Town of Wheatfield, New York.”

[FR Doc. 04–17374 Filed 7–29–04; 8:45 am]

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### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405 and 411

[CMS–6014–F]

RIN 0938–AL14

#### Medicare Program; Interest Calculation

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

**ACTION:** Final rule.

**SUMMARY:** This final rule changes the way we calculate interest on Medicare overpayments and underpayments to providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans to be more reflective of current business practices. This change reduces the amount of interest assessed on overpayments and underpayments and simplifies the way the interest is calculated. This change in the way we calculate interest also applies to Medicare Secondary Payer debt.

**DATES:** This final rule is effective on October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Nancy Braymer, (410) 786-4323.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. Interest Calculation

Sections 1815(d) and 1833(j) of the Social Security Act (the Act) require that, whenever a payment to a provider, supplier, or other entity is more than (overpayment) or less than (underpayment) the amount that was due to the provider, supplier, or other entity, we assess interest on the amount of the overpayment that the provider, supplier, or other entity owes to us or the underpayment that we owe to the provider, supplier, or other entity. This interest becomes due if the overpayment amount owed to us or the underpayment amount owed by us is not paid within 30 days of the date of the final determination of the overpayment or underpayment.

Payments we receive are applied first to accrued interest and then to principal. Interest we collect on overpayments and Medicare Secondary Payer (MSP) recoveries goes to the Treasury as general revenue. The principal amount we recover is used to reimburse the applicable Medicare trust fund—the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund. Interest we pay on Medicare underpayments comes from the applicable Medicare trust fund.

We determine the rate of interest in accordance with 42 CFR 405.378 by comparing the Private Consumer Rate with the Current Value of Funds Rate and assessing the interest at the higher of the two rates that is in effect on the date of the final determination of the amount of the overpayment or underpayment.

Interest is calculated from the date of the final determination and is owed if

the amount of the overpayment or underpayment is not paid within 30 days. Interest accrues daily but is assessed and calculated in 30-day periods. A period that is less than 30 days is considered to be a full 30-day period.

In this final rule, we are changing the method of calculating the amount of interest that is assessed on overpayments and underpayments to better align our practices to a commercial business model. Previously, we assessed interest prospectively (30 days into the future). Under private sector practices, interest is assessed on delinquent debts retrospectively.

Effective with this final rule, periods of less than 30 days will not be treated as a full 30-day period. We will assess interest only for full 30-day periods when payment is not made on time. The date of the final determination is the first day of the first 30-day period. As an example, if a Medicare overpayment is not paid within the 30-day time period specified in the demand letter, the debtor would owe interest for one 30-day period on day 31. No interest would be due on day 29 or day 30.

The change in the method of calculation applies only to overpayments and underpayments whose date of final determination occurs on or after the effective date of this final rule.

### B. Technical Correction

We are making a technical correction to correct a reference that was cited in a previous revision of the Code of Federal Regulations (CFR). In § 411.24, the rate of interest to be assessed on Medicare Secondary Payer debts is incorrectly referenced as appearing in § 405.376(d), rather than § 405.378(d), which is the correct reference.

### C. Clarification of Application to Medicare Secondary Payer (MSP) Debt

Section 1862(b)(2)(B)(i) of the Act provides express authority to assess interest on MSP debts. Our longstanding policy and practice have been to calculate interest on MSP debt using the method applicable to Medicare overpayments and underpayments as set forth in § 405.378. Specifically, interest is calculated in 30-day periods, and a period that is less than 30 days is considered to be a full 30-day period for MSP debts as well as for Medicare overpayments and underpayments.

It was and remains our intent to use the revised methodology set forth in this final rule for both types of debts: MSP recoveries and non-MSP Medicare overpayments and underpayments. Specifically, periods of less than 30

days will no longer be treated as a full 30-day period. However, the proposed rule published in the **Federal Register** (68 FR 43995) on July 25, 2003 did not make this intent explicit, even though the regulatory impact analysis in that proposed rule included MSP debts in assessing the costs and benefits of this regulatory change.

Therefore, this final rule amends § 411.24 to clarify that this change in the methodology for calculating interest applies to MSP debts, as well as Medicare overpayments and underpayments under § 405.378. As an example, where a group health plan based MSP debt is not paid within the 60-day time period specified in the recovery demand letter, under the current practice the debtor would owe interest for three 30-day periods on day 61, for four 30-day periods on day 91, and so forth. Under this final rule, the debtor would owe interest for two 30-day periods on day 61, for three 30-day periods on day 91, and so forth.

This change in the method of calculation applies only to those MSP debts where the debt is established on or after the effective date of this final rule. MSP debts are routinely established as of the date of the recovery demand letter.

## II. Provisions of the Proposed Rule

The provisions of the proposed rule were the following:

- In § 405.378, we stated that we would revise paragraph (b)(2) to delete the requirement that periods of less than 30 days be treated as a full 30-day period.
- In § 411.24, we stated that we would revise paragraph (m)(2)(iii) to correct the reference to § 405.376(d) by changing the reference to § 405.378(d).

## III. Provisions of the Final Rule

No public comments were received in response to the provisions of the proposed rule which, consequently, have not been changed in this final rule. However, we have made a clarifying addition. In § 411.24, we have revised paragraph (m)(2)(ii) to make explicit that interest is applied for full 30-day periods.

## IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (PRA).

## V. Regulatory Impact Analysis

### A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year).

This final rule is not a major rule. It simply changes the way we calculate interest on overpayments and underpayments and MSP debts. It does not change how overpayments or underpayments are determined, nor does it require providers, suppliers, or other entities to change the way they interact with us in determining overpayments and underpayments. It does not change how MSP debts are established.

During fiscal year (FY) 2001, we recovered \$167 million in interest on delinquent overpayments and MSP debts. In FY 2002 and FY 2003, we recovered \$115.7 million and \$93.4 million, respectively. Had this final rule been in effect, interest recoveries would have been \$153 million in FY 2001, \$106.1 million in FY 2002, and \$85.6 million in FY 2003. This represents a difference of \$14 million for FY 2001, \$9.6 million for FY 2002, and \$7.8 million for FY 2003 due to the change in the interest calculation. During FY 2001, we paid \$2.6 million in interest on underpayments; during FY 2002, we paid \$5.2 million; and during FY 2003, we paid \$4.1 million. Had this final rule been in effect, in FY 2001 interest payments would have been \$2.4 million, a difference of \$0.2 million. In FY 2002 interest payments would have been \$4.8 million, a difference of \$0.4 million; and in FY 2003 interest payments would have been \$3.8 million, a difference of \$0.3 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. Most hospitals, and most other providers, suppliers, health maintenance organizations,

competitive medical plans, and health care prepayment plans are small entities, either by nonprofit status or by having revenues of \$29 million or less in any one year. During FY 2001, we recovered \$167 million in interest on delinquent overpayments and MSP debts; during FY 2002, we recovered \$115.7 million; and during FY 2003, we recovered \$93.4 million. Had this final rule been in effect, interest recoveries would have been \$153 million during FY 2001, \$106.1 million during FY 2002, and \$85.6 million during FY 2003, a difference of \$14 million, \$9.6 million, and \$7.8 million, respectively. This would amount to 0.1 percent of the \$13.5 billion in overpayments and MSP debts recovered during FY 2001 and less than 0.1 percent of the \$13.4 billion recovered during FY 2002 and of the \$14.5 billion recovered during FY 2003. During FY 2001, we paid \$2.6 million in interest on underpayments; during FY 2002, we paid \$5.2 million; and during FY 2003, we paid \$4.1 million. Had this final rule been in effect, we would have paid \$2.4 million during FY 2001, \$4.8 million during FY 2002, and \$3.8 million during FY 2003, a difference of \$0.2 million, \$0.4 million, and \$0.3 million, respectively. This would amount to less than 0.1 percent of the \$236 billion, \$246.8 billion, and \$272.6 billion in benefit payments made during FY 2001, FY 2002, and FY 2003, respectively. For further details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final rule has no operations impact on any provider, supplier, or other entity including small rural hospitals. The final rule simply changes the way we calculate interest we assess on overpayments and underpayments and MSP debts. It does not change how overpayments or underpayments are determined nor require providers, suppliers, or other entities to change how they interact with us in determining overpayments or underpayments. Therefore, we have determined that this final rule would not have a significant effect on the operations of a substantial number of

rural hospitals. Because the interest we collect in a year far exceeds the interest we pay, the majority of providers, suppliers, and other entities will benefit from changing the method of calculating interest.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. During the three-year period from FY 2001 through FY 2003, we recovered \$167 million, \$115.7 million, and \$93.4 million, respectively, in interest on delinquent overpayments and MSP debts. Had this final rule been in effect, interest recoveries would have been \$153 million during FY 2001, a difference of \$14 million. For FY 2002, interest recoveries would have been \$106.1 million, a difference of \$9.6 million, and for FY 2003, \$85.6 million, a difference of \$7.8 million. During FY 2001, we paid \$2.6 million in interest on underpayments. Had this final rule been in effect, we would have paid \$2.4 million, a difference of \$0.2 million. During FY 2002, we paid \$5.2 million in interest on underpayments, and during FY 2003, we paid \$4.1 million. Had this final rule been in effect, interest payments in FY 2002 would have been \$4.8 million, a difference of \$0.4 million, and in FY 2003, \$3.8 million, a difference of \$0.3 million.

This final rule does not have an impact on State, local, or tribal governments. It reduces annual expenditures by providers, suppliers, or other entities in the private sector because it changes the way that we compute interest on any delinquent overpayments or MSP debts owed to us. Additionally, the change in interest calculation that we pay on underpayments owed to providers, suppliers, and other entities will not be an expenditure by a State, local, or tribal government.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule imposes no direct requirement costs on State and local governments, does not preempt State law, or have any Federalism implications. By changing how we calculate interest, we are reducing the amount of interest assessed on overpayments and MSP debts owed to

us and underpayments owed by us to providers, suppliers, and other entities.

#### B. Effects on the Medicare and Medicaid Programs

This final rule reduces the amount of interest assessed on Medicare overpayments and underpayments and MSP debts. During FY 2001, we recovered \$167 million in interest on delinquent overpayments and MSP debts. Had this final rule been in effect, interest recoveries would have been \$153 million, a difference of \$14 million. During FY 2001, we paid \$2.6 million in interest on underpayments. Had this final rule been in effect, we would have paid \$2.4 million, a difference of \$0.2 million. During FY 2002, we recovered \$115.7 million in interest on delinquent overpayments and MSP debts. Had this final rule been in effect, interest recoveries would have been \$106.1 million, a difference of \$9.6 million. During FY 2002, we paid \$5.2 million in interest on underpayments. Had this final rule been in effect, we would have paid \$4.8 million, a difference of \$0.4 million. In FY 2003, interest recoveries were \$93.4 million and would have been \$85.6 million, or \$7.8 million less, had this rule been in effect. In FY 2003, interest we paid was \$4.1 million and would have been \$3.8 million, or \$0.3 million less, had this rule been in effect. There is no effect on the Medicaid program.

#### C. Alternatives Considered

We considered a number of other methods to use in calculating the amount of interest owed. We assessed the relative merits of alternative calculation methods based on two primary criteria: comparability to a commercial business model and secondly, relative ease and cost of administration. Applying the first criterion precludes continuing our current calculation method. Under this final rule, we are able to use commercially obtained off-the-shelf software to calculate interest. As in the private sector, the debtor will still have a set payment period to pay the amount owed without additional interest being assessed during the payment period. We considered calculating and assessing interest on a daily basis but determined this would be prohibitively expensive and administratively burdensome for Medicare contractors, providers, beneficiaries, and other entities.

#### D. Conclusion

This final rule is not a major rule. It does not change the way overpayments or underpayments are determined, nor how MSP debts are established. It does

not have a significant impact on a substantial number of rural hospitals. Since a partial period is no longer considered a full 30-day period, interest assessed on amounts owed to us will be reduced. Therefore, this final rule reduces State, local, and tribal government expenditures. The final rule does not impose any direct requirement costs on State and local governments and does not preempt State law or have any Federalism implications.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule does not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

#### List of Subjects

##### 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

##### 42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

#### PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

##### Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

■ 1. The authority citation for part 405, subpart C, continues to read as follows:

**Authority:** Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1351, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

■ 2. In § 405.378, paragraph (b)(2) is revised to read as follows:

**§ 405.378 Interest charges on overpayments and underpayments to providers, suppliers, and other entities.**

(b) \* \* \*  
\* \* \* \* \*

(2) Interest accrues from the date of the final determination as defined in

paragraph (c) of this section, and either is charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

\* \* \* \* \*

#### PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 3. The authority citation for part 411 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

##### Subpart B—Insurance Coverage That Limits Medicare Payment; General Provisions

■ 4. In § 411.24, paragraphs (m)(2)(ii) and (iii) are revised to read as follows:

##### § 411.24 Recovery of conditional payments.

\* \* \* \* \*

(m) \* \* \*

(2) \* \* \*

(ii) Interest may accrue from the date when that notice or other information is received by CMS, is charged until reimbursement is made, and is applied for full 30-day periods; and

(iii) The rate of interest is that provided at § 405.378(d) of this chapter.

(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, Medicare—Supplementary Medical Insurance Program)

Dated: February 26, 2004.

**Dennis G. Smith,**

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

Approved: April 15, 2004.

**Tommy G. Thompson,**

*Secretary.*

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#### DEPARTMENT OF HOMELAND SECURITY

##### Federal Emergency Management Agency

##### 44 CFR Part 62

##### RIN 1660-AA28

##### National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

**AGENCY:** Federal Emergency Management Agency (FEMA),