

2004, to account for forecast error. Accordingly, we certify that this proposed rule would not have a significant impact on small entities.

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. For a proposed rule, 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. Because the change in methodology set forth in this proposed rule would also affect rural hospital swing-bed services, we believe that this proposed rule would similarly affect small rural hospitals. However, because the incremental change in payments for Medicare swing-bed services would be relatively minor in comparison to overall rural hospital revenues, this proposed rule would not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 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 or more. This proposed rule would have no substantial effect on State, local, or tribal governments. We believe the private sector cost of this proposed rule falls below these thresholds as well.

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. As stated above, this proposed rule

would have no substantial effect on State and local governments.

As stated previously, the purpose of this proposed rule is simply to consider an adjustment to the annual update to account for forecast error in the SNF market basket. We believe that such a revision would have, at most, only a negligible overall effect in terms of the RFA and the other provisions discussed in this section. As such, it would not represent an additional burden to the industry.

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this proposed rule would 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.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

#### **PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES**

1. The authority citation for part 413 continues to read as follows:

**Authority:** Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

#### **Subpart J—Prospective Payment for Skilled Nursing Facilities**

2. In § 413.337(d)(2), paragraph (d)(2) is revised to read as follows:

#### **§ 413.337 Methodology for calculating the prospective payment rates.**

(d) *Annual updates of Federal unadjusted payment rates.* \* \* \*

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount. Beginning with fiscal year 2004, an adjustment to the annual update of the previous fiscal year's rate will be computed to account for forecast error. The initial adjustment (in fiscal year 2004) to the update of the previous fiscal year's rate will take into account the cumulative forecast error between fiscal years 2000 and 2002. Subsequent adjustments in succeeding fiscal years will take into account the forecast error from the most recently available fiscal year for which there is final data.

\* \* \* \* \*

#### **§ 413.345 [Amended]**

3. In the second sentence of § 413.345, the word "tandardized" is removed and the word "standardized" is added in its place.

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

Dated: May 22, 2003.

**Thomas A. Scully,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Dated: June 3, 2003.

**Tommy G. Thompson,**  
*Secretary.*

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