

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.411A (Scale-up grants), 84.411B (Validation grants), and 84.411C (Development grants).

Dated: May 26, 2011.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2011-13589 Filed 6-2-11; 8:45 am]

BILLING CODE 4000-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1987-0002; FRL-9315-8]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Coker's Sanitation Service Landfills Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is publishing a direct final Deletion of the Coker's Sanitation Service Landfills Superfund Site (Site) located in Cheswold, Kent County, Delaware, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion is effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1987-0002, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.

- **E-mail:** Darius Ostrauskas, Remedial Project Manager, U.S. EPA, [ostrauskas.darius@epa.gov](mailto:ostrauskas.darius@epa.gov)
- **Fax:** (215) 814-3002, Attn: Darius Ostrauskas
- **Mail:** Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029
- **Hand delivery:** Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Phone 215-814-3360, Business Hours: Monday through Friday—9 a.m. to 4 p.m. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID no. EPA-HQ-SFUND-1987-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <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 the

hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday 8 a.m. to 5 p.m. The Dover Public Library, Reference Department, 45 South State Street, Dover, DE 19901, (302) 736-7030, Monday through Thursday, 9 a.m. to 9 p.m., Friday and Saturday, 9 a.m. to 5 p.m., and Sunday, 1 p.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3360.

#### SUPPLEMENTARY INFORMATION:

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#### I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Coker's Sanitation Service Landfills Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect.

EPA will, as appropriate, 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.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Coker's Sanitation Service Landfills Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Delaware prior to developing this direct final Notice of Deletion and the Notice

of Intent to Delete the Site co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through DNREC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Delaware State News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and 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.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

## IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

### *Site Background and History*

The Site (EPA Identification Number DED980704860) is located near Cheswold in Kent County, Delaware, approximately six miles northwest of the City of Dover. The Site consists of two landfills located approximately one-half mile apart on opposite sides of County Road 152. Landfill No. 1, which is on the north side of County Road 152, and Landfill No. 2, which is on the south side of County Road 152, are both

part of larger, heavily wooded tracts of land. Both landfills are fenced off and covered with vegetation. There are no known development plans for the properties occupied by the landfills. Properties adjacent to both landfills are primarily used for agricultural or light residential development. Landfill No. 1 is bordered on the north by a forested wetland that includes a shallow meandering stream, the Willis Branch of the Leipsic River. Agricultural lands border the tree lines east and west of Landfill No. 2. Deer and other wildlife populate this area of Kent County. Groundwater near the Site is used for domestic purposes, including drinking water.

Landfill No. 1 is located on property owned by Alberta F. Schmidt. Use of Landfill No. 1 began in 1969 under a permit issued by the Delaware Water and Air Resources Commission. DNREC issued subsequent permits (1973–1976). The landfill was closed in 1977 in accordance with the Delaware Solid Waste Disposal Regulations of August 1974. During landfill operation, latex waste sludge was discharged into unlined trenches that were six to eight feet deep and twelve feet wide. Liquids were allowed to drain off as solids settled. Trenches were then backfilled with soil obtained locally.

Landfill No. 2, located on property owned by Kowinsky Farms, Inc., was operated from 1976 to 1980 under a state permit. The permit required each six-foot deep, twenty-eight foot wide, one hundred twenty-five foot long trench to have a synthetic liner. The permit also required leachate collection, installation of groundwater monitoring wells, regularly scheduled site inspections, and periodic groundwater and leachate monitoring. When the Site was closed in 1980, all trenches were capped with two feet of native soil. As waste settled and no longer generated collectable quantities of leachate, the leachate collection was phased out in the early 1980's.

EPA conducted an initial Site Investigation in 1980, and a second one in 1983. Elevated levels of acrolein were found in one well and in one leachate collection pipe on Landfill No. 2. Ethylbenzene was detected in the same well and leachate collection pipe. Bis(2-chloroethyl) ether was detected in Landfill No. 1 leachate seeps. The Site was proposed for inclusion on the NPL in the **Federal Register** on April 10, 1985 (50 FR 14115), and included on the NPL in the **Federal Register** on July 22, 1987 (52 FR 27620).

*Remedial Investigation and Feasibility Study (RI/FS)*

In April 1986, EPA issued letters to several Potentially Responsible Parties (PRPs) notifying them of their potential liability for Site response actions and inviting them to conduct the RI/FS. On December 30, 1987, three PRPs signed an agreement with EPA in the form of an Administrative Order on Consent to conduct the RI/FS.

Media investigation during the RI/FS included waste, leachate, groundwater, surface water and sediment, soil, and air. Among the different media types investigated, waste contained the highest number of contaminants at the highest levels for styrene, ethylbenzene, and phenolic compounds. Leachate from Landfill No. 2 (taken from leachate collection trenches within the lined cells) contained the same contaminants, but at lower levels. The waste and leachate were determined to pose a threat to human health and the environment. Groundwater at both landfills contained similar compounds but at significantly lower levels, and it was determined that they did not pose a threat to human health or the environment.

The FS provided an in-depth analysis of the following potential remedial alternatives: (1) No Action; (2) Monitoring; (3) Limited Action; (4) Soil Cap; (5) Multi-Layer Cap (both landfills) and Sub-drain (Landfill No. 1 only); (6) Volatile Organic Compound (VOC) Stripping by Aeration ; and (7) On-site Incineration (of Waste). The FS also analyzed EPA and DNREC's preferred

alternative, alternative 3. The parties agreed, under a separate order, to remove drums containing varying quantities of latex waste found on-site during the RI.

*Selected Remedy*

EPA issued a Record of Decision (ROD) for the Site on September 28, 1990. Under the ROD, the remedial action objective was to reduce the potential for future contact with waste at the Site and thereby reduce risk to within EPA guidelines.

The waste materials found in the landfills at the Site are neither liquid nor highly mobile, and can be controlled reliably in place. The Site contains a large volume of material that would be difficult to handle and treat due to clay-like physical properties and the potential risk posed by substantial release of volatile organic compounds. EPA and DNREC determined that on-site containment of the waste was an appropriate remedial action.

The selected remedy addresses the principal threats posed by the conditions at the Site by reducing the potential for human exposure to wastes remaining at the Site. The major components of the selected remedy are as follows:

- Land use restrictions placed on both landfill properties.
- The entire waste disposal areas of both landfills are enclosed by a chain-link security fence with a locked gate to restrict the access of unauthorized persons and equipment onto the landfills. Appropriate warning signs are placed along the fence.

- Cover material was placed along the northern slope of Landfill No. 1 to eliminate exposure to leachate seeps.

- Areas of Landfill No. 2, which had subsided due to uneven settling of waste, were backfilled to grade and seeded.

- Leachate collection wells at Landfill No. 2 were sealed with grout to reduce the potential for direct contact with leachate.

- Groundwater was initially sampled semi-annually at both landfills; now, it is sampled at least once every five years.

- The landfills are inspected semi-annually.

- Surface water monitoring was conducted at the Willis Branch adjacent to

Landfill No. 1 at the same time as groundwater monitoring for a period of no less than five years. In response to monitoring requirements identified in the ROD, a groundwater and surface water monitoring program has been implemented at the Site. This monitoring program has included the identification of trigger levels for contaminants of concern for groundwater and surface water for both Landfill No.1 and Landfill No. 2. The trigger levels for Landfill No. 1 were developed primarily for the protection of aquatic wildlife due to the proximity of the Willis Branch and lack of potential human receptors. For Landfill No. 2, the trigger levels were developed to protect human health due to the proximity of nearby residential wells. Those levels are:

Contaminant of concern	Landfill No. 1 µg/L	Landfill No. 2 µg/L
<i>Groundwater:</i>		
Styrene .....	2900	100
Ethylbenzene .....	3200	5
1,2,3-trichloropropane .....	.....	5
Phenolics .....	.....	22999
Antimony .....	.....	6
<i>Surface Water:</i>		
Styrene .....	1400	.....
Ethylbenzene .....	1600	.....
Xylenes .....	900	.....

*Response Actions*

The following is a summary of the activities that were completed at the Site.

- An Environmental Protection Easement and Declaration of Restrictive Covenants between Alberta Schmidt, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No. 1 was signed on February 24, 2005. The document was recorded with the Office of the Recorder of Deeds

for Kent County, Delaware on April 18, 2005, to implement the institutional controls (land use restrictions) for Landfill No. 1.

- An Environmental Protection Easement and Declaration of Restrictive Covenants between Kowinsky Farms, Inc, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No. 2 was signed on September 24, 2008. The document was recorded with the Office of the Recorder

of Deeds for Kent County, Delaware on November 26, 2008, to implement the institutional controls (land use restrictions) for Landfill No. 2.

- On April 8, 1992, the PRPs entered into a Consent Decree with EPA pursuant to which the PRPs agreed to implement the remedy selected in the ROD. The PRPs started construction activities in early July 1993.

- Remedial construction activities at Landfill No.1 consisted of clearing the

perimeter of vegetation so that the security fence could be installed. Leachate seeps were covered with wood chip mulch. Following installation of the security fence, cleared areas were seeded. Lastly, warning signs were posted around the landfill perimeter.

- At Landfill No. 2, remedial construction activities were more extensive. First, the landfill was cleared of all vegetation. Trees within the landfill perimeter were cut and chipped for mulch. Each waste cell's leachate collection system was grout sealed. Settled waste cells were filled with clean fill and the entire landfill surface was re-graded. Top soil was added; the landfill was then graded and seeded. A security fence was installed around the landfill. Finally, warning signs were placed around the landfill perimeter.

- Three wells were sampled at Landfill No. 1 and four at Landfill No. 2. The sampling parameters were ethylbenzene, styrene, 1,2,3-trichloropropane, antimony, and phenolics, as well as field parameters. Groundwater was sampled semi-annually in 1993 and 1994, and then annually through 1998. During this period, all sampling results for contaminants of concern were below established trigger levels for both Landfill No. 1 and Landfill No. 2, as well as Maximum Contaminant Levels (MCLs) established under the Safe Drinking Water Act. In 1999, EPA determined that the subject monitoring could be discontinued. In 2009, the monitoring resumed at a frequency of at least once every five years. Sampling in 2009 found that all contaminants of concern were below the established trigger levels and MCLs.

- The Site has been inspected regularly as required in the ROD and routine maintenance activities have been performed as needed. The routine maintenance activities have generally consisted of minor fence repair, replacement of warning signs, and mowing the surface of Landfill No. 2.

On September 9, 1993, EPA and DNREC conducted the final construction inspection. On September 29, 1993, EPA signed the Preliminary Site Close Out Report (PCOR), which documented that the PRPs had completed construction activities at the Site. EPA signed the Final Close Out Report on February 19, 2009, which documented completion of all response action, other than operation, maintenance, and five-year reviews.

#### *Cleanup Goals*

EPA approved the Sampling and Analysis Plan (Part IV of the Remedial Design Submittal) requiring periodic

sampling of groundwater, surface water and sediments. Sampling under the subject Plan was initiated at the start of remedial action (RA) activities and continued for six years. During that time, the monitored contaminants of concern at Landfill No.1 and Landfill No. 2 were well below identified trigger levels. In response to the results of this monitoring, the First Five-Year Review for the Site issued by EPA in 1999 found that monitoring of groundwater and surface water at the Site could be discontinued. However, during the preparation and completion of the Final Close Out Report for the Site in February 2009, EPA determined that monitoring should resume and be conducted at a minimum of once every five years because waste has been left in place at the Site.

#### *Operation and Maintenance (O&M)*

The landfills are inspected semi-annually to identify any maintenance activities that need to be conducted to ensure continued performance of the RA. Inspection frequency was quarterly for the first year to provide for seep cover inspection and maintenance. The EPA-approved O&M Plan presented the requirements for the Site inspections, and included a checklist that was used to document inspection observations and results. O&M began following EPA's certification that the RA activities were completed. O&M activities that will continue at the Site are mowing and semi-annual inspections. Also, because waste remains onsite, groundwater and surface water monitoring will be performed once every five years.

An Environmental Protection Easement and Declaration of Restrictive Covenants between Alberta Schmidt, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No.1 was signed on February 24, 2005. The document was recorded with the Office of the Recorder of Deeds for Kent County, Delaware on April 18, 2005, to implement the institutional controls for Landfill No. 1.

An Environmental Protection Easement and Declaration of Restrictive Covenants between Kowinsky Farms, Inc, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No. 2 was signed on September 24, 2008. The document was recorded with the Office of the Recorder of Deeds for Kent County, Delaware on November 26, 2008, to implement institutional controls for Landfill No. 2.

The implemented institutional controls (land use restrictions) for both Landfill No. 1 and Landfill No. 2 prohibit disturbance of the onsite containment remedies.

#### *Five-Year Review*

EPA has conducted three (3) statutory Five-Year Reviews for this Site. Since the remedies selected for the Site allow hazardous substances, pollutants, or contaminants to remain onsite above levels that allow for unlimited use and unrestricted exposure, statutory Five-Year Reviews are required. These reviews are conducted pursuant to CERCLA Section 121(c), 42 U.S.C. 9621(c), and as provided in the current guidance on Five-Year Reviews.

The first Five-Year Review for the Site was completed on January 6, 1999, and the second Five-Year Review was completed on May 25, 2004. Both of these Five-Year Reviews found the remedy to be not fully protective due to the need for institutional controls in both cases.

The most recent Five-Year Review was completed on May 22, 2009. With the implementation of institutional controls, this Five-Year Review found no issues that affected the current or future protectiveness of the remedy for the Site and concluded that the remedy at the Site is protective over the short term and the long term.

The next Five-Year Review will be completed by May 25, 2014.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

Before the start of construction activities, representatives of the PRPs visited residents whose homes were adjacent to the landfills on both sides of County Road 152. Residents who were at home at the time of the visit were informed of the start date and the nature and duration of the construction activities. The PRP representatives answered questions that the residents asked about the construction activities. Fact sheets advising the residents of the construction activities were given to residents in person or were placed in their mailboxes. EPA issued a fact sheet in July 1993, at about midway through the construction activities. The fact sheet presented a description of the Site remedial action and project status.

EPA notified local officials about upcoming Five-Year Reviews. EPA placed notices in the *Delaware State News* to inform the public that the Five-Year Reviews were being conducted and when the findings of each would be available.

### *Determination That the Criteria for Deletion Have Been Met*

No further response action under CERCLA is appropriate. EPA has determined based on the investigations conducted that all appropriate response actions required have been implemented at the Site. Through the third Five-Year Review, EPA has also determined that the remedy is considered protective of human health and the environment and, therefore, additional remedial measures are not necessary. Other procedures required by 40 CFR 300.425(e) are detailed in Section III of this direct Final Notice of Deletion.

### V. Deletion Action

The EPA, with concurrence dated September 16, 2010, of the State of Delaware, through DNREC, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. If adverse comments are received within the 30-day public comment period, EPA 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. 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: April 29, 2011.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

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.

■ 2. Table 1 of Appendix B to part 300 is amended by removing “DE”, “Coker’s Sanitation Service Landfills”, “Kent County”.

[FR Doc. 2011–13841 Filed 6–2–11; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 412**

[CMS–1346–CN]

**RIN 0938–AQ23**

### **Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012); Correction**

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

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects two technical errors that appeared in the final rule published in the **Federal Register** on May 6, 2011 entitled, “Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012).”

**DATES:** *Effective Date:* July 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Myrick or Jana Lindquist, (410) 786–4533.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. 2011–10562 of May 6, 2011 (76 FR 26432) (hereinafter referred to as the RY 2012 IPF PPS final rule), there were two technical errors that we describe in the “Summary of Errors” section and correct in the “Correction of Errors” section below.

##### **II. Summary of Errors**

In the RY 2012 IPF PPS final rule, on page 26452, in Table 11, we made a typographical error when we listed the diagnosis code “V451” rather than “V4512” for the description of comorbidity for chronic renal failure. In addition, we inadvertently omitted from Table 11 the comorbidity code “V4511” for chronic renal failure. These changes are not substantive changes to the policies or payment methodologies in the final rule. They are changes to conform the final rule to reflect the

correct policies, which were implemented on July 1, 2011.

### **III. Correction of Errors**

In FR Doc. 2011–10562 of May 6, 2011 (76 FR 26432), make the following corrections:

- On page 26452, in Table 11—RY 2012 Diagnosis Codes and Adjustment Factors for Comorbidity Categories, in the second column, with the heading “Diagnoses codes,” for the renal failure, chronic diagnoses codes, replace code “V451” with “V4512” and add code “V4511.”

### **IV. 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 in the rule.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of rules after the date of their publication in the **Federal Register**. This 30-day delay in the 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 notice merely corrects an error and omission in Table 11 of the RY 2012 IPF PPS final rule and does not make any substantive changes to the policies or payment methodologies. The correct policies were implemented on July 1, 2011. We are simply conforming the RY 2012 IPF PPS final rule to those policies by making the corrections identified herein. We believe that undertaking further notice and comment procedures to incorporate these corrections into the FY 2012 IPF PPS final rule and delaying the effective date of these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

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