

- (3) The name of the customer;
- (4) The invention promotion services offered or performed by the invention promoter;
- (5) The name of the mass media in which the invention promoter advertised providing such services;
- (6) An explanation of the relationship between the customer and the invention promoter; and
- (7) A signature of the complainant.
- (c) The complaint should fairly summarize the action of the invention promoter about which the person complains. Additionally, the complaint should include names and addresses of persons believed to be associated with the invention promoter. Complaints, and any replies, must be addressed to Office of Independent Inventor Programs, U.S. Patent and Trademark Office, Washington, D.C. 20231.
- (d) Complaints that do not provide the information requested in paragraphs (b) and (c) of this section will be returned. If complainant's address is not provided, the complaint will be destroyed.
- (e) No originals of documents should be included with the complaint.
- (f) A complaint can be withdrawn by the complainant or the named customer at any time prior to its publication.

#### § 4.4 Invention Promoter Reply

- (a) If a submission appears to meet the requirements of a complaint, the invention promoter named in the complaint will be notified of the complaint and given 30 days to respond. The invention promoter's response will be made available to the public along with the complaint. If the invention promoter fails to reply within the 30-day time period set by the Office, the complaint will be made available to the public. Replies sent after the complaint is made available to the public will also be published.
- (b) A response must be clearly marked, or otherwise identified, as a response by an invention promoter. The response must contain:
- (1) The name and address of the invention promoter;
  - (2) A reference to a complaint forwarded to the invention promoter or a complaint previously published;
  - (3) The name of the individual signing the response; and
  - (4) The title or authority of the individual signing the response.

#### § 4.5 Notice by Publication

If the copy of the complaint that is mailed to the invention promoter is returned undelivered, then the Office will publish a Notice of Complaint Received in the Official Gazette, the

**Federal Register**, or on the Office's Internet home page. The invention promoter will be given 30 days from such notice to submit a reply to the complaint. If the Office does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available.

#### § 4.6 Attorneys and Agents

Complaints against registered patent attorneys and agents will not be treated under this section, unless a complaint fairly demonstrates that invention promotion services are involved. Persons having complaints about registered patent attorneys or agents should contact the Office of Enrollment and Discipline at the U.S. Patent and Trademark Office, Box OED, Washington, D.C. 20231, and the attorney discipline section of the attorney's state licensing bar if an attorney is involved.

Dated: January 13, 2000.

#### Q. Todd Dickinson,

*Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.*  
[FR Doc. 00-1359 Filed 1-19-00; 8:45 am]  
**BILLING CODE 3510-16-U**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 70

[NE 071-1071a; FRL-6521-6]

#### Approval and Promulgation of Implementation Plans and Operating Permits Programs, Approval Under Section 112(l); State of Nebraska

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Nebraska on February 5, 1999. This revision consists of updates to *Title 129—Nebraska Air Quality Regulations*, Chapters 1, 2, 5, 6, 7, 8, 10, 17, 22, 25, 34, 35, 41, and Appendix II. The state also requested that EPA approve revisions adopted by the Lincoln-Lancaster County Health Department (LLCHD), Lincoln, Nebraska, in 1997 and 1998, and rule revisions adopted by the city of Omaha in 1998. EPA is taking action to approve these revisions also. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to hazardous air pollutants (HAP). EPA is also approving revisions to the agencies' part

70 operating permits programs. The effect of this action is to ensure that the state and local agencies' air program rule revisions are reflected in the EPA-approved program.

**DATES:** This direct final rule is effective on March 20, 2000 without further notice, unless EPA receives adverse comment by February 22, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be addressed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is approval under section 112(l)?
- What is the Part 70 Operating Permits Program?
- What is being addressed in this document?
- Have the requirements for approval of a SIP revision been met?
- What action is EPA taking?

#### What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### **What is the Federal Approval Process for a SIP?**

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

#### **What Does Federal Approval of a State Regulation Mean to Me?**

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

#### **What is Approval Under Section 112(l)?**

Section 112(l) of the CAA provides authority for EPA to implement a program to regulate HAPs, and to subsequently delegate authority for this program to the states and local agencies. EPA has delegated authority for this program to Nebraska, LLCHD, and Omaha, and has approved relevant state

and local agency HAP rules under this authority. In this action, EPA is approving revisions to the section 112(l) approved state and local agency rules.

#### **What Is the Part 70 Operating Permits Program?**

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM<sub>10</sub>; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permits program are also subject to public notice, comment, and EPA approval.

#### **What Is Being Addressed in This Document?**

EPA is taking final action to approve a SIP revision submitted by the state of Nebraska on February 5, 1999. This revision consists of updates to *Title 129—Nebraska Air Quality Regulations*, Chapters 1, 2, 5, 6, 7, 8, 10, 17, 22, 25, 34, 35, 41, and Appendix II. The state also requested that EPA approve revisions adopted by the LLCHD, Lincoln, Nebraska in 1997 and 1998, and the city of Omaha in 1998. All of the rule revisions are being approved pursuant to section 110. State rules being approved pursuant to section 112(l) are Chapters 5, 7, 8, and 10. Section 112(l) approved rules for

LLCHD are Chapters 5, 7, 8, and 15. The Omaha 112(l) revisions are consistent with the state's 112(l) revisions.

EPA is also approving as an amendment to the agencies' Part 70 operating programs the following rule revisions: NDEQ Chapters 1, 2, 5, 6, 7, 8, 10, 29, and 41; LLCHD Chapters 2-1, 2-2, 2-5, 2-6, 2-7, 2-8, and 2-15; and Omaha rules similar to the NDEQ revisions.

A detailed discussion of the specific rule revisions effected by the state and local agencies is contained in the Technical Support Document (TSD) prepared for this action, which is available from the EPA contact listed above.

The request to revise the Nebraska SIP was submitted by Michael J. Linder, NDEQ Interim Director, on February 5, 1999. The state rules were effective September 7, 1997; the Lincoln-Lancaster County rules were effective March 11, 1997, and August 11, 1998; and the city of Omaha rules were effective April 1, 1998.

#### **Have the Requirements for Approval of a SIP Revision Been Met?**

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSDs which are part of this notice, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **What Action Is EPA Taking?**

EPA is processing this action as a direct final action because this amendment to the Nebraska SIP makes routine revisions to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

#### **Conclusion**

##### *Final Action*

EPA is taking final action to approve, as an amendment to the Nebraska SIP, rule revisions submitted by the state of Nebraska as discussed above. Approval of this revision in the Nebraska SIP will make the state and local agency rules Federally enforceable. EPA is also approving revisions to the agencies' part 70 operating permits programs and section 112(l) programs.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 20, 2000 without further notice unless the Agency receives adverse comments by February 22, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 20, 2000, and no further action will be taken.

### Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that

preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

#### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to

publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *H. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

##### *40 CFR Part 70*

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 14, 1999.

**William Rice,**

*Acting Regional Administrator, Region VII.*

Chapter I, Title 40 of the CFR is amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart CC—Nebraska**

2. In § 52.1420 paragraph (c), table titled EPA-APPROVED NEBRASKA REGULATIONS, the following entries are revised, and a new entry titled Appendix II is added following the Appendix I entry, and in paragraph (e), table titled EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS, two entries are added at the end of the table to read as follows:

#### **§ 52.1420 Identification of plan.**

(c) EPA-approved regulations.

EPA—APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Comments
<b>STATE OF NEBRASKA</b>				
<b>Department of Environmental Quality Title 129—Nebraska Air Quality Regulations</b>				
129-1	Definitions	9/7/97	[insert publication date and FR citation].	
129-2	Definition of Major Source	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-5	Operating Permit	9/7/97	[insert publication date and FR citation].	Section 001.02 is not SIP approved.
	* * *		* *	
129-6	Emissions Reporting	9/7/97	[insert publication date and FR citation].	
129-7	Operating Permits—Application	9/7/97	[insert publication date and FR citation].	
129-8	Operating Permit Content	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-10	Operating Permits for Temporary Sources	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-17	Construction Permits—When Required	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-22	Incinerators; Emission Standards	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-25	Nitrogen Oxides (Calculated as Nitrogen Dioxide); Emissions Standards for Existing Stationary Sources.	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-34	Emission Sources; Testing; Monitoring	9/7/97	[insert publication date and FR citation].	
129-35	Compliance; Exceptions Due to Startup, Shutdown, or Malfunction.	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
129-41	General Provision	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
Appendix II	Hazardous Air Pollutants (HAPS)	9/7/97	[insert publication date and FR citation].	
	* * *		* *	
<b>Lincoln-Lancaster County Air Pollution Control Program</b>				
<b>Article 1—Administration and Enforcement</b>				
	* * *		* *	
<b>Article 2—Regulations and Standards</b>				
Section 1	Definitions	8/11/98	[insert publication date and FR citation].	
Section 2	Major Sources—Defined	8/11/98	[insert publication date and FR citation].	
	* * *		* *	
Section 5	Operating Permits—When Required	8/11/98	[insert publication date and FR citation].	
Section 6	Emissions Reporting—When Required	8/11/98	[insert publication date and FR citation].	

EPA—APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Comments
Section 7 .....	Operating Permits—Application .....	8/11/98	[insert publication date and FR citation].	
Section 8 .....	Operating Permit—Content .....	8/11/98	[insert publication date and FR citation].	
	* * *		* *	
Section 15 .....	Operating Permit Modifications—Reopening for Cause.	8/11/98	[insert publication date and FR citation].	
	* * *		* *	
Section 17 .....	Construction Permits—When Required .....	8/11/98	[insert publication date and FR citation].	
	* * *		* *	
Section 20 .....	Particulate Emissions—Limitations and Standards.	3/31/97	[insert publication date and FR citation].	
	* * *		* *	
Section 32 .....	Dust—Duty to Prevent Escape of .....	3/31/97	[insert publication date and FR citation].	

**City of Omaha  
Chapter 41—Air Quality Control**

**Article I In General**

41-2 .....	Adoption of State Regulations with Exceptions ...	4/1/98	[insert publication date and FR citation].	
	* * *		* *	

\* \* \* \* \*

(e) \* \* \*

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable Geographic or nonattainment area	State submittal date	EPA approval date	Comments
	* * *		* *	
Lincoln Municipal Code, Chapter 8.06.140 and 8.06.145.	City of Lincoln .....	2/5/99	[insert publication date and FR citation].	
Lancaster Co. Resolution 5069, Sections 12 and 13.	Lancaster County .....	2/5/99	[insert publication date and FR citation].	

**PART 70—[AMENDED]**

1. The authority citation for Part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Appendix A to Part 70 is amended by adding paragraph (d) to the entry for Nebraska; City of Omaha; Lincoln-Lancaster County Health Department to read as follows.

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Program**

\* \* \* \* \*

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

\* \* \* \* \*

(d) The Nebraska Department of Environmental Quality submitted the following program revisions on August 20, 1999; NDEQ Title 129, Chapters 1, 2, 5, 6, 7, 8, 10, 29, and 41; City of Omaha Ordinance No. 34492, amended section 41-2, and LLCHD Articles 2-1, 2-2, 2-5, 2-6, 2-7, 2-8, and 2-15, effective February 22, 2000.

\* \* \* \* \*

[FR Doc. 00-618 Filed 1-19-00; 8:45 am]

BILLING CODE 6560-50-P

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 412**

[HCFA-1124-IFC]

RIN 0938-AJ92

**Medicare Program; Medicare Inpatient Disproportionate Share Hospital (DSH) Adjustment Calculation: Change in the Treatment of Certain Medicaid Patient Days in States With 1115 Expansion Waivers**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule with comment period implements a change to the Medicare DSH adjustment calculation policy in reference to section 1115 expansion waiver days. This rule sets forth the criteria to use in calculating the Medicare DSH adjustment for hospitals for purposes of payment under the prospective payment system.

**DATES:** *Effective date:* January 20, 2000.

*Applicability Date:* These regulations are applicable to discharges occurring on or after January 20, 2000.

*Comment date:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 20, 2000.

**ADDRESSES:** Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1124-IFC, P.O. Box 8010, Baltimore, MD 21244-8010.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Buto, Deputy Director, Center for Health Plans and Providers, (202) 205-2505.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Summary*

The Medicare disproportionate share hospital (DSH) adjustment provision under section 1886(d)(5)(F) of the Social Security Act (the Act) was enacted by section 9105 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 and became effective for discharges occurring on or after May 1, 1986, as set forth in the May 6, 1986 final rule with comment period (51 FR 16772).

The size of a hospital's Medicare DSH adjustment, which is applied to the hospital inpatient prospective payment system (PPS) payment, is based on the sum of the percentage of patient days attributable to patients eligible for both Medicare Part A and Supplemental Security Income (SSI), and the percentage of patient days attributable to patients eligible for Medicaid but not Medicare Part A. The first computation includes days for patients who, during a given month, were entitled to both Medicare Part A and SSI (excluding State supplementation). This number is divided by the number of covered patient days utilized by patients under Medicare Part A for that same period. The second computation includes patient days associated with beneficiaries who were eligible for medical assistance (Medicaid) under a State plan approved under Title XIX but who were not entitled to Medicare Part A. (See 42 CFR 412.106(b)(4).) This number is divided by the total number of patient days for that same period.

Currently, hospitals whose disproportionate patient percentage exceeds a certain threshold (which varies for urban and rural areas) receive either a fixed adjustment or, in the case of large urban hospitals (100 or more beds) or large rural hospitals (500 or more beds), a variable adjustment based on a statutory formula. As of April 1, 1990, variable adjustments were made for large urban hospitals and rural referral centers. Facilities that qualify as rural referral centers as well as sole community hospitals receive the greater of a fixed adjustment or a variable adjustment based on a statutory formula. Qualifying large rural hospitals and sole community hospitals receive a fixed adjustment. Urban hospitals with 100 or more beds that receive funds from State and local governments for indigent care in excess of 30 percent of net inpatient revenues are treated separately (42 CFR 412.106(c)).

*B. Section 1115 Expansion Waivers*

Some States provide medical assistance under a demonstration project (also referred to as a section 1115 waiver). In some section 1115 waivers, a given population that otherwise could have been made eligible for Medicaid under section 1902(r)(2) or 1931(b) in a State plan amendment is made eligible under the waiver. These populations are referred to as hypothetical eligibles, and are specific, finite populations identifiable in the budget neutrality agreements found in the Special Terms and Conditions for the demonstrations; the patient days utilized by that population are to be recognized for purposes of calculating the Medicare DSH adjustment. In addition, the section 1115 waiver may provide for medical assistance to expanded eligibility populations that could not otherwise be made eligible for Medicaid.

Under current policy, hospitals were to include in the Medicare DSH calculation only those days for populations under the section 1115 waiver who were or could have been made eligible under a State plan. Patient days of the expanded eligibility groups, however, were not to be included in the Medicare DSH calculation.

**II. Provisions of the Interim Final Rule With Comment Period**

In this interim final rule with comment period, we are revising the policy, effective with discharges occurring on or after January 20, 2000, to allow hospitals to include the patient days of all populations eligible for Title XIX matching payments in a State's