tolerance would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 512 (21 U.S.C. 346a(e)))

Dated: January 30, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.349(a) is amended by adding and alphabetically inserting the entry for the raw agricultural commodity asparagus, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Asparagus	0.02
* * * * *	

[FR Doc. 84-3254 Filed 2-7-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

42 CFR Parts 85 and 85a

Use of Personal Sampling Devices During NIOSH Investigations

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This document amends the regulations covering health hazard evaluations (42 CFR Part 85) and research investigations (42 CFR Part 85a) of the workplace to provide expressly for the use of personal sampling devices as an investigative technique. The amendment clarifies that employees may be requested to wear personal sampling devices as part of the environmental sampling procedures used by NIOSH during its workplace investigations.

EFFECTIVE DATE: March 9, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Annette N. McElhannon, Regulations Specialist, NIOSH, Building 1, Room 3421, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, telephone (404) 329-3691 or FTS: 236-3691.

SUPPLEMENTARY INFORMATION: This final rule implements revisions proposed in a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on March 11, 1983 (48 FR 10377). The Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) and the Federal Mine Safety and Health Act (30 U.S.C. 801 *et seq.*) direct the Secretary of Health and Human Services to conduct occupational health and safety research. To implement these functions, the Secretary promulgated Parts 85 and 85a to Title 42, Code of Federal Regulations, to establish the procedures for NIOSH's conduct of occupational health and safety research investigations at places of employment. Part 85 governs the evaluation of workplace conditions requested by employers or authorized representatives of employees, while Part 85a concerns the conduct of investigation under NIOSH-initiated research projects.

Included among these procedures is a recital of the various investigative activities NIOSH is authorized to perform. Thus, § 85.7(c) and 85a.5(d) provide that NIOSH is authorized to, among other things, collect environmental samples and samples of substances, to measure environmental conditions and employee exposures, and to employ other reasonable investigative techniques. Since the promulgation of these regulations, NIOSH has interpreted the regulations as authorizing the use of personal sampling devices to measure individual employee exposures to substances and physical agents. The most common personal sampling devices are those that use sampling pumps to draw air through liquid or solid sorbents, filters, etc., and those in which a reaction takes place directly on the sorbent. The latter devices are known as passive chemical monitors. The other common personal sampling device, the noise dosimeter, is used for measuring cumulative employee noise exposures over a given period of time. The sampling medium or dosimeter is attached to the worker's clothing as near as possible to the worker's breathing or hearing zone. The remainder of the sampling device (if required), such as a sampling pump or recording unit, is connected by flexible hose or wire to the sampling medium or dosimeter and also is attached to the worker in a place that interferes the least with work requirements (e.g., on the employee's belt). NIOSH uses personal sampling devices because they are the most accurate way to monitor a worker's exposure during the normal work routine and workday.

NIOSH's use of personal sampling devices to measure individual employee exposure has been judicially upheld. In *Establishment Inspection of Keokuk Steel Castings, Division of Kast Metals*, 638 F. 2d 42 (8th Cir. 1981), the Court upheld enforcement of the warrant issued to NIOSH which included the use of personal samplers by workers willing to wear them. In so holding, the Eight Circuit expressly disagreed with the Ninth Circuit decision in *Plum Creek Lumber Co.*, v. *Hutton*, 608 F. 2d 1289 (9th Cir. 1979), which involved an Occupational Safety and Health Administration (OSHA) compliance inspection. In *Plum Creek*, the Court held that it was without authority to order an employer to permit its employees to wear personal sampling devices contrary to the employer's written policy in absence of a regulation or law specifying the use of such devices.

In *Establishment Inspection of Metro-East Manufacturing Co.*, 655 F. 2nd 805 (7th Cir. 1981), the only other Circuit Court decision on this issue, a divided panel held that the OSHA regulations did not give employers fair warning of what is required or prohibited because they failed to specify the use of personal samplers as a reasonable investigative technique. The Court suggested that the OSHA regulations be amended to give employers this fair warning, and subsequently OSHA amended their regulations (29 CFR Part 1903) on December 10, 1982 (47 FR 55478), to provide this information. Since the workplace regulations are similar to those of OSHA, NIOSH proposed on March 11, 1983, to amend Parts 85 and 85a to clarify expressly the use of personal sampling devices in the

conduct of NIOSH research investigations.

Public comments were invited in the proposed rule. Three comments were received—one from a national labor union and two from trade associations. The comments from the two trade associations indicated that they did not believe the amendment was justified in that (1) personal sampling is inaccurate, (2) potential safety and health hazards exist when personal sampling is used, (3) the devices are disruptive and interfere with ongoing work, (4) use of personal sampling goes beyond the authority of NIOSH mandates under the Occupational Safety and Health Act and the Federal Mine Safety and Health Act, and (5) the amendment failed to state that wearing the personal sampling devices is voluntary on the employee's part. The national labor union supported the amendment in that (1) the amendment does provide specific notice to employees that NIOSH may use personal sampling, (2) personal sampling provides key data on individual employee exposure that is not available from area sampling, and (3) the union does not have records nor has it received information concerning any accidents caused by wearing personal sampling devices.

In response to the comments made by the trade associations, NIOSH does not have in its possession, nor was evidence provided, that personal sampling is not accurate. On the contrary, it is NIOSH's opinion, as noted in OHSA's final rule on use of personal sampling devices (29 CFR Part 1903) that personal sampling is the "most effective means of determining exposure levels and producing statistically valid data while at the same time being the most accurate means available to measure employee exposure."

No information was provided to support the contention that potential safety and health hazards exist when personal sampling devices are used or that the devices are disruptive and interfere with work. Similarly, no such information was presented to OSHA for their rulemaking (47 FR 55478).

In regard to NIOSH's authority to use personal sampling devices, this authority is provided to NIOSH within sections 8 and 20 of the Occupational Safety and Health Act and section 501 of the Federal Mine Safety and Health Act. Also, wearing the personal sampling device is voluntary on the employee's part. Employees who decline to wear personal sampling devices are not compelled to do so. Again, NIOSH's policy parallels that of OSHA, as stated in their final rule (47 FR 55478), "* * * *With respect to those who decline, it is neither agency practice nor policy to compel an employee to wear a personal sampling device. Rather, when faced with such a refusal, the agency attempts to ascertain and alleviate the employee's concern; if these efforts are unsuccessful, another employee is asked to wear the device* * * *." However, to clarify the amendment, the final rule now states that wearing the personal sampling device is voluntary.

Since NIOSH believes that no new information was provided during the comment period and that similar provisions were promulgated by OSHA (47 FR 55478), the amendment to 42 CFR Parts 85 and 85a is adopted as proposed, except for the clarification mentioned above.

This rule is primarily a clarification of procedures currently in use. Experience indicates that personal sampling devices are compact, take minimal time to attach to the employee, and neither hinder nor obstruct employee job performance. There are not substantive adverse effects on productivity due to the use of personal sampling devices. NIOSH is unaware of any injuries or accidents caused by the use of these devices. Personal sampling devices used during an investigation are provided by NIOSH at no cost to the employer. For these reasons, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291. Further, because these regulations do not have a singificant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

List of Subjects

42 CFR Part 85

Investigations, Mine safety and health, Occupational safety and health, Poison prevention.

42 CFR Part 85a

Investigations, Mine safety and health, Occupational safety and health.

For the reasons stated in the preamble, Parts 85 and 85a of Title 42, Code of Federal Regulations, are amended as set forth below.

Dated: October 24, 1983.

Edward N. Brandt, Jr.,
Assistant Secretary for Health.

Approved: January 10, 1984.
Margaret M. Heckler,
Secretary.

PART 85—REQUESTS FOR HEALTH HAZARD EVALUATIONS

1. In § 85.7, paragraph (c) is revised to read as follows:

§ 85.7 Conduct of investigations.

* * * * *

(c) NIOSH officers are authorized to collect environmental samples and samples of substances or measurements of physical agents (including measurement of employee exposure by the attachment of personal sampling devices to employees with their consent), to take or obtain photographs related to the purpose of the investigation, employ other reasonable investigative techniques, including medical examinations of employees with the consent of such employees, and to question privately any employer, owner, operator, agent, or employee. The employer shall have the opportunity to review photographs taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

* * * * *

PART 85a—OCCUPATIONAL SAFETY AND HEALTH INVESTIGATIONS OF PLACES OF EMPLOYMENT

1. In § 85a.5, paragraph (d)(1) is revised to read as follows:

§ 85a.5 Conduct of investigations of places of employment.

* * * * *

(d)(1) NIOSH authorized representatives are authorized: To collect environmental samples and samples of substances; to measure environmental conditions and employee exposures (including measurement of employee exposure by the attachment of personal sampling devices to employees with their consent); to take or obtain photographs, motion pictures or videotapes related to the purpose of the investigation; to employ other reasonable investigative techniques, including medical examinations, anthropometric measurements and standardized and experimental functional tests of employees with the informed consent of such employees; to review, abstract, and duplicate such personnel records as are pertinent to mortality, morbidity, injury, safety, and other similar studies; and to question and interview privately any employer,

owner, operator, agency, or employee from the place of employment. The employer, owner, operator, or agency shall have the opportunity to review photographs, motion pictures, and videotapes taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

* * * * *

(Sec. 8(g) 84 Stat. 1600; 29 U.S.C. 657(g) and Sec. 508, 83 Stat. 803; 30 U.S.C. 957)

[FR Doc. 84-3232 Filed 2-7-84; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

42 CFR Part 431

Medicaid Program; Reduction in Error Rate Tolerance; Medicaid Quality Control Program

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

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). Under these regulations, Federal financing participation will be disallowed to the extent that a State has a Medicaid eligibility payment error rate (as measured by the Medicaid quality control system) that exceeds the statutorily mandated three-percent national standard for any of the three quarters beginning April 1, 1983 and ending December 31, 1983.

The regulations further provide that we will project a payment error rate for each State for each of these three quarters and will reduce the State's quarterly grant award (based on its estimated expenditures) to the extent that the anticipated error rate exceeds the three-percent national standard.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Randolph Graydon, Bureau of Quality Control, Health Care Financing Administration, Room 239, East High Rise, 6325 Security Boulevard, Baltimore, MD 21207, (301) 597-1381.

SUPPLEMENTARY INFORMATION:

I. Background

The medicaid quality control (MQC) system was designed to reduce erroneous medical assistance payments by monitoring and improving the quality of eligibility determinations, third-party liability activities, and claims processing. The system uses sampling methodology to calculate the rate, or percentage, of erroneous medical assistance payments for each State, for each six-month sampling period (April–September and October–March of each year).

Within each six-month period, a State must select a sample of Medicaid beneficiary cases every month and review them for errors. We then review a subsample of the State-selected cases to verify the State's findings. At the end of each six-month review period, we calculate a State's payment error rate based on the findings submitted by the State and the findings of the Federal subsample. If a State fails to complete a valid review for any period, we assign the State an error rate based on either the weighted average of its error rate in the last three review periods, a special Federal sample or audit, or a Federal subsample.

Section 201 of the FY 1980 Labor-HEW Appropriation Bill (Pub. L. 96-123), commonly referred to as the Michel amendment, required States to reduce their erroneous Medicaid expenditures to a four-percent level by September 30, 1982, and directed the Secretary to reduce Federal payments to States that failed to achieve target error rate levels during the interim periods.

On January 25, 1980, we published final regulations at 42 CFR 431.802 (45 FR 6326) to implement the provisions of the Michel amendment. The regulations provided for a phased reduction in each State's July–December 1978 base period payment error rate to a four-percent target over the Federal fiscal years (FYs) 1981, 1982, and 1983. Under the regulations, if a State failed to meet a target error rate, Federal matching funds associated with erroneous expenditures in excess of the target error rate would be disallowed. If a State made a "good faith effort" but failed to meet its target error rate, the Secretary could waive or reduce the amount of a disallowance. (The regulations provided that the waivers are limited to extraordinary circumstances.)

In section 133 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97-248), Congress set the Medicaid payment error rate tolerance level, the national standard, at three percent, and specified that the States must achieve that rate in the third and fourth quarters of FY 1983 and in each succeeding fiscal year. Section 133 amended section 1903 of the Social Security Act (Act) by adding a subsection (u).

Before enactment of Pub. L. 97-248, the regulations provided only for quality control disallowances that were computed after actual payment error rates were established for each period and after requests by the States for waivers of the disallowances were assessed by the Secretary (§ 431.802). However, in addition to the disallowance calculation, section 1903(u)(1)(c) of the Act now requires that each State's quarterly estimate of expenditures for medical assistance be reduced to the extent that the State's anticipated payment error rate exceeds the three-percent national standard. The method for projecting this anticipated error rate is left to the discretion of the Secretary.

Section 1903(u)(1)(E) of the Act excludes from a State's error rate calculation payments made as a result of technical errors. Also excluded are payments made for services provided to any individual whose eligibility was determined exclusively by the Social Security Administration (SSA) under section 1634 of the Act. (Under that section, the Secretary and a State may enter into an agreement under which SSA determines Medicaid eligibility on behalf of the State for individuals who are eligible for Supplemental Security Income (SSI) or who are receiving a State supplementary payment that is federally administered, or both.) Section 1903(u)(1)(E) of the Act also provides that the Secretary may exclude any other classes of individuals whose eligibility was determined in part under a section 1634 agreement.

On June 24, 1983, we published in the **Federal Register** (48 FR 29450) interim final regulations with a 60-day comment period to implement the provisions of section 1903(u) of the Act. The provisions of the interim final regulations, the comments received, our responses, and the changes we made in response to those comments are discussed below.

II. Provisions of the Interim Final Regulations

A. Calculation of the Payment Error Rate

As required by section 1903(u)(1)(A) of the Act, the interim regulations (§ 431.803(b)) specified that a State's payment error rate will be expressed as a ratio of erroneous payments for medical assistance to total medical assistance expenditures under the State plan.

Erroneous payments are defined in the regulations (§ 431.803(b)) as medical assistance payments that were made for an individual (or a family) under quality control review who:

- Was ineligible for the review month or at the time services were received, or
- Had not properly met beneficiary liability prior to receiving Medicaid services.

Beneficiary liability is defined as either the amount of excess income that must be offset with incurred medical expenses to gain eligibility (spenddown) or the amount of payment a beneficiary must make toward the cost of long term care (§ 431.803(b)). In determining the amount of erroneous payments for cases involving beneficiaries who are determined to be ineligible due to excess resources, the lesser of the amount of excess resources or the amount of medical assistance payments for the review month is the amount of the error (§ 431.803(c)(3)(i)). Similarly, in determining the amount of the error for cases in which there is a beneficiary liability error, the amount of the error is the smaller of the unmet beneficiary liability or the amount of medical assistance payments for the review month (§ 431.803(c)(3)(iii)).

In the interim final regulations, we provided that all payments made on behalf of SSI beneficiaries whose eligibility is determined exclusively by SSA under section 1634 agreements are excluded from the calculation of the payment error rate (§ 431.803(c)(2)). Also excluded from the determination of errroneous payments are payments made as a result of a technical error (§ 431.803(c)(4)). We defined technical errors for MQC purposes as errors in conditions of eligibility that, if corrected, would not result in a difference in the amount of medical assistance paid (§ 431.803(b)). These errors include, but are not limited to, those attributable to Work Incentive Program requirements, the assignment of Social Security numbers, the requirement for a separate Medicaid application, and monthly reporting requirements. Errors resulting from any change in financial circumstances or categorical eligibility will be counted.

B. Determining a State's Anticipated Payment Error Rate

The interim final regulations (§ 431.803(d)) implemented the statutory requirement that the Secretary project an anticipated payment error rate for each State and reduce the State's quarterly estimate of expenditures for medical assistance by the percentage that the State's error rate exceeds three percent. The interim regulations based the projections on the weighted average of the error rates of the two most recently completed six-month review periods.

In determining the anticipated payment error rate, we evaluate the data from the two six-month review periods most recently completed by HCFA and the State. As provided in § 431.803(c), determination of a State's anticipated payment error rate excludes technical errors and takes into account the revised method of assigning dollar amounts for resource errors prescribed by section 133 of Pub. L. 97-248. After the error rates for those two review periods have been adjusted for these revisions, the weighted average error rate is calculated. This error rate is then adjusted to reflect corrective actions implemented by the State, and becomes the anticipated payment error rate for the quarter in question. The State's quarterly estimate of medical assistance expenditures is reduced by the difference between the State's anticipated payment error rate and the three-percent national standard.

C. Establishing an Error Rate for States That Fail To Cooperate

Under § 431.803(c)(5) of the regulations, if a State fails to cooperate in providing information for establishing its error rate or its anticipated error rate, we establish the State's error rate based on—

- A special sample or audit;
- The Federal subsample; or
- Other similar arrangements as the Administrator may prescribe.

This may be done directly or under a contractual or other arrangement. Regardless of the method used, the full costs associated with determining the error rates must also be withheld from the State's quarterly estimate of expenditures.

D. Computations for Disallowance of FFP

When States submit their quarterly estimate of expenditures for medical assistance, under § 431.803(d)(4), we reduce the amount of the estimate by the percentage difference between the three-percent national standard and the anticipated payment error rate established by us for that quarter. At the close of the quarter, this reduction is adjusted to represent the appropriate percentage of the State's actual expenditures for the quarter. As set forth at § 431.803(d)(4), these quarterly reductions, which are noted on the State's grant award, are not disallowances and, therefore, are not appealable.

The actual error rates are either those determined from the State reviews and subsequent Federal re-reviews or, if the State fails to complete a valid sample, those determined by us. The disallowance amount is the product of (1) the difference between the three-percent national standard and the State's actual error rate, and (2) the Federal share of the State's actual medical assistance expenditures for the review period.

After the actual error rates for the April-September 1983 review period and for each fiscal year thereafter are determined, the disallowance amount is computed, a disallowance letter is issued and, in the absence of a waiver (see section II.E., below), adjustments are made in the FFP previously calculated for each State. These adjustments are made by comparing the disallowance amount to the amounts previously withheld from the quarterly grant awards for the appropriate quarters. If the actual disallowance is less than the amounts withheld for the appropriate quarters, the excess amounts withheld will be returned to the State. If the disallowance exceeds the amounts withheld, then the additional amounts will be withheld from the State's next quarterly grant.

E. Notice of Disallowance and Waivers of Disallowance Based on "Good Faith"

Under § 431.803(e), the Administrator is permitted to waive, in certain limited cases, all or part of an FFP disallowance if a State is unable to reach the three-percent national standard despite a good faith effort. We evaluate requests for waivers prior to taking the actual disallowance. States are allowed 30 days from the date of the notice of a disallowance to apply for a waiver. We respond within 90 days of receipt of all information needed to reach a decision on the State's request for a waiver.

F. Applicability

Section 1903(u)(4) of the Act excludes Guam, Puerto Rico, the Virgin Islands, the Northern Marianas, and American Samoa from the provisions of section 1903(u) of the Act. The interim final regulations, therefore, excluded those entities from the provisions of § 431.803.

III. Discussion of Comments

In response to the interim final regulations, we received 39 comments from or on behalf of State and local health or welfare agencies. Following are specific comments received and our responses.

A. Effective Date of the Regulations

Comment—Twelve commenters objected to the manner in which the interim final rule was published because it did not allow for comments prior to the regulations' effective date. Some States commented that issuing interim final rules without the benefit of prior public comment denies the States the opportunity to adequately respond and provide input. The States contended that

this process is not only undesirable, in general, but, in their opinion, is particularly inappropriate when applied to policies that, in their view, deprive the State of funds. They believe that the Federal government should be especially sensitive to the solicitation and careful consideration of comments from the States when rules that could potentially result in "fiscal penalties" are proposed.

Response—Section 1903(u) of the Act was effective upon enactment (September 3, 1982) and requires that States achieve the three-percent national standard for the period April-September 1983 and for each full fiscal year thereafter. We were, therefore, required to make the effective date of the interim final rule April 1, 1983.

Although we were unable to provide a public comment period prior to the effective date of that rule, we did provide for a comment period and are responding to those comments in this final rule.

Comment—One State commented that the regulations are being implemented before an ongoing major HHS study on the present quality control system has been completed.

Response—The statute was effective upon enactment, and the Secretary was mandated to enforce its provisions. While there is an ongoing study that could ultimately result in changes to the quality control program, under the present statutory mandate, we cannot delay implementation of the statute's provisions by delaying the effective date of these regulations.

B. Three-Precent National Standard

Comment—Three States commented that the three-percent national standard is arbitrary and is too low to be met in a cost beneficial manner.

Response—Section 1903(u)(1)(A) of the Act requires that the State payment error rate tolerance level be set at three percent. Therefore, we have no authority to set any other level in these regulations.

Comment—Three States commented that the regulations are punitive and do not provide a balance system of fiscal penalties and rewards.

Response—These regulations implement congressionally prescribed tolerance levels for erroneous expenditures for medical assistance. The statute provided only for disallowances of excess erroneous expenditures. It did not provide the Secretary with the authority to provide enhanced funding for States with low error rates.

C. Impact on States Due to Disallowances Under These Regulations

Comment—Six States objected to the imposition of "fiscal sanctions" based on the quality control system. The States point out that the primary purpose of quality control is the reduction and elimination of errors through corrective action. They contend that today, due to the fiscal problems suffered by almost all States, States are experiencing a severe lack of financial and staff resources. States believe that imposition of sanctions is very likely to produce a situation in which the basic goals of quality control are retarded, not advanced, since sanctions would exacerbate the State's financial predicament.

The States noted that the preamble to the interim final rule (48 FR 29451) stated that the national average payment error rate has decreased from 6.6 percent for the July–December 1978 base period to a projected rate of near three percent for the April–September 1981 and October 1981–March 1982 assessment periods. The States claims that this substantial reduction in the error rate was accomplished by the States *without* having fiscal sanctions imposed on them.

Response—As stated previously, the statute (section 1903(u)(1)(A) of the Act) mandates the disallowance of erroneous expenditures above the three-percent national standard. Therefore, the regulations must provide for the disallowance of these expenditures. It should also be noted that the reduction in error rates cited above occurred during time periods when disallowance provisions similar to these regulations were in place.

Comment—Four States expressed the opinion that errors caused by State policies that are not in compliance with the State plan should not be included in the payment error rate because disagreement between State and Federal staff regarding interpretation of regulations or law can increase a State's error rate through the Federal re-review process prior to a resolution of the disagreement.

Response—We do not concur with this recommendation. Section 431.800(d)(1) specifies that the State must operate its MQC system in accordance with policies, sampling methods, review procedures, etc., as specified in MQC manuals issued by HCFA. The *State Medicaid Manual*, Part 7, section 7250 specifies that reviews must be conducted against written State policies and procedures that are in accordance with the State plan. If a policy is in conflict with the State plan, reviews must be conducted against the State plan.

As provided in section 7220 of the *Manual*, if an error is cited by Federal reviewers, the State may either accept the Federal finding or request a conference to discuss the Federal and State review difference. The State must reflect the resolution of the difference as determined by the Regional Administrator in its statistical reports. These reports are submitted to HCFA at the end of each review period and accurately reflect whether or not an error is cited *after* the resolution of the difference.

Comment—One commenter stated that if States have funds withheld based on projected error rates but, in fact, have acceptable error rates when the final calculations are done, these States should not only receive the withheld funds but should also receive interest on these funds. This would be consistent with § 433.38, which requires States to pay interest on disallowed claims determined by us, and would be less disruptive to States; cash flow.

Response—We do not agree that States should receive interest on funds that were withheld based on projected error rates. Funds withheld based on the anticipated error rate are reductions in the States' grant awards and do not constitute disallowances. Since these reductions are not disallowances, they are not subject to the provisions of section 1903(d)(5) of the Act, which provide States the option of retaining disallowed funds and paying interest on them should it be determined that the funds were properly disallowed or of permitting the Federal government to retain the funds pending the appeal decision. Further, since Congress did not specify in the statute that interest should be paid on excessive funds withheld under section 1903(u) of the Act, there is no basis in the law that provides for us to pay interest on these withholdings.

Comment—Two States recommended that disallowance amounts should be offset to the extent that erroneous payments are recouped by the State. This would reduce the impact of disallowances on States.

Response—In the event that States have recovered overpayments due to ineligibility and have credited HCFA with the Federal share of their recoveries, we will deduct the amount credited from the grant reduction made under the provisions of these final regulations for the quarter in which the credit was given. States must identify credits for ineligibility recoveries in order to receive their deductions.

D. Prospective Withholdings Based on Anticipated Error Rates

Comment—Four States did not agree with the concept of withholding funds prospectively. They argued that this process is outside the philosophy of quality control as a management tool. They also expressed the opinion that this process is administratively cumbersome in that monies could be withheld based on an anticipated excessive error rate, only to be repaid later when the actual error rate is determined not to be over the three-percent national standard. The commenters strongly urged that we consider fiscal penalties for excessive error rates only on a retrospective basis.

Response—The provision for reducing a State's quarterly estimates of expenditures is mandated by section 1903(u)(1)(C) of the Act. We are, therefore, required to implement a system for prospective reductions.

Comment—One State commented that projected error rate data should be released to the States at least three months in advance of the quarter to which the rate will apply.

Response—For purposes of administering the process in the interim final regulations, we believe that advance notice of our intent to reduce grant awards was adequate. We have, however, included time frames for furnishing States with projected error rates in the final regulations that will govern future error rate projections (§ 431.804). These regulations were published in the **Federal Register** on December 1, 1983 (48 FR 54224). The provisions of § 431.804 will be applied to States beginning with the January–March 1984 quarter.

Comment—Twenty respondents expressed strong opposition to the fact that quarterly withholdings are not considered disallowances and, therefore, are not appealable. The regulations (§ 431.803(d)(4)) state that the reduction in the grant award for the quarter does not constitute a disallowance and is not appealable. An appeal cannot be filed until we compute the actual amount of the disallowance. This could be up to two years after the withholding is made. The States believe that the reductions should be appealable because their effect is an adverse action on the State.

Response—The quarterly reductions are based on the statutorily required estimates of erroneous expenditures and do not represent actual data for disallowances, but rather reductions to the State's estimates of expenditures. The Senate Finance Committee report accompanying Public Law 97–248 states that if the estimated prospective reduction proves to be inaccurate when actual data from the period becomes available, appropriate adjustments will be made in subsequent grants (S. Rep. No. 97–494, 97th Congress, 2nd Session 39 (1982)). This provides clear guidance that estimates are not to be adjusted until actual data are available. Therefore, the final regulations retain the provision that appeals will not be entertained until the actual disallowance has been taken based on actual error rate data.

E. Determination of a State's Final Payment Error Rate

Comment—Five States commented that error rates can be subject to intense distortion from a large overpayment in a single case, and, therefore, the dollar rate is a most unreliable indication of program quality having little relation to the more meaningful case error rate.

Response—Section 1903(u) of the Act clearly requires that error rates be calculated by taking a ratio of "erroneous payments" to "total payments". We believe that this can only be properly implemented by using dollar amounts rather than the percentage of cases in error.

Comment—Five States commented on the use of the "point estimate" in determining a State's actual payment error rate. This rate is arrived at by taking a sample of the State's Medicaid beneficiary cases, and extrapolating the percentage of errors in the sample to the universe of Medicaid beneficiaries. The result is called the "point estimate," and is considered by us to be the best estimate of the actual error rate. Because the result is, however, still an estimate, the "true" error rate may be somewhat different. This "true" rate lies somewhere within a certain range greater or lesser than the point estimate. This range is known as the "confidence interval," and five States recommended that the value at the lowest end of this confidence interval be used as the actual error rate, rather than using the point estimate that lies in the middle of this interval.

Response—The point estimate continues to be a generally accepted statistical measure of the true error rate. Use of the lower end of the confidence interval would constantly understate the State's true error rate as would the use of the upper end overstate the error rate. In addition, under the current MQC methodology the final "point estimate" reflects a "regression" adjustment to account for differences between the State findings in the main sample, and Federal findings that result from our review of a subsample of the main sample. The greater the difference between the Federal and State findings, the larger the confidence interval will be. Thus, the State could be encouraged to conduct poor reviews to increase differences, thus artificially lowering the lower limit. Use of the point estimate encourages thorough reviews and more closely reflects the true error rate. We will, therefore, continue to use the point estimate in establishing error rates.

Comment—Eight States addressed the issue of agency- versus client-caused errors. They state that the standards for client- and agency-caused errors should be differentiated to reflect the reality that client-caused errors are particularly difficult to control. They recommended that sanctions should apply only to agency-caused errors or that these two types of errors be weighted differently.

Response—The statute does not distinguish between agency- or client-caused errors, and provides no basis for giving these errors different weights in computing the final payment error rate. It clearly states that erroneous payments made above the three-percent national standard are to be disallowed. Therefore, we will continue to calculate the payment error rate based on erroneous payments made as a result of either agency- or client-caused errors. Furthermore, we wish to provide an incentive to States to develop procedures for assuring prompt reporting from clients and to develop methods for agency tracking of changes in beneficiaries' circumstances.

Comment—Four States commented that the regulations should provide that the reduction of grant awards and disallowance of FFP exclude expenditures for SSI beneficiaries. One State also recommended that the regulations provide a method for determining the amount of the benefits paid to SSI beneficiaries and a procedure to exclude them in section 1634 States.

Response—The regulations (§ 431.803 (d)(3) and (d)(6)) do provide for the exclusion of all payments made on behalf of beneficiaries who receive SSI payments in section 1634 States. These payments are excluded by reducing total payments made by the State for medical services subject to FFP by the percentage of payments made on behalf of SSI beneficiaries (§ 431.803(d)(6)). This calculation is shown on an attachment to each grant award that is reduced under this provision.

Comment—Eleven States commented on the definition of technical errors as set forth in the regulations. In general, the States approve of the fact that allowance is being given for "technical

errors." However, they proposed a change in wording that would allow for inclusion of additional types of technical errors as they are encountered and agreed to by us.

Response—We agree with these comments, and the final regulations (§ 431.803(b)) adopt the States' suggestion. However, we have provided that errors other than those specifically mentioned may be cited as technical errors only after receiving approval from us. States should submit to their Regional Offices a description of the error and a explanation as to why this error should be cited as a technical error. The Regional Office will forward this information to HCFA Central Office. After review, the Central Office will advise the Regional Office whether or not the error can be classified as technical.

Comment—One State commented that the regulations should contain provisions that would allow States to appeal Federal re-review findings.

Response—The *State Medicaid Manual*, Part 7, Quality Control, at section 7220, provides for appeal of re-review findings to the HCFA Regional Administrator. We do not believe it appropriate to codify this mechanism in the disallowance provisions that are the subject of these regulations, but we will consider publishing this appeals procedure as a part of the MQC regulations at a later time.

F. Determining a State's Anticipated Error Rate

1. *Use of two six-month periods as a base for error rate projections.*

Comment—We received 20 comments from or on behalf of States regarding the use of data from the two most recently completed six-month periods as a base for projecting States' anticipated error rates. States were concerned that these data are inadequate for an accurate projection of error rates. We received the following recommendations as alternative data bases that could be used to project error rates:

- Use the lower error rate from the two most recent review periods.
- Base projections on the two completed sample periods following the date Pub. L. 97-248 became law (September 3, 1982).
- Recompute the projected error rate at the end of each review period.
- Use some latitude in selecting which two periods are used to project error rates.

Response—We have reviewed States' suggestions regarding which data base to use in making projections of anticipated error rates. We have amended the regulations (§ 431.803(d)(1)) to provide that projections will be based on the lower of either the error rate from the most recently completed six-month review period or the weighted average of the error rates from the two most recently completed six-month review periods.

This methodology provides for using the most recently completed data unless it disadvantages the State. In that case, projections would be based on the average of the two most recently completed periods. This method provides the advantage of using either the more stable data from a 12-month period or the most recent data available from the latest 6-month period if an error reduction has occurred.

2. *Use of the expected impact of corrective action in projecting anticipated error rates.* The interim final regulations do not rely only on data showing recent actual experience as a basis for estimating future error rates. The regulations allow us to lower our projection of the anticipated error rate by assuming that implementation of a State's corrective action plan will to some extent reduce the rate of future errors from the error rate experienced in the past.

Comment—Three States commented that the methodology we used to estimate the effect of corrective action plans is subjective and does not recognize unique factors within a State. Several States recommended that the rule describe the method used to reduce the anticipated error rate in light of the expected impact of corrective action.

Response—Under the governing statute, section 1903(u) of the Act, estimation of a State's anticipated error rate is part of the previously established process by which we estimate the amount of Federal funds that are to be paid to a State each quarter, until a final settlement is made after a State has submitted documentation of its actual Medicaid expenditures. This estimation process necessarily requires a highly discretionary evaluation by us of the likely effect of events during the quarter on a State's Medicaid expenditures. Nothing in section 1903(u) of the Act suggests that any less discretionary approach was intended for the adjustment to this estimate necessary to account for the anticipated error rate.

Accordingly, the interim final regulations' consideration of the possible effects of corrective action is inherently subjective, as the comments noted. Estimating the impact of corrective actions that have not yet been fully implemented and evaluated necessarily requires a subjective assessment of the extent to which the actions will be successful, and judgments of this nature are not amenable to mechanical rules. It might well be argued that these assessments are so speculative that they should not be made at all, and that estimates of future error rates should be based solely on actual data of recent experience. Indeed, it was this concern for the uncertain reliability of estimating the effects of corrective action that led us to issue new regulations that do not utilize the possible impact of corrective action in the estimation process (48 FR 54224; Dec. 1, 1983). But since consideration of the possible effect of corrective action can only benefit a State by lowering the error rate that would otherwise be anticipated by looking only to recent experience, we do not believe that States are disadvantaged by the subjective nature of this consideration.

To assure relatively uniform treatment of all States, we have developed a general framework for estimating the future effect of corrective action plans. We start with the following four basic criteria and assign weights to them:

Criterion	Weight (percent)
Did the State correctly identify the major cause of errors?	20
Did the State develop corrective actions designed to address the error causes identified?	20
Did the State implement the planned corrective actions?	30
Is there any preliminary evidence that implemented corrective actions are reducing the State's error rate?	30

Each of these criteria was selected because it represents one of the four basic steps of the corrective action process: Identification of error causes; planning appropriate corrective action; implementation of the plan; and evaluation of the effectiveness of the corrective actions. Additional weight is given to implementation and evaluation because of the greater likelihood that a plan already implemented will produce results, and the greater confidence we have in an action for which some results of effectiveness already exist.

For each cause of errors that is identified in the corrective action plan, we assign a score for each of the four criteria reflecting our judgment about the State's efforts. Scores for the various causes of errors are then combined. This combined score is translated into a projected reduction of the State's error rate, subject to the restriction that no estimated future error rate will be reduced more than 25 percent based on analysis of the corrective action plan.

The 25 percent limit on the credit given to corrective action plans was the subject of numerous critical comments, which contended that this was an

arbitrary limit on the estimated impact of a corrective action plan. We continue to believe, however, that our estimation of the likely impact of corrective action plans is properly subject to a 25-percent limit because of the inherent weaknesses in projecting error rates based on the expected effects of actions that are not fully implemented and proven. The average annual reduction of error rates by States has been 19.8 percent, which suggests to us that States are not likely actually to achieve significantly greater reductions no matter how promising their corrective action efforts may appear. Moreover, a State's corrective action plan may not be designed to correct all the errors detected in a previous sample. Our historical evidence relating to error rate reduction indicates that when a State directs corrective action activity to one cause of errors, other sources of error frequently develop. In summary, given the judgmental manner in which the possible effects of corrective action plans must be evaluated and the potential for overestimating the value of a corrective action plan, we believe that it is inappropriate to assume, for estimation purposes, that a corrective action plan can in the short run achieve more than a 25-percent reduction from the error rate that a State has actually been shown to have incurred in the recent past. Of course, once the effects of corrective action are reflected in data from actual samples, there is no limit to the improvement that will be recognized.

As this description of the evaluation methodology should indicate, there is limited value in setting it out in detail in the text of the regulations. The critical part of the process is the judgment about the State's success in identifying and remedying each cause of error, and, since this assessment is subjective, the regulations can at most simply describe the framework in which these judgments take place. We have, however, included the four basic criteria for evaluating corrective action in these regulations to suggest the outlines of the process, as well as a reference to the maximum 25 percent reduction in the estimate that will be attributed to the possible effects of a corrective action plan (§ 431.803(d)(2)).

Comment—Fifteen comments received from or on behalf of States requested that the regulations fully define the method by which a State's base period error rate is adjusted to develop an anticipated error rate. They believe that we have failed to explain the specific procedures by which we will make these adjustments. For example, the States asked whether consideration will be given to (1) technical errors, (2) the revised method of assigning dollar amounts for resource errors, and (3) corrective action implemented by the State. They also asked whether HCFA will go back and actually re-review the cases from the two six-month review periods most recently completed to look for technical and resource errors, or whether HCFA will just assume that a certain percentage of errors were "technical" and that the resources errors were a certain amount, and apply these assumptions to the two review periods.

Response—We have amended the regulations (§ 431.803(d)(1)) to reflect more clearly that for periods prior to October 1983 we will examine all cases in both the full State sample and the Federal subsample to identify cases with errors due to excess resources or technical errors. The individual case findings will then be adjusted to reflect the new error definitions set forth in this document. However, by October 1983 the States had sufficient time to become familiar with and implement the error definition provisions of the interim final regulations. Thus, beginning with the October 1983 sample month, it is the State's responsibility to apply the new error definitions and we will make adjustments only to the extent that review of the Federal subsample (as part of the "Federal difference resolution process" described in section 7220 of the Manual) reveals errors in the State's application of the error definitions.

After case findings are adjusted for the new error definitions in Pub. L. 97-248, if the resultant error rate is above the three-percent tolerance level, then the State's corrective action activity will be assessed to determine if the anticipated error rate should be further reduced.

Comment—Two States commented that it is unfair to penalize States on the sample estimate (error rates established from sampling rather than enumerating the entire population) alone and suggested that the regulations should mandate the use of trend analysis and other statistically sound methods for predicting error rates.

Response—Our research has shown that trend analyses are not good indicators of future performance and that the point estimate for the most recently completed sample period is a better predictor of the point estimate of the next sample period. We therefore rejected the proposal of using trend analyses.

G. Problems With the Quality Control Review Process

Comment—One State raised the issue of the effect of large dollar cases on the error rate. It believes that the MQC process needs a mechanism to adjust error findings for aberrant situations. On occasion, one or two highly unusual cases with large dollar errors might skew the resulting error rate. Since these figures can result in a significant penalty to a State, there should be a mechanism, other than the proposal for a statistically valid sample, to account for these unusual circumstances.

Response—We do not agree. As pointed out in the State's comment, these cases only appear in the sample on occasion. As such, they properly reflect the fact that erroneous payments are made for high dollar cases that may not appear in other sample periods.

Comment—One State commented that the regulations should stipulate that State and Federal quality control staffs should use the same eligibility verification processes as State eligibility staff.

Response—We are not adopting this suggestion because we believe it would increase, rather than reduce errors. In fact, we believe that the reverse would be more desirable. Eligibility staff should be encouraged to use verification procedures as exhaustive as those used by the quality control staff. This would serve to improve the accuracy of eligibility determinations, which is the primary purpose of the MQC program.

Comment—Eighteen comments were received from or on behalf of States concerning the need for States to receive error rate information on a more timely basis. States commented that one weakness of the Federal quality control system is the delay in reporting actual data until many months after the events which they measure have occurred. The extraordinary length of time, which can and does exist, between the occurrence of errors and the final measurement undermines the ability of States to take timely, cost-effective corrective actions. For example, at the present time, sanctions in Medicaid are being proposed by the Federal government for Federal Fiscal Year 1981, which ended two years ago. Time limits should be established in which a State's final error rate is determined so that corrective action by the State can be taken in a timely and cost-effective manner.

Response—Since calculation of final payment error rates is dependent upon the State's completion and reporting of its own reviews and the completion and reporting by SSA of AFDC-QC sample

data, we cannot establish a firm time frame for completion of the calculation. However, we have amended the final regulations at § 431.803(d)(5) to commit ourselves to making the necessary adjustment in grant awards previously reduced based on anticipated error rates within 30 days of establishing the actual error rate for the particular quarter. The delay in Federal computation of final error rates for disallowance purposes does not preclude States from using initial State data to begin corrective action planning. States are encouraged to use data available to them to initiate actions to reduce erroneous payments and case errors.

Comment—One State expressed concern about its inability to control liability errors. The State found it hard to keep beneficiary liability amounts current where health insurance premiums are involved because premium amounts decrease and increase and policies are begun and terminated before the agencies are able to reflect the changes for eligibility purposes. Regulations in this area will work to cause high error rates in these cases because the status of the premiums is very erratic. The States are eventually going to be damaged if changes are not made in this policy.

Response—We are aware of the difficulties in administering the policy as required under § 435.725 to protect patients' income for noncovered medical expenses. This policy is under review by the Department. However, we will continue to base MQC reviews on the policy currently in place until that policy is revised. In addition, we do allow States to provide in their State plans for the proration of prepaid insurance premiums for the period for which the insurance policy is in effect.

Comment—One State had a question about errors that occur because a beneficiary did not meet his or her liability amount. The State wanted to know if a liability error, which is later adjusted so that there is no payment error, falls in the category of a technical error. These errors, which occur because of processing timing and receive automatic adjustment, do not result in misspent funds.

Response—Claims that are paid in the correct amount or are properly adjusted during the claims processing administrative period do not result in payment errors.

Comment—Two States commented on the quality control process. The States believe that, although the intent of the current quality control system is laudable, the procedures are questionable. There has not been enough emphasis placed on the validity of the quality control process. The whole quality control process should be reevaluated by Federal and State officials before actual disallowances are imposed. As an example, it could be argued that the sample pulled in a State is too small to accurately identify error prone areas in order to take corrective action.

Response—We do not agree that our current quality control procedures are questionable. We believe that the MQC system is strong and is a viable method for determining payment error rates for disallowance purposes. We are, nevertheless, constantly looking for approaches to improve the current system. For example, we are currently testing in one State a methodology of retrospective sampling to determine its effect on system improvement.

With regard to a State's sample size, if a State does not believe its minimum sample size is adequate to identify error prone areas, it may increase its sample size at its discretion as provided in § 431.800(d)(7). FFP is available for the costs of these additional reviews.

H. Good Faith Waivers

Comment—Four States commented on the time frame for submitting good faith waivers. They believe that States should be given at least 65 days (rather than the proposed 30 days) from the receipt of notification of intent to disallow funds to present evidence for good faith waivers. The regulations implementing the Michel amendment's provisions (§ 431.802) allow 65 days, and this time frame should not be reduced in these regulations.

Response—We agree with this comment and have amended the text of these final regulations to reflect the comment.

Comment—Five respondents objected to the restriction of good faith waivers to "extraordinary circumstances."

Response—Section 1903(u)(1)(B) of the Act prescribes that the Secretary may waive, "in certain limited cases," all or part of the reduction required if a State is unable to reach the national standard despite a "good faith" effort. Since the statutory language clearly indicates that waivers should be granted only on a limited basis, we elected to retain the language currently in the regulations at § 431.802 which limits waivers to "extraordinary circumstances."

I. Michel Amendment Disallowances

Comment—Eight States commented on the potential for double penalties because of the overlap of the Michel amendment and the Pub. L. 97–248 provisions. States believe that the regulations should be more specific on this issue. States could be faced with double penalties over the next fiscal year due to the overlap of the Michel amendment and Pub. L. 97–248 provisions. The States argue that since the Pub. L. 97–248 national standard (three percent) is lower than that under the Michel amendment (four percent), the imposition of double sanctions would seem to be unwarranted. They object to the fact that there is no clear detailed discussion in the regulations of this overlap and the potential for double penalties.

Response—The provisions of section 133 of Pub. L. 97–248 replaced the provisions of the Michel amendment for periods after September 30, 1982. This provided for a six-month hiatus period from disallowance provisions before the new provisions took effect in April 1983. Thus, States will be subject to disallowances under Michel through September 30, 1982 and to disallowances under Pub. L. 97–248 for periods after April 1, 1983.

The Michel disallowances are retroactive and reflect the error rates for the periods October 1980–September 1981 and October 1981–September 1982. Pub. L. 97–248 provides for both prospective reductions and retroactive disallowances, both of which are for periods beginning April 1, 1983. Therefore, there is no overlap of periods of disallowance. However, projections of anticipated erroneous payments under Pub. L. 97–248 will be based on Michel period data adjusted for error definitions in Pub. L. 97–248 until data under that law are available.

Comment—Two States questioned the authority on which the disallowance provisions under the Michel amendment are enforced.

Response—The authority for Michel amendment disallowances is section 201 of the Labor-HEW Appropriation Bill for FY 1980 as referenced in the continuing resolution for FY 1980 (Pub. L. 96–123).

J. Other General Comments

Comment—One State identified what it believes was an omission to the regulations. It wanted to know what procedure would be used when a State that has had a previous reduction in FFP reaches a final error rate of *less* than three percent.

Response—The final regulations (§ 431.803(d)(5)) have been clarified to make clear that if, after final error data are available, we determine that the amount withheld on a prospective basis exceeds the actual error rate, an adjustment will be made to the State's grant award within 30 days of the final disallowance calculation. If the State's

actual error rate is less than the anticipated error rate, the State's grant award will be increased accordingly. If the actual error rate remains above three percent, the State may file a good faith waiver request.

Comment—The States question the statutory authority for reducing grant awards for the third quarter of FY 1983 after the beginning of the quarter. The States believe that Pub. L. 97–248 does not give us the authority to reduce the grant awards unless we do so by reducing the initial estimate of expenditures prior to the beginning of the quarter. They believe that penalizing the States at the end of the third quarter was not justified and again has caused unanticipated fiscal difficulties in a number of States. The States believe that the intent of Congress was to institute rules and policies regarding this program *prospectively* and to disallow the Federal funds prospectively. The States should not be penalized because we were unable to promptly publish regulations.

Response—The statute requires that beginning April 1, 1983 *each* quarter's estimate must be adjusted based on the anticipated error rate. Since the interim final regulations were not published until after the issuance of the grant award for the third quarter of FY 1983, in order to meet the statutory requirement, we issued a supplemental grant award under the authority of section 1903(d)(2) of the Act reducing the initial award in the amount of the projected overpayment.

We interpret the statute to require only that we reduce the State's estimate of expenditures prior to the computation of the actual error rate and the subsequent disallowance amount, and not necessarily prior to the beginning of each quarter. The statute requires us to adjust each quarter's grant award. If, as a result of an administrative delay, this does not occur until after the beginning of a quarter, it would thwart congressional intent to allow a State to retain funds that by statutory mandate should have been withheld. Furthermore, our failure to make the reduction prior to the quarter is advantageous to the State rather than causing it any undue harm, because it allows the State to have use of the funds for a longer period of time.

IV. Summary of Changes in the Regulations

A. The definition of technical error in § 431.803(b) is changed to allow errors other than those specifically mentioned in that section to be classified as technical errors upon approval by HCFA.

B. The base period error rate to be used in calculating the anticipated error rate, as specified in § 431.803(d)(1) (previously § 431.803(d)(2)), is changed from the weighted average of the actual error rates of the two most recently completed six-month review periods to the lower of that weighted average or the error rate of the most recently completed six-month review period.

C. Section 431.803(d)(1) (previously § 431.803(d)(2)) is amended to more clearly reflect that all cases for sample periods prior to October 1983, in both the full State sample and the Federal subsample, will be examined to identify those cases with excess resource and technical errors. Those cases will be adjusted to reflect the new error definitions. For periods prior to October 1983, we will identify cases with these errors. Beginning October 1983, these adjustments will be made through the Federal difference resolution process if they are not reflected in the original State findings.

D. We have amended § 431.803(d)(2) (previously § 431.803(d)(3)) to include the criteria that are used by us to assess the effect of States' corrective actions on their anticipated payment error rates.

E. We have amended § 431.803(d)(5) (previously § 431.803(d)(6)) to state that within 30 days after the actual error rate is calculated for a particular quarter, we will increase the State's grant award to the extent that the final disallowance amount is less than the amount previously withheld for that quarter.

F. In § 431.803(e)(1)(i), we have lengthened the time States have for submitting good faith waiver requests from 30 days after date of receipt of notification of the potential disallowance to 65 days from that same date.

G. We have made the following technical changes in these regulations:

- We revised the title of § 431.803 to more clearly state the applicability of that section.
- Language was added to § 431.803(b) to clarify the definition of "erroneous payments."
- The language in §§ 431.803 (b), (c)(2), and (c)(3) was amended to clarify the definition of "State payment error rate." A similar conforming change was made in § 431.804(b).
- We moved § 431.803(d)(1) to § 431.803(c)(1) and renumbered the other paragraphs of those sections accordingly. In addition, we made conforming changes to § 431.803 to take into account this redesignation of Paragraphs (c) and (d).
- We changed the title of § 431.803(d) to more clearly state what the subject of that section is.
- We revised § 431.803(d)(3) (previously § 431.803(d)(4)) to clarify that payments to SSI beneficiaries in section 1634 contract States are not included in the calculation of the quarterly reduction. We also revised that section to clarify that the quarterly reductions are not disallowances and, therefore, are not appealable.
- The term "reduction" replaces the term "withholding" in § 431.803(d)(6) (previously § 431.803(d)(7)).
- The term "national standard" replaces the term "target error rate" in §§ 431.803 (e)(1)(ii), (e)(1)(iii), and (e)(2).
- In § 431.803(e)(2)(v)(A), the date for submittal of the States' annual corrective action plan is changed from July 31 to August 31 to conform with previously published change made to § 431.800(g).
- Sections 431.803 (e)(4) and (e)(5) are redesignated as (e)(3) and (e)(4) to correct a technical error that was made when the interim final regulations were published.
- We made a minor editorial correction to the title of § 431.804.

V. Waiver of 30-Day Delay in Effective Date

The regulations published in the interim final rule were effective on April 1, 1983. Although we have amended those regulations in this **Federal Register** document, the effective date of this final rule will remain as April 1, 1983.

The changes we have made in the regulations at § 431.803 will not result in an increase in any State's quarterly reductions made for the April–June 1983 and July–September 1983 quarters. In fact, these regulations will, for many States, reduce the amount of the reductions made in grants for those quarters.

We would be unable to promptly increase the States' grant awards for past quarters if we were to provide the usual 30-day delay in the effective date. Therefore, we find good cause to waive the delay in the effective date.

VI. Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in the order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a

substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure that the regulations are cost-effective.

A. Executive Order 12291

In this final rule, we discuss the interim final regulations, the comments received, our responses, and the changes made in response to those comments. These final regulations provide for disallowance of FFP for the period April 1 through December 31, 1983 to the States whose eligibility payment error rate for Medicaid, as measured by the MQC system, exceeds three percent.

In the interim final regulations implementing section 133 of Pub. L. 97-248 (published on June 24, 1983), we estimated that the regulations would result in withholding of FFP in the amount of $12 million in FY 1983 and $22 million in FY 1984. These estimates reflected the product of the difference between the three-percent national standard and the adjusted error rate, and the amount of the Federal share of the medical assistance expenditures for those States that we anticipate would exceed the three-percent level.

However, we have changed our initial estimate from the interim final regulations to reflect the following changes in the final regulations. First, we have established, at § 431.804, new regulations concerning the disallowance of FFP for excess erroneous State payments that take effect January 1, 1984. Therefore, our current regulations, at § 431.803, will only be effective April 1 through December 31, 1983.

Second, we are using more recent State error rate data in our calculations. These error rates are based on the Pub. L. 97-248 definition of error rates and, for our reestimate of FY 1983 savings, reflect the data from the period April 1981 through March 1982. For our reestimate of FY 1984 savings, our data represent the period from October 1981 through September 1982.

Finally, we have made several methodological refinements in our estimating process. However, these refinements have a negligible effect on the reeestimates.

Therefore, our estimate of savings resulting from these final regulations are:

Fiscal year	Savings (in millions)
1983	$10
1984	8.5

The fiscal year 1983 savings are for the last two quarters of that fiscal year and the fiscal year 1984 savings are for the first quarter of fiscal year 1984 (October 1 through December 31, 1983).

Since these estimates do not meet the $100 million threshold, and as it is the statutory provisions and not these final regulations that result in the estimated savings, we have determined that these final regulations are not a major rule as defined by section 1(b) of the Executive Order.

B. Regulatory Flexibility Analysis

These final regulations implement a congressionally mandated national standard for erroneous payments in the Medicaid program. The regulations affect only State agencies, which do not fall into the category of small governmental jurisdictions as defined by Pub. L. 96-354.

The Secretary certifies, under 5 U.S.C. 605(b) enacted by the Regulatory Flexibility Act, that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting requirement.

42 CFR Part 431 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents for Part 431, Subpart P is amended by revising the title of §431.803 to read as follows:

Subpart P—Quality Control

Sec.

* * * * *

431.803 Disallowance of Federal financial participation for erroneous State payments during the period April 1 through December 31, 1983.

* * * * *

3. Section 431.803 is amended by revising the title; revising the definitions of "Erroneous payments", "State payment error rate," and "Technical error" in paragraph (b); redesignating paragraph (d)(1) as paragraph (c)(1) and redesignating paragraphs (c)(1) through (c)(6) as paragraphs (c)(2) through (c)(7); revising redesignated paragraphs (c)(2) and (c)(7), respectively; revising the title of paragraph (d); removing paragraph (d)(1) and redesignating paragraphs (d)(2) through (d)(9) as paragraphs (d)(1) through (d)(8), respectively; revising redesignated paragraphs (d)(1), (d)(2), (d)(3), and (d)(5); revising paragraph (e)(1), the introductory language of paragraph (e)(2), and paragraphs (e)(2)(iv) and (e)(2)(v)(A); and redesignating paragraphs (e)(4) and (e)(5) as (e)(3) and (e)(4) to read as follows:

§ 431.803 Disallowance of Federal financial participation for erroneous State payments during the period April 1 through December 31, 1983.

* * * * *

(b) *Definitions.* For purposes of this section—

* * * * *

"Erroneous payments" means the Medicaid payment that was made for an individual or family under review who—

(1) Was ineligible for the review month or, if full month coverage is not provided, at the time services were received; or

(2) Had not properly met beneficiary liability prior to receiving Medicaid services.

* * * * *

"State payment error rate" means the ratio of erroneous payments for medical assistance to total expenditures for medical assistance (less payments to Supplemental Security Income beneficiaries in section 1634 contract States) for cases under review under the MQC system for each assessment period.

"Technical error" means errors in eligibility conditions that, if corrected, would not result in a difference in the amount of medical assistance paid. These errors include, but are not limited to, Work Incentive Program requirements, assignment of social security numbers, the requirement for a separate Medicaid application, monthly reporting requirements, and assignment of rights to third-party benefits as a condition of eligibility for Medicaid. Errors other than those listed must be

approved by HCFA before they are classified as technical errors.

(c) *Setting the State's payment error rate.*

(1) Each State must, for the April–September 1983 period and for each annual assessment period thereafter, have a payment error rate no greater than 3 percent or be subject to a disallowance in FFP.

(2) A payment error rate for each State is determined by HCFA for the period April-September 1983 and for each annual assessment period thereafter by computing the ratio of erroneous payments for medical assistance made on behalf of individuals or cases in the sample for services received during the review month to total expenditures for medical assistance made on behalf of individuals or cases in the sample for services received during the review month under the State plan in effect at the time of review. This ratio incorporates the findings of a federally re-reviewed subsample of the State's review findings and is projected to the universe of total medical assistance payments for a particular quarter in order to calculate the amount of disallowance, if any, under paragraph (d)(7) of this section.

(3) The State's payment error rate does not include payments made on behalf of individuals whose eligibility determinations were made exclusively by the Social Security Administration under an agreement under section 1634 of the Act.

(4) The amount of erroneous payments is determined as follows:

(i) For ineligible cases resulting from excess resources, the amount of error is the lesser of—

(A) The amount of the payments made on behalf of the family or individual for the review month; or

(B) The difference between the actual amount of countable resources of the family or individual for the review month and the State's applicable resource standard in the approved State plan.

(ii) For ineligible cases resulting from other than excess resources, the amount of error is the total amount of medical assistance payments made for the individual or family under review for the review month.

(iii) For erroneous payments resulting from failure to properly meet beneficiary liability, the amount of error is the lesser of—

(A) The amount of payments made on behalf of the family or individual for the review month; or

(B) The difference between the correct amount of beneficiary liability and the amount of beneficiary liability met by the individual or family for the review month.

(5) In determining the amount of erroneous payments, errors caused by technical errors are not included.

(6) If a State fails to cooperate in completing a valid MQC sample or individual reviews in a timely and appropriate fashion as required, HCFA will establish the State's payment error rate based on either—

(i) A special sample or audit;

(ii) The Federal subsample; or

(iii) Other arrangements as the Administrator may prescribe.

(7) When it is necessary for HCFA to exercise the authority in paragraph (c)(6) of this section, the amount that would otherwise be payable to the State under title XIX of the Act is reduced by the full costs incurred by HCFA in making these determinations. HCFA may make these determinations either directly or under contractual or other arrangements.

(d) *Computation of anticipated error rate.*

(1) Before the beginning of each quarter, HCFA will project the anticipated State payment error rate for each State for that quarter. The anticipated error rate is based on the lower of the weighted average of the actual error rates for the two most recent 6-month review periods or the actual error rate of the most recently completed 6-month review period. In either case, the review period must have been completed by both the State and HCFA. Adjustments for the amount of erroneous payments due to excess resources and for technical errors will be made for all cases in the State and Federal samples for periods prior to October 1, 1983. Beginning with the October 1983–March 1984 sample period, these adjustments will be made only through the Federal difference resolution process if they are not reflected in the original State findings. If a State fails to provide HCFA with information needed to project an anticipated payment error rate, HCFA will assign the State an error rate as prescribed in paragraph (c)(6) of this section.

(2) The anticipated payment error rate established in paragraph (d)(1) of this section will then be adjusted by HCFA up to 25 percent based on the effect anticipated by HCFA of corrective action implemented by the State and a final anticipated payment error rate will be established by the Administrator. The following criteria will be used in assessing the effect of corrective action on the anticipated payment error rate:

(i) The State's correct identification of the major causes of errors.

(ii) The State's development of corrective actions designed to address the error causes identified by the State.

(iii) The State's implementation of the planned corrective actions.

(iv) The State's evaluation of whether or not corrective actions reduced the State's error rate.

(3) Based on the anticipated error rate established in paragraphs (d)(1) and (d)(2) of this section, HCFA will reduce the State's estimate of its FFP requirements for FFP for medical assistance for the quarter by the percentage by which the anticipated payment error rate exceeds the 3-percent national standard. This reduction will be applied against the State's total estimate of FFP for medical assistance expenditures (less payments to Supplemental Security Income beneficiaries in section 1634 contract States) prior to any other required reductions. The reduction will be noted on the State's grant award for the quarter and does not constitute a disallowance. The reduction, therefore, is not appealable.

(4) After the end of each quarter, an adjustment to the reduction will be made based on the State's actual expenditures.

(5) After the actual payment error rate has been established for an assessment period, HCFA will compute the actual amount of the disallowance and adjust the FFP payable to each State based on the difference between the amounts previously withheld for each of the quarters during the appropriate assessment period and the amount that should have been withheld based on the State's actual final error rate. Within 30 days after the actual error rate is calculated for a particular quarter, HCFA will increase the State's grant award to the extent that the final disallowance amount is less than the amount previously withheld for that quarter.

(6) HCFA will compute the amount to be withheld or disallowed as follows:

(i) Subtract the 3-percent national standard from the State's anticipated or actual payment error rate percentage.

(ii) If the difference is greater than zero, the Federal medical assistance funds for the period, excluding payments for those individuals whose eligibility for Medicaid was determined exclusively or in part by the Social Security Administration under a section 1634 agreement, are multiplied by that percentage. This product is the amount of the disallowance or reduction.

(7) A State's payment error rate for an annual assessment period is the sum of the weighted average of the payment error rates in the two 6-month review periods.

(8) The weights are established as the percent of the total annual payments that occur in each of the 6-month periods.

* * * * *

(e) *Notice of States and showing of good faith.*

(1) When the actual payment error rate data are finalized for the April–September 1983 assessment period and each annual assessment period thereafter, HCFA will establish each State's error rate and the amount of any disallowance. States that have error rates above the national standard will be notified by letter of their error rates and the amount of the potential disallowance.

(i) The State has 65 days from the date of receipt of this notification to show that this disallowance should not be made because it made a good faith effort to meet the national standard.

(ii) The Administrator finds that the State did not meet the national standard despite a good faith effort, HCFA will reduce the disallowance in whole, or in part, as the Administrator finds appropriate under the circumstances shown by the State.

(iii) A finding that a State did not meet the national standard despite a good faith effort will be limited to extraordinary circumstances.

(iv) The decision of the Administrator will be communicated to the State by letter.

(2) Some examples of circumstances under which the Administrator may find that a State did not meet the national standard despite a good faith effort are—

(i) * * *

(iv) State actions resulting from incorrect written policy interpretations to the State by a Federal official reasonably assumed to be in a position to provide that interpretation; and

(v) The State timely developed and implemented a corrective action plan which the Administrator finds to be reasonably designed to meet the national standard, but the national standard was not achieved. In evaluating whether the State made a good faith effort in these circumstances, the Administrator will consider the following factors:

(A) Submittal of annual corrective action plans to the HCFA Regional Office by August 31 of each year with revisions to the plan made within 60 days of identification of additional error prone areas, other significant changes in the error rate, or changes in planned corrective action.

* * * * *

(3) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources is not a ground for a waiver.

(4) A State may request reconsideration of a disallowance under this section in accordance with the procedures specified in 45 CFR Part 16.

4. Section 431.804 is amended by revising the title and the definition of "State payment error rate" in paragraph (b) to read as follows:

§ 431.804 Disallowance of Federal financial participation for erroneous State payments (effective January 1, 1984).

* * * * *

(b) *Definitions.* For purposes of this section—

* * * * *

"State payment error rate" means the ratio of erroneous payments for medical assistance to total expenditures for medical assistance (less payments to Supplemental Security Income beneficiaries in section 1634 contract States) for cases under review under the MQC system for each assessment period.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: January 8, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 16, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-3411 Filed 2-7-84; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 62, 64, 65, 66, 67, 70, 75, and 77

Changes in Assignments of Officials in FEMA Regulations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This document changes numerous references in FEMA regulations from the Associate Director, State and Local Programs and Support, FEMA (called the Associate Director) to references to the Federal Insurance Administrator. The change is needed because the activities described in the regulations are now, as a result of a recent transfer of functions, being performed by the Administrator.

EFFECTIVE DATE: February 8, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, FEMA, 500 C Street SW., Washington, D.C. 20472, (202) 287–0377.

SUPPLEMENTARY INFORMATION: This regulation makes changes needed to reflect new organizational assignments within FEMA. It relates to internal management and, thus, is not a subject to Executive Order 12291 and the Regulatory Flexibility Act. It is categorically excluded from environmental requirements of 44 CFR Part 10. It is not substantive rule. Thus, notice and public comment are unnecessary and the rule can be made effective immediately. There is no information collection involved.

List of Subjects

44 CFR Part 59

Flood insurance, Floodplains.

44 CFR Part 60

Flood insurance, Floodplains.

44 CFR Part 61

Flood insurance.

44 CFR Part 62

Flood insurance.

44 CFR Part 64

Flood insurance.

44 CFR Part 65

Flood insurance.

44 CFR Part 66

Flood insurance, Floodplains, Intergovernmental relations.

44 CFR Part 67

Flood insurance, Floodplains.

44 CFR Part 70

Flood insurance, Floodplains.

44 CFR Part 75

Flood insurance, Floodplains.

44 CFR Part 77

Flood insurance, Floodplains, Grant programs/environmental protection.

Accordingly, Subchapter B, Chapter I of Title 44, Code of Federal Regulations, is amended as follows:

PART 59—GENERAL PROVISIONS

§§ 59.1, 59.2, 59.22, and 59.24 [Amended]

1. 44 CFR Part 59 is amended by removing the title "Associate Director"

and adding the title "Administrator" in place thereof in the following sections:

Sections 59.1 in definition of "Eligible Community", "Flood elevation determination", "Flood Hazard Boundary Map", "Flood Insurance Rate Map", "Participating Community", "Project Cost", "Regular Program", and "States Coordinating Agency" 59.2(a), 59.2(b), 59.22(a)(9) (i) and (v), 59.22(b)(2), 59.24(a) (9 times), 59.24(b) (6 times).

2. Section 59.22(a)(9)(ii) is amended by removing the words "and the Associate Director."

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

§§ 60.1–60.6, 60.11, 60.13 and 60.25 [Amended]

3. 44 CFR Part 60 is amended by removing the title "Associate Director" and adding the title "Administrator" in place thereof in the following sections: §§ 60.1(a), 60.1(b), 60.2(a) (2 times), 60.2(f), 60.2(h) (2 times), 60.3 introductory text (5 times), 60.3(a), 60.3(b), 60.3(b)(4), 60.3(b)(6), 60.3(c), 60.3(c)(2), 60.3(c)(4), 60.3(d), 60.3(e), 60.4 introductory text (5 times), 60.4(a), 60.4(b), 60.4(b)(2), 60.5 introductory text (5 times), 60.5(a), 60.5(b), 60.5(b)(2), 60.6(a) (3 times), 60.6(a)(6), 60.6(b)(1) (2 times), 60.6(b)(2), 60.6(b)(3), 60.6(b)(4), 60.11(a), 60.11(b) (first time only), 60.13, 60.25(a)(4), 60.25(b).

4. Section 60.25(a)(17) is amended by removing the words "and the Associate Director".

PART 61—INSURANCE COVERAGE AND RATES

§§ 61.1, 61.9 and 61.12 [Amended]

5. Section 61.1 is amended by removing the title "Associate Director, State and Local Programs and Support" and adding "Administrative" in place thereof.

6. 44 CFR Part 61 is amended by removing the title "Associate Director, State and Local Programs and Support" and adding the title "Administrator" in § 61.9.

7. 44 CFR Part 61 is amended by removing the title "Associate Director" and adding the title "Administrator" in place thereof in the following sections:

§§ 61.12(a), 61.12(b), 61.12(c), 61.12(d), 61.12(e), and 61.12(f).

8. Section 61.12(c) is amended by removing the words "Engineering Branch, Office of Natural and Technological Hazards, Office of State and Local Programs and Support" and adding in its place the words "Risk Studies Division, Office of Risk Assessment, Federal Insurance Administration."

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

§§ 62.3 and 62.4 [Amended]

9. 44 CFR Part 62 is amended by removing the title "Associate Director" where it appears in § 62.3(a), and in § 62.4(a) and adding the title "Administrator" in place thereof.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

§§ 64.1, 64.3, 64.4, and 64.5 [Amended]

10. Section 64.1(a) is amended by removing the title "Associate Director, State and Local Programs and Support" and adding the title "Administrator" in place thereof.

11. 44 CFR Part 64 is amended by removing the title "Associate Director" and adding the title "Administrator" in its place in the following sections: 64.1(b), 64.3(a), 64.3(a)(2), 64.3(c)(1), 64.4(b), 64.4(c), 64.4(d), 64.5(a) (2 times).

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

§ 65.3 [Amended]

12. 44 CFR Part 65 is amended by removing the title "Associate Director" and adding the title "Administrator" in its place in the following sections: § §65.3, 65.3(a), 65.3(a)(2), 65.3(c).

13. Section 65.3(b) is amended by removing the words "Engineering Branch, National Hazards Division, Office of Natural and Technological Hazards," and adding "Risk Studies Division, Office of Risk Assessment, Federal Insurance Administration" in its place thereof.

PART 66—CONSULTATION WITH LOCAL OFFICIALS

§§ 66.1, 66.3, 66.4, and 66.5 [Amended]

14. 44 CFR Part 66 is amended by removing the title "Associate Director" and adding the title "Administrator" in its place in the following sections: §§ 661.(c), 66.1(c)(3), 66.3(a), 66.3(b), 66.4 (3 times), 66.5(b).

15. 44 CFR Part 66 is amended by removing the title "Associate Director's" and adding the title "Administrator's" in its place in § 66.3(b).

16. Section 66.4(a) is amended by removing the words "for State and Local Programs and Support (Associate Director)".

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

§§ 67.3, 67.4, 67.6–67.9 and 67.12 [Amended]

17. 44 CFR Part 67 is amended by removing the title "Associate Director"and adding the title "Administrator" in its place in the following sections: § §67.3 introductory text, 67.3(e), 67.3(f), 67.4 introductory text, 67.7(b), 67.7(d), 67.8(a), 67.8(b), 67.8(c), 67.8(e), 67.9(a), 67.12(a).

§§ 67.5, 67.7 and 67.11 [Amended]

18. 44 CFR Part 67 is amended by removing the possessive form of the title "Associate Director's" and adding the possessive form of the title "Administrator's" in place thereof in the following sections: § §67.5 (2 times), 67.7(a) (2 times), 67.7(d), 67.11.

PART 70—PROCEDURE FOR MAP CORRECTION

§§ 70.1 and 70.3–70.7 [Amended]

19. 44 CFR Part 70 is amended by removing the title "Associate Director"and adding the title "Administrator" in its place in the following sections: § §70.1, 70.3(a), 70.4, 70.5, 70.6(a), 70.7(a).

20. Section. 70.7(a) is amended by removing the words for "State and Local Programs and Support".

PART 75 —EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF INSURANCE PLAN

§§ 75.1, 75.10, 75.11 and 75.13 [Amended]

21. 44 CFR Part 75 is amended by removing the words "State and Local Director"and adding "Administrator" in place thereof in the following sections: §§ 75.1, 75.10, 75.11(a) (2 times) and 75.13(c).

PART 77—ACQUISITION OF FLOOD DAMAGED STRUCTURES

§§ 77.1 and 77.2 [Amended]

22. 44 CFR Part 77 is amended by removing the title "Associate Director"and adding in its place "Administrator" in the following sections: § §77.1(b), 77.2(b), 77.2(b)(1), 77.2(b)(4), 77.2(b)(5), 77.2(d)(1) (2 times).

23. Section 77.2(d)(3) is amended by removing the title "Director" and "Director's" and adding "Administrator" and "Administrator's" in place thereof.

Authority: Reorganization Plan No. 3 of 1978, Executive Order 12127.

Dated: February 1, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-3353 Filed 2-7-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

Letter Regarding Interpretation of the Jurisdictional Separations Manual

AGENCY: Federal Communications Commission.

ACTION: Interpretation letter.

SUMMARY: Under delegated authority the Common Carrier Bureau in response to a request by Southwestern Bell has provided an interpretation of the FCC-NARUC Jurisdictional Separations Manual, Part 67 of the FCC Rules and Regulations. The issue concerns the updating of Operator Work Time by periodic studies for use as a basis for apportioning costs in state/interstate separations.

FOR FURTHER INFORMATION CONTACT: Michael E. Wilson, Audits Branch, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone No. (202) 634-1965.

William J. Tricarico,

Secretary, Federal Communications Commission.

January 31, 1984.

Mr. D. D. Dupre,
General Attorney,
Southwestern Bell,
1111 West Capitol Avenue,
Little Rock, Arkansas 72203

Dear Mr. Dupre: This is in response to your letter of December 8, 1983, to Jack Smith requesting an interpretation of the *Jurisdictional Separations Manual (Manual)* concerning the updating of Operator Work Time (OWT) studies. The basic issue is whether an update to OWT is a proper implementation of the *Manual* procedures or whether OWT was frozen in 1970, requiring regulatory approval for use of updated studies for separations.

In the *Manual* under Section 11.2, Fundamental Principles Underlying Procedures, Paragraph 11.212, is the following statement:

In the development of "actual use" measurements, measurements of use are: (1) Determined for telephone plant or for work performed by operating forces on a unit basis (e.g., conversation-minute-mile per message, traffic units per call) in studies of traffic handled or work performed during a representative period* * *.

It is our interpretation that the performance of regular studies to update OWT is consistent with the general principle of representativeness, as expressed in the above citation, and therefore is a proper implementation of *Manual* requirements. Consistent with this interpretation and with the provision in Paragraph 11.211 requiring that separations be "made on the 'actual use' basis, which gives consideration to relative occupancy and relative time measurements," it is our opinion that OWT was not frozen in 1970. Such a freeze would be arbitrary and contrary to providing proper consideration to relative occupancy and time. Accordingly, updated studies of OWT are required to assure representativeness. And, use of such studies for separations is required to provide conformance with the "actual use" principle and does not routinely require a Joint Board or FCC hearing for approval—though, of course, the studies are always subject to FCC oversight.

If you have any questions concerning this response, please contact Michael Wilson, Chief, Audits Branch, on (202) 634-1965.

Sincerely,

Gerald P. Vaughan,

Chief, Accounting and Audits Division

[FR Doc. 84-3346 Filed 2-7-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-738; RM-4457]

FM Broadcast Station in Silverton, Colorado; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C Channel 297 to Silverton, Colorado, as that community's third FM broadcast service, in response to a petition filed by Patsy Jensen.

EFFECTIVE DATE: April 2, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Silverton, Colorado); MM Docket No. 83-738, RM-4457.

Report and Order (Proceeding Terminated)

Adopted: January 13, 1984.
Released: January 27, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 36169, proposing the assignment of Class C Channel 297 to Silverton, Colorado, as that community's third FM broadcast service,[1] in response to a petition filed by Patsy Jensen ("petitioner"). Supporting comments were filed by petitioner in which she reaffirmed her intention to file for the channel, if assigned. No oppositions to the proposal were received.

2. In view of the expressed interest in the allocation of Channel 297 to Silverton, Colorado, and the fact that the proposed assignment could provide a third FM broadcast service to that community, the Commission believes that the public interest would be served by a grant thereof.

3. As indicated in the *Notice*, Class C Channel 297 can be assigned to Silverton in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 2, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Silverton, Colo.	257A, 280A, and 297.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-3342 Filed 2-7-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 81-737; RM-3882]

FM Broadcast Stations in Montevideo, Olivia, and Ortonville, Minnesota; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

[1] A petition has been filed by Longhorn Communications, Inc., licensee of FM Station KDRW (Channel 280A) Silverton, requesting the substitution of Class C Channel 297 for Channel 280A, and modification of its license to specify operation on the Class C Channel (see MM Docket 83-1131, 48 FR 50575, published November 2, 1983).