

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
South Africa	✓	✓	✓		
Spain	✓	✓	✓	✓	✓
Sri Lanka	✓	✓	✓	✓	✓
Sudan	✓	✓	✓		
Suriname	✓				
Swaziland	✓				
Sweden	✓	✓	✓	✓	✓
Switzerland	✓	✓	✓	✓	✓
Syrian Arab Republic	✓	✓	✓	✓	
Tajikistan	✓	✓			
Tanzania, United Republic of	✓	✓	✓	✓	✓
Thailand	✓	✓	✓		
The Former Yugoslav Republic of Macedonia	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓
Tonga	✓				
Trinidad and Tobago	✓	✓	✓	✓	
Tunisia	✓	✓	✓	✓	
Turkey	✓	✓	✓		
Turkmenistan	✓	✓			
Tuvalu	✓	✓	✓	✓	
Uganda	✓	✓	✓	✓	
Ukraine	✓	✓	✓		
United Arab Emirates	✓				
United Kingdom	✓	✓	✓	✓	✓
United States of America	✓	✓	✓		
Uruguay	✓	✓	✓	✓	
Uzbekistan	✓	✓	✓		
Vanuatu	✓	✓	✓	✓	
Venezuela	✓	✓	✓	✓	
Viet Nam	✓	✓	✓		
Yemen	✓	✓	✓	✓	
Yugoslavia	✓				
Zambia	✓	✓			

**Annex 2 to Appendix C of Subpart A— Nations Complying with, But Not Parties to, the Protocol [Reserved]**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[FRL-7535-9]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Withdrawal of Final Exclusion**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Because the United States Environmental Protection Agency (EPA) received adverse comment, we are withdrawing the direct final rule for Identification and Listing of Hazardous Waste; Final Exclusion, delisting petition from Bekeart Steel, Dyersburg, Tennessee. We published the direct final rule on June 2, 2003, (68 FR 32645-32656). We stated in that direct final rule that if we received adverse

comment by July 17, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. EPA is withdrawing the direct final rule on the delisting petition submitted by Bekaert Steel, Inc, for the Dyersburg, Tennessee facility.

**DATES:** The direct final rule published at 68 FR 32645, June 2, 2003, is withdrawn as of July 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this withdrawal of direct final rule, please contact Ms. Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, (Mail Code 4WD-RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-8568, or call, toll free, (800) 241-1754, and leave a message, with your name and phone number, for Ms. Jewell Grubbs to return your call. Questions may also be e-mailed to Ms. Jewell Grubbs at [Grubbs.jewell@epa.gov](mailto:Grubbs.jewell@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA published a Direct Final Rule on June 2, 2003, granting the delisting petition submitted by Bekaert Steel, Inc. (Bekaert) for an F006 waste water treatment sludge from electroplating

operations, where Bekaert manufactured copper plated steel cord for the automobile tire industry. The rule would have become effective on August 1, 2003, without further notice, unless EPA received adverse comment by July 17, 2003. The direct final rule 45-day public comment period explained that if we received adverse comments, we would withdraw the relevant direct final action.

We received adverse comment and are therefore withdrawing the direct final rule approving Bekaert's delisting petition. Commentors argued that EPA could not issue a delisting petition based on another identical facility's data, and that the regulations specifically require the delisting to be based on site specific information. Therefore, for the petition to be complete Bekaert should submit at a minimum, three additional data points from the Dyersburg, Tennessee facility to support the initial delisting petition. The three additional data points must be collected in compliance with 40 CFR 260.22, and be sufficient to demonstrate the temporal and spatial variability of the petitioned waste. EPA shall review the data submitted and shall publish a proposed rule to provide public notice

on EPA's proposed decision and collect comments on the proposed decision.

#### List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 18, 2003.

**Jewell Harper,**

*Acting Director, Waste Management Division.*

[FR Doc. 03-19005 Filed 7-24-03; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 411 and 489

[CMS-1475-FC]

RIN 0938-AM65

#### Medicare Program; Third Party Liability Insurance Regulations

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

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

**SUMMARY:** This final rule with comment period removes § 411.54(c)(2) and a portion of § 489.20(g) from our regulations. These regulations were held by a court to be inconsistent with the Medicare Secondary Payer provisions that are found in section 1862(b)(2)(a) of the Social Security Act. Specifically, the court held that § 411.54(c)(2) and a portion of § 489.20(g) are unenforceable to the extent that these regulations require providers and suppliers to only bill Medicare and prohibits them from billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement during the "promptly" period.

**DATES:** *Effective date:* This final rule with comment period is effective on August 25, 2003.

*Comment date:* We will consider comments if we receive them at the appropriate address, as provided in the **ADDRESSES** section, no later than 5 p.m. on September 23, 2003.

**ADDRESSES:** In commenting, please refer to file code CMS-1475-FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services,

Department of Health and Human Services, Attention: CMS-1475-FC, PO Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for us to receive mailed comments on time in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-8013.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available if you wish to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Ripley, (410) 786-0970.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are recorded and processed, generally beginning approximately 4 weeks after the publication of the document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786-7197.

#### I. Background

Under section 1862(b)(2)(A) of the Social Security Act (the Act), Medicare payments may not be made for any item or service for which payment has been made or can reasonably be expected to be made "promptly" (as determined in accordance with our regulations) under a liability insurance policy. The regulations at § 411.54(c)(2) and a portion of § 489.20(g) require providers and suppliers (including physicians) to bill Medicare for Medicare covered services. These regulations also prohibit those providers and suppliers from billing a liability insurer or asserting or maintaining a lien against the beneficiary's insurance settlement, regardless of when the liability insurer

is billed or when the lien is asserted. After the regulations at § 411.54(c)(2) and § 489.20(g) were published, but before the effective date, the American Hospital Association (AHA), filed a lawsuit on behalf of its member hospitals to prevent us from implementing these sections. (*See American Hospital Association (AHA) v. Sullivan*, 1990 WL 274639 (D.D.C. May 24, 1990).) During the litigation, the parties stipulated to allow providers to bill liability insurers or assert or maintain a lien against a beneficiary's insurance settlement.

The court ultimately held that this statutory provision (that prohibits Medicare from making payment where liability insurance that is expected to pay promptly exists) permits a provider to seek payment from insurance or assert or maintain a lien against the beneficiary's insurance settlement during the "promptly" period. Therefore, we were unable to implement § 411.54(c)(2) and the portion of § 489.20(g) that states, "except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section." The court took no action affecting existing special rules for Oregon. The court also did not address billing a liability insurer or asserting or maintaining a lien after the expiration of the "promptly" period. The AHA decision has not been appealed. Therefore, to the extent that § 411.54(c)(2) and a portion of § 489.20(g) are inconsistent with the court's decision, they are unenforceable.

In light of the AHA decision, we are continuing the policy which we stipulated during the AHA case with respect to all providers and suppliers (including physicians); that is, we are allowing them to bill liability insurers or assert or maintain liens on a beneficiary's liability insurance settlement rather than billing Medicare. The Commerce Clearing House, Inc. (CCH) published two policy memoranda that addressed the issue of billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement, referring to the holding in the AHA case. (Medicare & Medicaid Guide (CCH) 45, 187 at 53, 508-53, 512 (1997). The first policy memorandum entitled, "Provider and Supplier Billing When Medicare is Secondary Payer to Liability Insurance—Information", is dated August 21, 1995. The second policy memorandum entitled "Charges to Beneficiaries and Handling Improper Collections By Providers and Suppliers When Medicare is Secondary Payer to Liability Insurance—Action", is dated March 12, 1996. These memoranda can