ACTION: Notice of policy memorandum, correction.

SUMMARY: In FR Document 80-37988, appearing on page 80824 in the issue of Monday, December 8, 1980, the title as shown above is incorrect.

It should be corrected to read as follows:

Environmental Protection Agency

40 CFR Part 51

[AD-FRL-1694.3]

Compliance with VOC Emission Limitations for Can Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy memorandum.

FUR FURTHER INFORMATION CONTACT: Leo Stander, U.S. Environmental Protection Agency, (919) 541-5516.

Dated: December 29, 1980.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-267 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

Medicaid Program; Plans of Correction for Intermediate Care Facilities for the Mentally Retarded

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

ACTION: Final rule with comment period.

SUMMARY: This regulation amends 42 CFR 442.115 to authorize a State survey agency, in specified circumstances to certify an intermediate care facility for the mentally retarded for participation in the Medicaid program when the facility has not met the July 18, 1980 compliance deadline provided in 42 CFR 442.115(a). The regulation would permit plans to correct certain deficiencies by July 18, 1982 based on the length of time needed to complete the plan. It would also allow extensions beyond either the 1980 or 1982 deadline where, under limited circumstances, a delay has been caused by litigation.

We are publishing this regulation as a final rule because of the need to protect facilities from disruption of Federal funding where the criteria for an extension of the deadline are satisfied, including the assurance that the health and safety of the residents will not be jeopardized by the granting of an extension. However, we are providing a comment period and will make any further revisions we find necessary based upon comments we receive.

DATES: Effective on date of publication. To insure consideration, comments should be received by March 9, 1981.

ADDRESSES: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17082, Baltimore, MD 21235.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.; or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-80-FC. Comments will be available for public inspection, beginning approximately two weeks from today, in Room 309-G of the Department's Offices at 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Dr. Wayne Smith, Health Care Financing Administration, Health Standards and Quality Bureau, Second Floor, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, MD 21207, (301) 594-7651.

SUPPLEMENTARY INFORMATION:

Background

In 1972, Congress passed legislation (Pub. L. 92-223) that, for the first time, provided coverage for services in intermediate care facilities for the mentally retarded (ICFs/MR) under the Medicaid program (42 U.S.C. 1396d). Interim and final standards to implement the ICF/MR program were published on January 17, 1974 (45 CFR 249.12 and 249.13 (1974) now 42 CFR Part 442 Subpart G). The interim standards gave facilities until March 1977 to achieve full compliance with all of the final standards.

The standards promulgated in 1974 were part of an effort to upgrade the quality and scope of services provided by institutions for the mentally retarded. The regulations emphasized the fundamental principles of the "habilitation process," namely individualized active treatment in minimally restrictive settings.

In developing the regulations, the Department received the views of numerous consumer, provider, and professional associations and State governments. In addition, the Department considered various court decisions which established the right of institutionalized individuals to active treatment and which set forth the details of an acceptable treatment regimen. The adoption of active treatment principles in the 1974 regulations was intended to give mentally retarded persons the type of care and services that would enable them to attain maximum independent living capabilities and to return to the community at the earliest possible time.

The 1974 regulations provided an important new direction for the treatment of the mentally retarded. The regulations also rendered many existing buildings unsuitable for the delivery of care without substantial renovation because of new physical environment requirements (e.g., stricter fire safety standards and bedrooms housing no more than four persons rather than large open wards). Many States planned to build new, less restrictive facilities rather than upgrade old buildings. Since nearly all ICFs/MR were State owned and operated, legislative appropriations were required for renovation and new construction. Other States decided to phase out parts of their institutions and to relocate residents in other settings.

Since the Department recognized that some institutions for retarded persons could not meet the new structural requirements or relocate patients within a one year survey cycle, the deadline for full compliance with the new requirements was set for March 1977. Facilities were allowed to participate in the new program under the interim regulations published at that time (45 CFR 249.12 (1974)).

As a result of serious problems experienced by most of the States participating in the ICF/MR program in meeting the March 1977 deadline, a coalition of State government and advocacy groups requested that the Department consider an extension of the deadline. Some States that were attempting to phase out certain beds and place the residents in alternative care settings did not want to renovate buildings which were no longer going to be used, but they found that alternative care settings were not developing rapidly enough to meet phase out goals.

After extensive consultation, the Department decided to extend the March 1977 deadline for meeting Life Safety Code and physical environment provisions. 42 CFR 442.113 was issued to provide that the State survey agency could certify an ICF/MR with deficiencies even though correction of the deficiencies under the facility plan of correction would take more than 12 months to complete. (Normally, under Federal regulations, deficiencies must be corrected within a 12-month period for a long-term care facility to qualify for certification.) Section 442.115 required that the plan provide for completion of corrections in Life Safety Code, living, dining and therapy areas by July 18, 1980. However, if at the time of the first survey after July 17, 1977, the facility was unable to develop a plan for completion of corrections by July 18, 1980, the State survey agency could request that the Secretary approve a plan to complete corrections (for construction/renovation and/or phase-out of beds) by July 18, 1982, if certain additional requirements were satisfied (42 CFR 442.115(b)). At that time, most of the uncorrected deficiencies involved failure to meet the limit of four residents per bedroom and Life Safety Code deficiencies that were certified by the State to be non-threatening to the residents' health and safety (42 CFR 442.105). The extensions to 1980 and 1982 did not apply to those provisions of the Life Safety Code which, if not followed, would result in conditions threatening the health and safety of the residents.

Current Situation

The majority of States responded to the 1977 regulation by moving forward with their construction, renovation, or phase-out programs. Most States have been able to complete their plans of correction prior to July 18, 1980. A recent survey reported almost $1 billion in expended or appropriated State funds since July 1977 for capital improvement in mental retardation facilities. Thirty-nine States reported that three-fourths of their expenditures for capital improvements were devoted to correcting ICF/MR deficiencies, indicating a strong commitment by most States to meet the ICF/MR regulations. *Trends in Capital Expenditures for Mental Retardation Facilities: A State by State Survey*, National Association of State Mental Retardation Program Directors (June 1980).

At the time of the 1977 revision to the regulations, a survey of the States indicated that about 35 percent of the facilities in the ICF/MR program could not meet the 1977 deadline. Initially it was estimated that the number of facilities that would not meet the 1980 deadline was less than 10 percent of the facilities participating in the ICF/MR program, i.e., approximately 80 facilities nationwide would not meet the deadline and had not requested an extension to 1982 under the provisions of § 442.115(b). However, we have since learned that some of these facilities have corrected their deficiencies. Thus approximately 36 facilities in 16 States with 11,000 beds are still affected by the passing of this deadline.

The reasons that facilities failed to meet the July 18, 1980 deadline have included construction delays due to strikes, court orders enjoining construction, absence of alternative treatment settings for patients in institutions scheduled to be phased out, and lack of adequate funds. In spite of the problems faced by the facilities that did not meet the July 18, 1980 deadline, the work remaining for many could be completed by July 18, 1982.

We believe that those facilities which have made progress toward the successful completion of their construction, renovation, or phase out programs should not be subject to termination of Federal funds. Thus, the regulations require completion of at least 25 percent of required construction or 25 percent of planned phase out. We believe that States which have failed to achieve this level of progress should not receive continued Federal participation for treatment in facilities that were found to be inappropriate in 1974.

An additional ground for approval of an extended plan of correction (which would permit continued certification) is contained in new paragraph (f). This provision permits a State survey agency to request that the Secretary authorize approval for plans of correction beyond July 18, 1980, or July 18; 1982, where a facility is unable to comply with its plan of correction by either date, as appropriate, and where the facility's inability to do so was caused by litigation. Approval for certification beyond July 18, 1980 or July 18, 1982 under this provision may be granted only if the United States, or any agency or Department thereof, was a party, an intervenor, or an *amicus curiae*, to the litigation and if the position advocated or supported by the United States caused or contributed to the delay in the completion of planned corrections. Under these circumstances, the plan of correction may be extended beyond the original deadline, but only to the extent of the delay caused by litigation, as determined by the Secretary. The Department expects that the plan of correction will also be revised where necessary to comply with the decision of the court in the litigation.

The reason for this provision is that a few facilities have been parties to litigation where the United States was involved and where the United States supported a position which had the effect of preventing the facility from going forward with its approved plan of correction. In these circumstances, the Department believes that it would be inconsistent with elemental concepts of fairness to terminate funding for a facility because of that facility's inability to comply with its plan of correction.

Provisions of the Regulation

The regulation will permit the State survey agency to request the Secretary to authorize approval of an extended plan of correction for a facility which was unable to complete all needed corrections by July 18, 1980. The facility must still meet the applicable provisions for correction plans in 42 CFR 442.115 (c) and (d). These provisions require timetables for all correction plans. For those plans which call for renovation, a showing that adequate financial resources are available must be in the plan. For plans calling for phase out, the plan must call for no new admissions to parts of facilities being closed and a description of methods to insure recipient's health and safety until the closing is completed. For corrections involving construction or renovation, it must also provide documentation from a supervising architect or contractor that the facility completed at least 25 percent of the required work covered by the plan of correction by July 18, 1980 and that construction will be completed by July 18, 1982. Moreover, if the plan of correction provides for phasing out all or part of a facility, the ICF/MR must provide documentation that the phase out program was at least 25 percent completed on July 18, 1980. The State survey agency must find that the facility can complete the phase out plan by July 18, 1982.

The facility must demonstrate that all continuing deficiencies covered by the plan of correction are directly related to the completion of construction, renovation or phasing out of beds. The provisions of 42 CFR 442.113(d), which require that the State survey agency conduct on-site surveys every six months to document the facility's progress toward meeting its correction timetables remain in force, as does 42 CFR 442.105(a) which requires an agency finding that the facility's deficiencies do not jeopardize the patient's health and safety, nor seriously limit the facility's capacity to give adequate care. The facility must be in compliance with all other certification requirements. If the facility meets these conditions, the State survey agency may certify the facility for periods not to exceed 12 months at one time.

Waiver of Proposed Rulemaking and Delayed Effective Date

We are publishing this amendment as a final regulation, effective upon publication. In the absence of this amendment, all facilities which failed to meet the July 18, 1980 deadline would be subject to termination of their provider agreements and their State Medicaid programs would be subject to disruption of Federal financial participation for the cost of those portions of facilities still out of compliance. The amendment relieves a restriction on a limited number of facilities which have made progress toward completion of their plans of correction and which are expected to complete corrections by July 1, 1982. At the same time the amendment protects the health and safety of the residents of these facilities. These facts constitute good cause for a finding that it would be in the public interest to waive the publication of a notice of proposed rulemaking and the requirement for a thirty day delay in the effective date of the amendment.

42 CFR 442.115 is amended by revising paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 442.115 Correction plans.

(a) The ICF/MR's plan required by § 442.113 must provide for completion of corrections by:

(1) July 18, 1980; or

(2) July 18, 1982, if authorized by the Secretary under paragraphs (b) or (e) of this section; or

(3) By the date approved by the Secretary, if authorized by the Secretary under paragraph (f) of this section.

* * * * *

(e) If an ICF/MR is unable to complete corrections required by the plan of correction by July 18, 1980 and it did not request an extension beyond that date under paragraph (b) of this section, the survey agency may request the Secretary to authorize approval for an extension of the facility's plan of correction to July 18, 1982 if—

(1) For corrections under paragraph (c) of this section, the facility provides documentation from the renovation project's supervising architect or contractor that required construction work was at least 25 percent completed by July 18, 1980 and will be complete by July 18, 1982;

(2) For corrections under paragraph (d) of this section, the facility provides documentation that the phase out program was at least 25 percent completed on July 18, 1980 and will be completed by July 18, 1982; and

(3) The survey agency finds that all continuing deficiencies covered by the plan of correction will be resolved by completion of the construction, renovation, or phase out of beds.

(f) If an ICF/MR is unable to complete corrections required by the plan of correction by July 18, 1980 or July 18, 1982, as authorized in paragraphs (a), (b) and (e) of this section, the survey agency may request the Secretary to authorize a plan of correction for an additional period of time if the delay was caused by litigation, provided that—

(1) The United States, or any agency or Department thereof, was party to the litigation, or was an intervenor in it, or participated as an *amicus curiae*; and

(2) The United States advocated a position which caused or contributed, in whole or in part, to the delay; and

(3) The request for an additional period of time to complete corrections under this provision does not exceed the amount of the delay resulting from the litigation, as determined by the Secretary.

Secs. 1102, 1905(c), and 1905(d) of the Social Security Act (42 U.S.C. 1302, 1396d(c), 1396d(d)).

Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program.

Dated: November 25, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: December 29, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-400 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-35-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. 1

[Docket No. FEMA PP-360]

Implementation of State Assistance Program for Training and Education in Emergency Management

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final Rule.

SUMMARY: This rule sets forth a description of the FEMA training and education assistance program to the States. The program functions through State Cooperative Agreements and is designed to further comprehensive emergency management training including emergency preparedness planning, hazard mitigation, and disaster response and recovery. In response to State and local expressed needs, FEMA was formed to coordinate and manage all disaster planning and response in one Agency. The combined training responsibilities of predecessor agencies are now being administered by the Training and Education Office of FEMA using the State Cooperative Agreements and Regional Support Contracts as the vehicle to meet individual State training needs. This rule defines the objectives and elements of the program, the funding approach, and the State application/proposal.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: Dave McLoughlin, Assistant Director for Training and Education, Federal Emergency Management Agency, 1725 I Street, N.W., Washington, D.C. 20472, Telephone: (202) 254-9556.

SUPPLEMENTARY INFORMATION: On September 9, 1980, the Assistant Director of Training and Education published in the **Federal Register** (Docket No. FEMA PP-360), a proposed amendment to Chapter I, Title 44 CFR by adding a new Part 360, entitled State Assistance Programs for Training and Education in Comprehensive Emergency Management. The amendment would provide for the use of State Cooperative Agreements to accomplish the following:

the design and delivery of training to meet emergency and disaster operational requirements; the presentation and management of training programs to disseminate emergency management concepts; to further intergovernmental operational response capability; to provide management development for emergency management staffs; to motivate the general public to practice emergency self-help; and to build self-confidence among public officials as to their capability to successfully manage crises.

The State Cooperative Agreements are intended as a vehicle for each State to plan, develop and present the training and education activities to meet the needs of State.

The proposed rule was open for public comment until September 30, 1980. Sixteen responses were received by that date. Fifteen of the 16 stated their opposition to the rule because of what was termed "the requirement for 75/25 and 50/50 funding of student expenses." Though specific figures for funding future years were *not* included in the proposed rule, and thus the comments were not pertinent to the rule, some reiteration of the points and note of the concerns should be made.

Communications from the Department of Defense, State of Georgia, and the Division of Disaster and Emergency Services, Commonwealth of Kentucky state that the program is essentially a "Federal program" and therefore should be supported 100%. Congress has not changed its attitude since the 1950 passage of the Civil Defense Act that civil preparedness, which includes training, was a joint responsibility. Thus training was always a shared expense program until 1977. Training monies provided by the Federal government are shared in order to provide an opportunity to improve personnel professional development, technical skills, planning and operations capability in all phases of mitigation preparedness, response and recovery in cases of attack on this country, and natural and manmade disasters.

On the same question of sharing the cost of training, the State of Missouri, Department of Public Safety, suggested encouragement of smaller community participation. It was their contention that the impact of shared costs would fall heaviest on smaller communities since employees had to take time away from their jobs for training. The State Cooperative Agreements will enable the State to bring the training to more rural communities however, which was not the case in the past.

Several others providing comments addressed policy questions not at issue in the proposed rule with respect to redivision of available funds from Regional Support Contracts to the States and on the insufficiency of Personnel and Administrative funds. Several submissions recommended reduction in the length of courses. This is a valid comment since many less than full time coordinators cannot absent themselves from their other positions for more than 1 week. Since the Career Development Courses are being rewritten, this point will be carefully considered in the development of new materials. This comment will be relayed to States for consideration in the development of their own training programs.

3. Two letters rate special comment, one of which was from the Division of Disaster Emergency Services, Texas Department of Public Safety.

a. The writer suggests that the "tone" of the proposed rule is misleading in that it suggests that State and local government had coordinated and approved the training program. The Assistant Director of Training and Education, in addition to his staff members, discussed and presented at State and local coordinators conferences, the basic concepts of the proposed rule. This opportunity for discussion lasted over 3 months. Nothing in the rule suggests that the details has been voted upon or that the drafting was completed in a partnership.

b. Radef training "has been taken away from the state program" according to the Texas letter. To the contrary; the money for Radef training has been moved from the Maintenance and Calibration to the State Cooperative Agreement.

4. Comments from the State of New York are in opposition to the provision that permanent positions may not be established on State staffs with State Cooperative Agreement funds. New York states that they now have a 100% Federally funded training and education staff member. This staff position, however is not funded by Training and Education funds from FEMA since no such positions exist in the 50 States with this office's agreement or approval. FEMA cannot therefore accommodate this recommendation.

Therefore, all local government concerns expressed with regard to this proposed rule can be accommodated within State training programs under the State Cooperative Agreement if the State so agrees. Since training is and has been considered a joint responsibility, no change in the policy to fund Training and Education staff at a State level is made. Other comments were not relevant to the proposed rule, but instead addressed a budget/program policy of T&E, FEMA.

A finding of Inapplicability of section 102(2) of the National Environmental Policy Act of 1969 still pertains.

As previously stated, there is no conflict with the President's Memorandum of November 16, 1979; since nothing in the regulation would affect or be affected by the small business sector.

Accordingly, Chapter I, Title 44 CFR is amended by adding Part 360, State Assistance Programs for Training and Education in Comprehensive Emergency Management as follows:

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Authority: Reorganization Plan No. 3 (3 CFR 1978 comp. p. 329); Executive Order 12127 (44 FR 19367); Executive Order 12148 (44 FR 43239).

§ 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result is an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

§ 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and participant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) Government Conducted Courses: Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

(i) Career Development Courses: Phases I, II, and III,

(ii) Radiological Officer and Instructor Courses,

(iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) Government and Recipient Conducted Courses:
Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

(i) Emergency Management Workshops,

(ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) Recipient Conducted Courses: This element requires the greatest degree of sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

(i) Radiological Monitoring,

(ii) Emergency Operations Simulating Training,

(iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval. During FY 81 only, allowable cost will be funded at 100%. The projected program envisions a sharing of eligible costs in the future however.

§ 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

§ 360.4 Administrative procedures.

(a) *Award.*

Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in Section 360.2.

(b) *Period of Agreement.*

Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in Section 360.2(b) to give continuity to the total training and education program.

(c) *Submission Procedure.*

Each State applicant shall comply with the following procedures:

(1) *Issuance of a Request for Application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to Submit:* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application Package:* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting Agreements.*
Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

§ 360.5 General provisions for State Cooperative Agreement.

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

Dated: December 24, 1980.

John W. Macy, Jr.,

Director.

[FR Doc. 81-321 Filed 1-5-81; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Parts 59, 60 and 64

National Flood Insurance Program

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule amends the National Flood Insurance Program regulations concerning AO zones (shallow flooding zones), and adds regulations for AH zones (also shallow flooding zones), which are currently not mentioned in the regulations. These changes are necessary due to changed flood mapping methods which permit the Federal Insurance Administration (FIA) to determine base flood elevations for shallow flooding areas characterized by "ponding" flooding.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 755-5581.

SUPPLEMENTARY INFORMATION: The proposed rule to amend the National Flood Insurance Program (NFIP) regulations concerning AO zones (shallow flooding zones) and add regulations for AH zones (also shallow flooding zones) was published on September 9, 1980 (45 FR 59346) with request for comment. No comments were received during the comment period.

In this final rule, a conforming amendment is added which inadvertently was not included in the proposed rule. Section 64.3(a)(1) is amended to include the AH zone symbol as part of the list of zone symbols. Since this amendment is conforming and does not affect the substance of the proposed rule, notice and comment are not required.

A. Explanation of Rule Change

Under the authority contained in the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), the Federal Insurance Administration (FIA) amends §§ 59.1, 60.3, and 64 of Title 44 (formerly appearing at former §§ 1909.1, 1910.3 and 1914 of Title 24).

Originally, FIA only mapped one type of shallow flooding zone—the AO zone, where the average depth of flooding is one to three feet above local grade, where a clearly defined channel does not exist, where the flooding path is unpredictable, and where velocity flow may be evident. The earlier maps had no indication of flood depths for AO zones, but on more recent maps, the flooding depth in AO zones has been specifically indicated (e.g., AO (depth 2 feet) indicates a two foot flooding depth). Additionally, there are shallow flooding zones where FIA can determine base flood elevations relative to the National Geodetic Vertical Datum of 1929. This is an easier standard for rating and regulatory purposes. To avoid confusion between the shallow flooding zones with base flood elevations and those with an average depth of flooding above local grade, FIA has established the AH zone where base flood elevations are indicated.

Since the regulatory flood plain management standard in the AO zone will be relative to the highest adjacent grade to a proposed structure, "highest adjacent grade" is defined. Previously, AO zones were regulated relative to a depth number above the crown of the nearest street. This treatment assumed that all shallow flooding areas would be relatively flat, ponding areas, where elevating relative to the crown of the nearest street would provide an adequate protection level and a convenient reference point. However, this criterion is inadequate since many of the shallow flooding zones now being mapped are on slopes, where the nearest street may be well above or below the proposed construction site. For this reason, the protection level in AO zones will be relative to "highest adjacent grade," as defined in § 59.1 of the proposed rule change. This new standard will correspond to the mapping methodology, which determines the average depth of flooding over local grade.

The current definition of "area of shallow flooding" in Section 59.1 mentions a VO zone as one type of shallow flooding zone. FIA has never designated a VO zone. This zone may be used at some time in the future, after § 60.3 is amended to specify regulatory standards for the VO zone. Whether or not a shallow flooding area will be designated as an AH or AO zone depends on the rapidity of change in the water surface elevation relative to the topographical information available for the shallow flooding area. The following types of shallow flooding areas generally indicate where AH and AO zone designations will be used.

1) Flat, ponding areas, where shallow floodwaters accumulate, and little or no velocity flow is evident and a 10-year flood elevation does not occur or cannot be estimated. This type of shallow flooding area will normally be designated an AH zone.

2) Sloping areas, where shallow floodwaters flow in a sheet, maintaining a relatively constant average depth above local grade. Normally, this type of shallow flooding area will be designated as an AO zone, unless the topographical information is detailed enough and the slopes are small enough to determine base flood elevations relative to mean sea level and adequately present their location on a map.

3) Alluvial fan areas, where floodwaters flow out of confined paths in hilly or mountainous areas and spread over large areas of a valley in an unpredictable manner. Alluvial fan areas are normally found in arid regions of the western states. They will normally be designated AO zones. Alluvial fan areas are being studied in more detail by FIA and the findings may lead to separate regulation and rating of this hazard area.

AH zones will be regulated similarly to Zones AI-30, since both types of zones have base flood elevations. A flood protection level at the depth number above highest adjacent grade will be required for AO Zones. (A two foot flood protection level will be used if no depth number is indicated for the AO zone). Aside from this different protection standard, AO zones will be regulated similarly to AH and AI-30 zones.

In summary, the AO and AH zones will be used in the following situations:

1) The AO zones (with flood depths indicated) will be used primarily for sheet flow areas where the depth of flooding is from one to three feet, where a clearly defined channel does not exist, where the flooding path is unpredictable, where velocity flow may be evident, and where it is not cost effective to determine flood elevations relative to mean sea level. The regulatory flood plain management standard will be based on a flood depth number of one to three feet above adjacent grade.

2) The AH zone will be used primarily for areas of ponded water, or sheet flow over areas of very low slope, where the depth of flooding is from one to three feet, where a clearly defined channel does not exist, where the flooding path is unpredictable, where velocity flow is minimal, where the 10-year flood does not exist or cannot be calculated,