Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.17 [Amended]

2. Section 71.171 is amended as follows:

Brunswick Malcolm-McKinnon Airport, GA [Revised]

Within a 5-mile radius of Malcolm-McKinnon Airport (lat. 31°09'05" N, long. 81°23'30" W.); within 1.5 miles each side of the Brunswick VORTAC 022° radial, extending from the 5-mile radius zone to the VORTAC.

Issued in East Point, Georgia, on April 30, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-12363 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Counterfeit Drugs Enforcement Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to enforcement activities to add to the authorities delegated to officers and employees of FDA who have been issued certain FDA official credentials. The amendment delegates authority to criminal investigators to conduct certain activities relative to counterfeit drugs and to carry firearms under section 702(e)(1) through (e)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 372(e)(1) through (e)(5)).

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.35 *Enforcement activities* (21 CFR 5.35) to delegate authority to FDA officers and employees who have been issued FDA credentials consisting of both Form FDA-200A, Identification Record, and Form FDA-200D, Special Authority for Criminal Investigators, to perform the following relative to counterfeit drugs under section 702(e)(1) through (e)(5) of the act: to carry firearms; to serve and execute search warrants and arrest warrants; to execute seizure by process issued pursuant to libel under section 304 of the act; to make arrests without warrant for offenses under the act with respect to counterfeit drugs under certain conditions; and to seize counterfeit drugs and equipment, labeling, and other things used or designed for use in making counterfeit drugs. The newly delegated authority will allow the designated officials to carry out their responsibilities thoroughly and expeditiously.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organizations and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a 242l, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. section 5.35 is amended in paragraph (a)(1) by removing "(the Act)" and inserting in its place "(the act)", by redesignating paragraph (b), as paragraph (c), by adding a new paragraph (b), by revising the introductory text of newly redesignated paragraph (c), and by adding new paragraph (c)(3) to read as follows:

§ 5.35 Enforcement activities.

(a) * * *

(b) Any designated officer or employee of the Food and Drug Administration who has been issued the Food and Drug Administration Official Credentials consisting of Form FDA-200A, Identification Record, and Form FDA-200D, Special Authority for Criminal Investigators, is authorized to do the following relative to counterfeit drugs, as set forth under section 702 (e)(1) through (e)(5) of the act:

(1) Carry firearms;

(2) Serve and execute search warrants and arrest warrants;

(3) Execute seizure by process issued pursuant to libel under section 304 of the act;

(4) Make arrests without warrant for an offense under the act with respect to counterfeit drugs if the offense is committed in the presence of the criminal investigator or, in the case of a felony, if the investigator has probable cause to believe that the person so arrested has committed, or is committing, such offense; and

(5) Make, prior to the institution of libel proceedings under section 304(a)(2) of the act, seizures of drugs or containers or of equipment, punches, dies, plates, stones, labeling, or other things, if they are, or the criminal investigator has reasonable grounds to believe that they are, subject to seizure and condemnation under section 304(a)(2) of the act.

(c) The Food and Drug Administration's official credentials referred to in paragraphs (a) and (b) of this section are described as follows:

* * * * *

(3) Form FDA-200D, entitled "Special Authority for Criminal Investigators," bears the holder's name, his or her special authority relative to counterfeit drugs, an identification number, an expiration date, the Commissioner's signature, the names of the Department of Health and Human Services, the Public Health Service, and the Food and Drug Administration. The form is superimposed with the Department's seal with blue imprint.

Dated: May 20, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12355 Filed 5-23-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 581

[Docket No. R-91-1542; FR-2620-I-01]

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12a

Use of Real Property To Assist the Homeless

AGENCIES: Department of Housing and Urban Development; General Services Administration; Department of Health and Human Services.

ACTION: Interim final rule with request for comments.

SUMMARY: Title V of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411 (McKinney Act), as amended, requires the Administrator of the General Services Administration (GSA), the Secretary of Housing and Urban Development (HUD), and the Secretary of Health and Human Services (HHS) (collectively referred to herein as "the Agencies"), to promulgate regulations to carry out the requirements of title V of the McKinney Act. The Agencies are promulgating the following joint interim final rule to fulfill that mandate.

Title V of the McKinney Act, as amended, Public Law 101-645, 104 Stat. 4673, (November 29, 1990), provides that suitable Federal properties categorized as underutilized, unutilized, excess, or surplus may be made available to States, units of local government and non-profit organizations, for facilities to assist the homeless. Responsibilities under title V are divided among three agencies: GSA, HUD, and HHS, as well as the Interagency Council on the Homeless. The interim final rule (herein rule or regulation) explains the procedures used by each agency in fulfilling its responsibilities under title V of the McKinney Act. The Agencies intend that representatives of the homeless, and thus, the homeless themselves, will benefit from this clarification of the title V process.

DATES: Effective Date: This rule is effective on May 24, 1991, except for $———.3, which will not be effective until approved by the District Court for the District of Columbia pending further proceedings in the case *National Law Center on Homelessness and Poverty* v. *Dept. of Veterans Affairs*, No. 88-2503-OG (Dec. 12, 1988). The Agencies will publish a separate notice in the **Federal Register** announcing the effective date of that section.

Under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 1441a, no rule or regulation of HUD may become effective until after the expiration of the 30 day calendar period beginning on the day after the day on which the rule or regulation is published. Because section 501(d) of the Stewart B. McKinney Homeless Assistance Act as amended requires that regulations implementing title V be issued jointly by GSA, HHS, and HUD, and contemplates that such regulations would be effective no later than 90 days after the date of enactment of the 1990 amendments to the Act, the General Counsel of HUD has determined that Congress intended that section 7(o) not apply to this regulation.

Comments Due: Comments must be submitted on or before July 23, 1991, and will be incorporated as appropriate.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address. Although comments should be sent to this centralized location, they will be circulated to each of the three agencies.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX is (202) 708-4337. (This is not a toll free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708-2084, or for the hearing or speech impaired, TDD (202) 708-3259.

FOR FURTHER INFORMATION CONTACT:

Majorie Lomax, General Services Administration, 18th & F Streets NW., DRP 4227, Washington, DC 20405, (202) 501-0052.

Judy Breitman, Chief, Real Property Branch, Division of Health Facilities Planning, Public Health Service, Department of Health and Human Services, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2265.

Mark Finks, Deputy Director, Office of Special Needs Assistance Programs, Department of HUD, room 7262, 451 7th Street SW., Washington, D.C. 20410, (202) 708-4300 or TDD (202) 708-2565.

Patricia Carlile, Executive Director, Interagency Council on the Homeless, room 7274, 451 7th Street SW., Washington, D.C. 20410, (202) 708-1480.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and have been assigned OMB number 09370191.

This rule will supersede Temporary Regulation H-27, published in the **Federal Register** on October 5, 1989 (54 FR 41099), by the General Services Administration, and codified in the appendix to subchapter H in title 41 of the CFR. This regulation also supersedes the information included in a **Federal Register** Notice published by HUD on June 23, 1989. See 54 FR 26421.

Under section 501 of title V, 42 U.S.C. 11411, HUD is responsible for collecting information from Federal landholding agencies regarding Federal real property that is excess or surplus or is described as unutilized or underutilized in property surveys which are performed annually by landholding agencies. In addition, HUD is responsible for collecting information from GSA regarding properties identified as excess or surplus pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (EPASA) (40 U.S.C. 483(B)(2).). HUD is also responsible for developing suitability criteria to determine which of those properties are suitable for use as facilities to assist the homeless. Only HUD has the authority to determine whether a property is suitable or unsuitable.

HHS is responsible for accepting and evaluating applications from states, local government agencies, or private nonprofit organizations which provide services to the homeless for use of unutilized, underutilized, excess, and surplus properties. In the case of excess property, HHS will request assignment of the property from GSA, and if the property is declared surplus and assigned to HHS, HHS will enter into a lease agreement or deed with the successful applicant. In the case of unutilized or underutilized property,

HHS will process applications for the use of the property, but the individual landholding agency will enter into the lease or permit agreement with the successful applicant.

GSA is responsible for determining whether the real properties reported to GSA by a particular agency as excess to its needs are required for use by any other Federal agency. Excess properties are those properties which an individual landholding agency determines are not necessary for the agency to discharge its responsibilities. Once GSA receives a request for assignment from HHS indicating that HHS has evaluated and approved an application under title V from an eligible organization with an approvable program, GSA may assign the property to HHS. In making such a determination, GSA will give priority of consideration to uses to assist the homeless, unless it determines that a competing request for the property under section 203(k) of the FPASA is so meritorious and compelling as to outweigh the needs of the homeless.

The rule establishes procedures for collecting information from landholding agencies about excess, surplus, unutilized and underutilized properties under their control and the criteria for determining the suitability of such property for use as facilities to assist the homeless. The rule also describes the process by which applications are received and evaluated.

Collecting the Information

Under section 202 of the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. 483, as amended, and Executive Order 12512, implemented by GSA at 41 CFR 101–47.8, Federal executive landholding agencies are required to conduct annual reviews of real property under their control. The agencies must identify any real property that is unutilized or underutilized in accordance with standards set out in 41 CFR 101–47.801. Pursuant to Executive Order 12512, GSA must also conduct surveys of agencies' real property holdings to identify any property which is unutilized or underutilized.

Section 501(a) of the McKinney Act directs HUD to collect information from Federal landholding agencies about property under their control which the agencies have determined to be unutilized or underutilized in the surveys described above. Under the rule, HUD will be required to canvass agencies on a quarterly basis regarding such property. Agencies must respond to the canvass within 25 days after receiving HUD's canvass letter. In accordance with section 501(a), the rule provides that within 30 days of collecting the information, HUD must determine which properties are suitable.

In addition to collecting information on unutilized and underutilized property, HUD will collect information concerning GSA's inventory of "excess" and "surplus" properties to determine which of those properties are suitable for use as facilities to assist the homeless. GSA offers "excess" properties to other Federal agencies through a process known as "Federal screening." If no other agency expresses a need for the property, it is determined "surplus," at which time GSA may arrange for the disposal of the property.

The agencies note that the section of this interim final rule relating to HUD's collection of information regarding unutilized, underutilized, excess or surplus properties is in conflict with the decision of the U.S. District Court for the District of Columbia in *National Law Center on Homelessness and Poverty, et al.* v. *U.S. Department of Veterans Affairs, et al.*, No. 88–2503–OG (D.D.C.), issued February 13, 1991. That decision interpreted the court's permanent injunction of December 12, 1988, which set forth certain procedures to be followed by the defendants in implementing title V of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411 (1987). In interpreting its December 12, 1988, order, the court specifically addressed the issue of HUD's collection of information regarding Federal real properties from Federal landholding agencies as required by title V. The court concluded that the order, which interpreted title V prior to the 1990 amendments, required HUD to perform "comprehensive canvasses," *i.e.*, collection of information from each landholding agency regarding all Federal public buildings, each quarter to determine whether landholding agencies have property that is unutilized, underutilized, excess, or surplus.

Although HUD had not previously interpreted the court's December order as requiring comprehensive quarterly canvasses, on April 1, 1991, HUD, in accordance with the court's February 13, 1991, order, conducted a comprehensive canvass of all Federal landholding agencies to determine whether said agencies had properties as described by the court order. Because the text of §____.3 below, conflicts with the court's February 13, 1991, decision and order, §____.3 will not be effective pending the outcome of further judicial proceedings in the *National Law Center* case. In the interim, the agencies will continue to comply with the court's orders.

Title V, as amended was signed into law on November 29, 1990, and became effective on February 27, 1991. Although the court's February opinion was issued subsequent to the enactment of title V, the court's opinion did not interpret, nor did it purport to interpret, HUD's responsibilities under the newly enacted amendments, because the issues before the court arose prior to the amendment of title V.

Title V, as amended on November 29, 1990, requires the Secretary of HUD, "on a quarterly basis, to request information from each landholding agency regarding Federal public buildings and other Federal real properties * * *" See 42 U.S.C. § 11411(a). The agencies interpret title V not to require HUD to conduct the quarterly collection of information from landholding agencies in the same manner as ordered by the District Court in the *National Law Center* case. The agencies interpret the 1990 amendments to require quarterly canvasses by HUD to collect updated information on properties not previously reported that year, instead of "comprehensive" collections each quarter of information regarding all Federal public buildings or other real property. Any other interpretation, as explained below, would make title V unworkable and would not only impose unnecessary administrative burdens but would lead to a situation in which properties that entered the title V process would continue in the process indefinitely with virtually no chance for the government to dispose of properties determined to be surplus to its needs.

Title V provides for an annual property canvass on December 31 of each year with quarterly updates. Section 501(c)(4)(A) requires that on December 31 of each year, the head of each landholding agency report to the Secretary of HUD the current availability status and the current classification of each property controlled by that agency that was included in a list of properties determined to be both suitable for use by the homeless and available for application by representatives of the homeless, and which remain available for application or have become available for application during that year. The properties identified by the landholding agencies must be published in the **Federal Register** by February 15 of the following year. Any homeless provider interested in applying for any of the listed properties has 60 days from February 15 to submit a written notice of intent to apply for a particular property. Thus, on February 15 of each year a completed list of every suitable and

available Federal building or other real property categorized as excess, surplus, unutilized, or underutilized will be available for submissions of notices of intent to apply for property by representatives of the homeless for 60 days, *i.e.*, until April 15.

On January 1, April 1, July 1, and October 1 of each year, HUD will conduct a canvass to collect information on properties not previously reported and about property reported previously, the status or classification of which has changed or for which any of the information reported on the property checklist has changed. Those properties determined suitable will be subject to a 60 day holding period during which homeless providers may submit a written notice of intent to apply for use of a particular property to assist the homeless. If no written notice of intent to apply for a property or application is received after the expiration of the 60-day period, the Federal landholding agency will be free to dispose of the property in accordance with the agency's normal disposal method.

An interpretation of title V which contemplated that a comprehensive canvass of all Federal real properties was to be completed each quarter would effectively bar any disposal of property except to homeless assistance providers. For example, under such an interpretation an agency would report properties that are suitable and available on December 31 as required by the statute. These properties would be published on February 15, and would have to be held for consideration by representatives of the homeless for 60 days—i.e. until April 16. On January 1, HUD would request information from the same agencies regarding all properties that are unutilized, underutilized, excess or surplus, regardless of whether the properties had previously been reported. These properties would be reviewed for suitability and availability. Using the time frames set forth in section 501 (a) and (b) of the Act, properties that would be reported in response to the January 1 canvass would be published in the **Federal Register** by April 25. Properties that are suitable and available would have to be held for homeless consideration for 60 days, or until June 25. Under such an interpretation, the 60-day holding period for the properties reported on December 31, as noted above, ends on April 16, but those same properties if reported pursuant to the January 1 canvass, would be republished on April 25 and therefore would be subject to another 60-day holding period, which means that said properties would be held until June 25. This extremely narrow window of time between these statutorily mandated holding periods may virtually preclude efforts to dispose of property other than through the title V process. Similar problems would occur for canvasses conducted in subsequent quarters. For example, properties that would be held until June 25 would be re-reported to HUD in response to its April 1 canvass by July 9 for publication by July 24.

In the conference language to the title V amendments the conferees stated that "a standard is thus established in the Conference report which is meant to guarantee the rights of successful applicants *while upholding the legitimate property needs of the Federal government.*" H.R. Rep. No. 101–951, 101st Congress, 2nd Sess. at 100 (1990) (emphasis added). That language clearly contemplates a balance between providing an opportunity for homeless applicants and the government's need to otherwise sell or dispose of its properties. Congress' intention not to require Federal properties to be held indefinitely in the Title V process is also evidenced in the conference report where the conferees discussed requests for application extensions by representatives of the homeless. The conferees stated, "[b]y this requirement the conferees intend that surplus properties not be held indefinitely." *Id.* The agencies' interpretation balances the purpose of the Act—to make unused and underused Federal properties available to assist the homeless—with the need of the Federal government to dispose of surplus Federal properties.

Simply because all properties are not reported to HUD every quarter does not mean that homeless providers will lose their ability to apply for properties determined suitable and available. Properties that are reported to HUD and determined suitable and available will be published in the **Federal Register** at least twice in a twelve month period—once upon the initial suitability and availability determination, and again on February 15, if they are still available. Even after the expiration of the 60-day holding period, representatives of the homeless may still apply for properties. Title V provides that a written notice of intent to apply for a property previously published as suitable and available may be filed at any time after a 60-day period has expired, if the property remains available. The representative of the homeless will then have 90 days in which to file an application for use of the property.

Determining Suitability

Under the rule, HUD will determine the suitability of unutilized and underutilized properties solely from the information collected from landholding agencies. In the case of properties designated excess or surplus, HUD's suitability determination will be based on an evaluation of information collected from GSA. Because suitability determinations must be made before applications for use are received, they are made without the knowledge of a specific proposal for use of a property. HUD's determination that a property is suitable does not imply that it is suitable for a particular use (it may be suitable only for storage, for example), nor does it imply any obligation on the part of the Federal Government to repair or modify the property so that it may be used for a particular purpose. Interested applicants will need to inspect properties in which they are interested to determine for themselves whether they are in a position to incur the costs to make a property usable. Suitable properties that are made available are available on an "as is" basis.

The rule will require HUD to keep a written record of the reasons for a determination that a property is unsuitable for use as a facility to assist the homeless. Properties determined unsuitable will be held for 20 days after the determination of unsuitability to allow for review of this decision by representatives of the homeless.

Suitability Criteria

The suitability criteria have been developed with the intent of excluding only those properties that are clearly unsuitable for use to assist the homeless. Thus, most properties will be determined suitable unless certain conditions exist. These conditions include national security concerns, the proximity of flammable or explosive material, location in a floodway, runway clear zone or military airfield clear zone, and other documented deficiencies, including environmental hazards, which would present a clear threat to physical safety. Vacant land may be determined suitable if the land is accessible or is capable of being made accessible by the applicant.

For properties for which applications are received under title V, an environmental evaluation will be completed by HHS based on information provided by the applicants pursuant to the requirements of the National Environmental Policy Act, 42 U.S.C. 4321. This evaluation will be performed after notice of availability is

published in the **Federal Register** and an application is received. HHS will review the environmental information to determine if exceptional, extraordinary, or hazardous circumstances exist which could affect the use of the property. The application packet provided to the applicant by HHS contains information to assist applicants in obtaining the necessary environmental information. Upon notice from HHS that an application has been received for a particular property, HUD will forward to HHS a copy of the suitability checklist for that property to assist HHS in its environmental evaluation. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

Determination of Availability

Section 501(b) directs HUD to notify a landholding agency with respect to any property of the agency that HUD has identified as suitable. Within 45 days after receipt of the notice from HUD, the agency must transmit to HUD notice of: (1) Its intention to declare the property excess to the agency's need; (2) its intention to make the property available for use as a facility to assist the homeless; or (3) the reasons why the property cannot be declared excess or made available for use by the homeless.

If the landholding agency decides that the property cannot be declared excess or that it cannot be made available to assist the homeless, the property will not become available. If the landholding agency intends to declare the property excess to the agency's need, the property may be made available to assist the homeless, after screening for use by other Federal agencies, in accordance with the FPASA and GSA's implementing regulations. Under these procedures, another Federal agency may indicate a desire to use the property to execute programs under its responsibility. In certain circumstances, GSA may exercise its discretion to make excess suitable property available for facilities to assist the homeless without offering the property to other Federal agencies through the screening process. Where properties are declared excess subsequent to HUD's publication of suitability, GSA will notify the public through its established procedures. If the landholding agency agrees to make the property available for use by the homeless without declaring it excess, it will be responsible for making the property available after HHS approves an application received from a representative of the homeless for use of the property.

GSA must respond to HUD within 45 days regarding properties which have previously been determined excess and which remain in GSA's inventory. GSA must transmit to HUD either (1) a statement that there is no other compelling Federal need for the property and that, therefore, the property will be determined surplus, or (2) a statement that there is a further and compelling Federal need for the property, and that, therefore, the property is not presently available for use to assist the homeless.

Public Notice

Under title V, as amended, HUD is required to publish in the **Federal Register** a list identifying properties determined suitable and available for use as facilities to assist the homeless. HUD is also required to publish lists of other properties reviewed, i.e., those determined suitable but not available, and those determined unsuitable. In an effort to get information to the homeless on an expedited basis, HUD will publish properties on a weekly basis. Should HUD determine that weekly publication is no longer necessary, HUD will publish a notice in the **Federal Register** stating its new publication schedule. Each notice will include a short description of each property and its location. The notice will also include information regarding whom to contact for further information and where to send written notices of intent to apply for property and applications for use of the property.

HUD is also responsible for transmitting to the Interagency Council on the Homeless (Council) a list of all properties that are published in the **Federal Register.** The Council will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The Council will encourage the state and regional homeless coordinators to disseminate this information widely.

On December 31 of each year, each landholding agency will report to HUD the current availability status and the current classification of each property controlled by the agency that was published as suitable during that year. Be February 15 of each year, HUD will publish a list of those properties in the **Federal Register.** HUD will also publish annually a list of suitable/unavailable properties with the reasons why the property was determined unavailable. HUD has established a toll-free number to provide the public with specific information about properties published in the **Federal Register.**

Holding Period

Suitable and available properties will be held for 60 days following publication in the **Federal Register.** During this time, States, units of local government, or private nonprofit organizations interested in particular properties for use to assist the homeless must submit written expressions of interest to HHS. If no expressions of interest have been received after 60 days, GSA or the appropriate landholding agency may proceed with disposal procedures in accordance with other applicable Federal law. The property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60 day holding period noted above, (1) no application or written expression of interest has been made under any law for use of the property for any purpose, and (2) in the case of surplus property, the Administrator of GSA has not received a bona fide offer to purchase the property or advertised the sale of the property by public auction.

Application Process

HHS is responsible for receiving applications for suitable and available properties published in the **Federal Register.** Written expressions of interest must be received by HHS within 60 days after a property is published in the **Federal Register.** An expression of interest need only be a short letter which identifies the specific property and briefly describes the proposed use. It should also include the name of the organization and indicate whether it is a public body or a private non-profit organization. It is helpful for representatives of the homeless to include the date the property was published in the **Federal Register** and, in the case of excess properties, the GSA number listed in the **Federal Register.**

Upon receipt of an expression of interest, HHS will mail an interested organization an application packet and notify the appropriate landholding agency that it has received an expression of interest. A complete application must be received within 90 days from the date an expression of interest is received from a particular organization for a particular piece of property. Accordingly, each organization will have a different deadline. All applicants which have applied for a particular piece of property will be informed as soon as an application has been approved for that property.

The application packet will ask a series of questions and request information to which the applicant must respond. Applicants must describe their organization and document their authority to acquire real property.

Organizations must be State or local governments, or non-profit entities, and must document that they will provide services to persons who meet the definition of the homeless included in title I of the McKinney Act. Applicants must provide a thorough description of their proposed program, including a description of the manner in which it will be necessary to alter the property to implement the program. Applicants must also indicate that they have notified the relevant local governments regarding their proposed program. Applicants must indicate that they either have the necessary funds or are in the process of obtaining the necessary funds to implement the proposed program. Finally, applicants must answer a series of questions regarding environmental factors, so that HHS can perform an environmental evaluation pursuant to the requirements of the National Environmental Policy Act (NEPA). HHS will assist applicants in obtaining any pertinent environmental information which is in the possession of HUD, GSA, or the landholding agency. The proposed program need not comply with local zoning requirements unless the applicant is interested in receiving a deed for the property.

As stated, section 501(e), as amended, requires HHS to evaluate each completed application within 25 days of receipt. Accordingly, applications will be processed on a first-come, first-served basis. When HHS receives a completed application for excess or surplus property that satisfies the application requirements, HHS will request assignment of that property from GSA for lease or deed to an eligible applicant. HHS will forward approved applications for unutilized or underutilized properties to the landholding agency so that the landholding agency may enter into a lease or permit agreement with the applicant organization. Because applications must be evaluated within 25 days of receipt, HHS' evaluation will be limited to the information contained in the application.

Under section 501, a landholding agency may allow unutilized or underutilized property to be made available to eligible organizations by lease, license, or use permit. Because these are properties which the landholding agencies will use in the future to carry out the agencies' responsibilities, the length of time a property may be available, and the exact terms and conditions of the lease or use permit, will be determined through consultation between the applicant and the landholding agency.

When more than one application is received for a particular property, HHS will convene an objective review panel to rank the applications. Because applications must be evaluated within 25 days of receipt, only those applications received for a particular property within 5 days after the initial application is received will be simultaneously evaluated by an objective review panel. The landholding agency or GSA, as appropriate, will be notified regarding the successful applicant. Applications received subsequent to a decision to lease or permit a property to a particular entity will be returned.

Transfer of Surplus Property by Deed

On August 8, 1990, HHS amended its regulations under part 12 to permit deeding of surplus property to organizations which assist the homeless. 45 CFR 12.3(e). Eligible organizations interested in receiving a deed for a particular piece of suitable property published in the **Federal Register** may file an application in compliance with the requirments set out in this rule, and those set out in 45 CFR part 12. As specified in 45 CFR part 12, organizations must be a state or local government or a section 501(c)(3) tax-exempt entity in order to receive title to a particular piece of Federal surplus real property. Such property will be conveyed under the authority set out in section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1) and (4)) and pursuant to the requirements set out in 45 CFR part 12.

Regulatory Procedures

As discussed above, this regulation's main effect is to consolidate and simplify current procedures. Therefore, the agencies have determined that this is not a major rule under Executive Order 12291. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic or export markets.

HUD has made a Finding of No Significant Impact pursuant to the requirements of section 102(c) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The Agencies certify that the rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required.

The Agencies have determined under Executive Order 12612 that the policies contained in this rule do not have federalism implications.

Under the Paperwork Reduction Act of 1980, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting or recordkeeping requirement in a proposed or final rule. This rule contains information collection requirements in section ____.9, which have been approved by OMB for review and approval. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency officials whose names appear in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 3028), Washington, DC 20503, Attention: Desk Officer for HUD.

This rule was listed in HUD's Semiannual Agenda of Regulations published at 56 FR 17360, 17375 published on April 22, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Waiver of Proposed Rulemaking and of Delayed Effective Date

The following rule is published as an Interim Final Rule and is effective immediately, except for § ____.3. On October 25, 1990, Congress passed amendments to title V of the McKinney Act. 42 U.S.C. 11411. These Amendments were signed into law by President Bush on November 29, 1990. Section 501(d) of the McKinney Act as amended states *inter alia* as follows:

> Promulgation of Regulations: No later than 90 days after the date of the enactment of this Act, the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section.

Cong. Rec. October 25, 1990, H13897. Accordingly, the regulation was intended to have been published by February 27, 1991.

The Administrative Procedure Act requires Notice and Comment

Rulemaking except "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). For the following reasons, GSA, HUD, and HHS have determined that good cause exists to publish the following joint regulation as an interim final rule and to make it effective immediately.

It would have been impracticable to publish a Notice of Proposed Rulemaking, include a comment period, and publish a final rule within 90 days of enactment of the amendments. Moreover, the Program has been in operation for several years, and although procedures have been modified by amendments to the statute and several court orders issued by the U.S. District Court for the District of Columbia, in litigation surrounding this program, all representatives of the homeless who have applied for the use of excess, surplus unutilized or underutilized Federal property have had actual notice of the procedures in place at the time of application. In addition, the public was made aware of the procedures utilized by all three agencies in a notice published by HUD in the **Federal Register** on June 23, 1989. 54 FR 26421. The present regulation will codify procedures already in place and formally adopt procedures mandated by the recent amendments to title V. Thus, there are no compelling reasons to publish a notice of proposed rulemaking prior to issuing an interim final rule. Nevertheless, in the interest of the fullest possible public participation, the agencies are inviting public comments on the rule for a sixty day period after its publication. Although section ____.3 is not effective immediately, the agencies will also accept comments from the public on this section. The agencies will revise the rule as appropriate after consideration of any public comments that are submitted.

Department of Housing and Urban Development

24 CFR Part 581

FOR FURTHER INFORMATION CONTACT: Mark Finks, Deputy Director, Office of Special Needs Assistance Programs, Department of HUD, 451 Seventh Street SW., Washington, DC 20410; (202) 708–4300 or TDD (202) 708–2565. (These are not toll-free numbers.)

List of Subjects in 24 CFR Part 581

Homeless, Grant programs—housing and community development, Unutilized or underutilized, excess and surplus Federal property, Reporting and recordkeeping requirements.

Title 24 of the Code of Federal Regulations, Chapter V is amended as set forth below.

Dated: May 15, 1991.

Jack Kemp,

Secretary.

1. Part 581 is added to read as set forth at the end of the common preamble.

PART 581—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.

Authority: 42 U.S.C. 11411 note; 42 U.S.C. 3535(d).

2. Part 581 is amended by adding a new 3581.13 to read as follows:

§ 581.13 Waivers.

The Secretary may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers in the **Federal Register.**

General Services Administration

41 CFR Part 101–47

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, General Services Administration (202–501–0052).

List of Subjects in 41 CFR Part 101–47

Government property management, Surplus government property.

Accordingly, 41 CFR part 101–47 and Subchapter H are amended as set forth below.

Dated: May 13, 1991.

Richard G. Austin,

Administrator.

1. The authority citation for part 101–47 is revised to read as follows:

Authority: 40 U.S.C. 486(c). Subpart 101–47.9 also issued under 42 U.S.C. 11411.

2. Subpart 101–47.9 is added to read as set forth at the end of the common preamble.

Subpart 101–47.9 Use of Federal Real Property to Assist the Homeless

3. FPMR Temporary Regulation H–27 is removed from the Appendix to Subchapter H in 41 CFR Chapter 101.

Department of Health and Human Services

45 CFR Part 12a

FOR FURTHER INFORMATION CONTACT: Judy Breitman, Chief, Real Property Branch, United States Public Health Service, (301) 443–2265.

List of Subjects in 45 CFR Part 12a

Real property, Homeless, Unutilized or underutilized, excess and surplus Federal property.

Title 45 of the Code of Federal Regulations, subtitle A is amended as set forth below.

Dated: May 16, 1991.

Louis W. Sullivan,

Secretary, U.S. Department of Health and Human Services.

Part 12a is added to read as set forth at the end of the common preamble.

PART 12A—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.

Sec.
12a.5 Real property reported excess to GSA.
12a.6 Suitability criteria.
12a.7 Determination of availability.
12a.8 Public notice of determination.
12a.9 Application process.
12a.10 Action on approved applications.
12a.11 Unsuitable properties.
12a.12 No applications approved.

Authority: 42 U.S.C. 11411; 40 U.S.C. 484(k); 42 U.S.C. 3535(d).

Sec.
____.1 Definitions.
____.2 Applicability.
____.3 Collecting the information.
____.4 Suitability determination.
____.5 Real property reported excess to GSA.
____.6 Suitability criteria.
____.7 Determination of availability.
____.8 Public notice of determination.
____.9 Application process.
____.10 Action on approved application.
____.11 Unsuitable properties.
____.12 No applications approved.

§ ____.1 Definitions.

Applicant means any representative of the homeless which has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day including weekends and holidays.

Eligible organization means a State, unit of local government or a private non-profit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 483.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2).)

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a state contact person designated by a state to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with section 210(a) of the Stewart B. McKinney Act of 1987, as amended.

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in § ____.6.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § ____.6.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ ____.2 Applicability.

(a) This part applies to Federal real property which has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of title V of the McKinney Act (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized).

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for

sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a Court Order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this Part.

§ ____.3 Collecting the information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus, in surveys conducted by the agencies under section 202 of the Federal Property and Administrative Services Act (40 U.S.C. 483), Executive Order 12512, and 41 CFR part 101–47.800. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency Annual Report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD, and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA Inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in Status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency shall submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the **Federal Register**. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

§ ____.4 Suitability determination.

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties which were reported pursuant to the canvass described in § ____.3(a), HUD will determine, under criteria set forth in § ____.6, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § ____.6.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § ____.7(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the **Federal Register** of a Notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.*

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the **Federal Register** that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1–800–927–7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the **Federal Register**.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in section ____.1.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to § ____.7(a), upon receipt of which HUD will promptly publish the determination in the **Federal Register**. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

§ ____.5 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA which has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to § ____.5(g) and will advise HUD of the availability of the property for use by the homeless as provided in § ____.5(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in § ____.5(c) through § ____.5(g).

(c) If a landholding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response which includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property, and therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the **Federal Register**, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible nonprofit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 101–47.203–5, 101–47.204–1 and 101–47.303–2.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property which is reported excess to GSA as provided in 41 CFR 101–47.402.

§ ____.6 Suitability criteria.

(a) All properties, buildings and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2000 feet of an industrial, commercial or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers which provide the heating or power source for the property, and which meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations and tank trucks are not included in this category and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100 year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage or extensive deterioration, friable asbestos, PCB's, or natural hazardous substances such as radon, periodic flooding, sinkholes or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

§ ____.7 Determination of availability.

(a) Within 45 days after receipt of a letter from HUD pursuant to ____.4(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property:

(i) An intention to declare the property excess,

(ii) An intention to make the property available for use to assist the homeless, or

(iii) the reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in section ____.6.

(2) In the case of excess property which had previously been reported to GSA:

(i) A statement that there is no compelling Federal need for the property, and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

§ ____.8 Public notice of determination.

(a) No later than 15 days after the last 45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the **Federal Register** a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number, 1–800–927–7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the **Federal Register**. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD shall publish in the **Federal Register** a list of all properties reported pursuant to § ____.3(b).

(e) HUD shall publish an annual list of properties determined suitable but which agencies reported unavailable including the reasons such properties are not available.

(f) Copies of the lists published in the **Federal Register** will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

§ ____.9 Application process.

(OMB approval number 09370191)

(a) *Holding period.*

(1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the **Federal Register**.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60 day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address:

Director, Division of Health Facilities Planning, Public Health Service, Room 17A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60 day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application Requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following——

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a "representative of the homeless," as specified in section ____.1 of this subpart. The applicant must document its authority to hold real property. Private non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions except for local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed the applicable unit of general local government responsible for providing sewer, water, police, and fire services, in writing of its proposed program.

(10) *Zoning and Local Use Restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant which applies for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to section ____. 9(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will,

generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.*

(1) Upon receipt of an application, HHS will review it for completeness, and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations which have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraph (e)(2)(iv) and (e)(2)(v) of this section are of equal importance.

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation Time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial Ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in section ____.8(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

§ ____.10 Action on approved applications.

(a) *Unutilized and underutilized properties.*

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit;

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.*

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with 41 CFR 101–47.402, custody and accountability of the property will remain throughout the lease term with the agency which initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney Act as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of section ____.9 of this part and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of Lease Term and Reversion of Title.*

Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

§ ____.11 Unsuitable Properties.

The landholding agency will defer, for 20 days after the date that notice of a property is published in the Federal Register, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to ____.4(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ ____.12 No applications approved.

(a) At the end of the 60 day holding period described in § ____.9(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will

proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

[FR Doc. 91-12428 Filed 5-22-91; 12:45 pm]
BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Extension of Study Concerning Excess Spoil Disposal; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning an extension of the trial period for a study of provisions for the disposal of excess spoil on abandoned mine sites contained in the Alabama regulatory program under the Surface Mining Control and Reclamation Act of 1977, at 30 CFR 901.15. This rule was published July 2, 1990 (55 FR 27224).

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, Barber Business Park, 135 Gemini Circle, suite 215, Homewood, Alabama 35209; telephone (205) 290-7282.

Dated: May 14, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

PART 901—[AMENDED]

In the final rule published in the **Federal Register** issue of Monday, July 2, 1990 (55 FR 27224), the following correction is made:

§ 901.15 [Corrected]

On page 27225 in the second column, amendatory instruction 2 is corrected to read as follows:

"2. Section 901.15 is amended by revising the first sentence of paragraph (e) to read as follows:

[FR Doc. 91-12409 Filed 5-23-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Payment Method for Health Care Services Under The Supplemental Health Care Program for Active Duty Members of the Uniformed Services; Adoption of CHAMPUS Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule partially implements 10 U.S.C. 1074(c), as amended by section 729 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189. The recent amendment authorizes the Department of Defense to establish for the active duty supplemental care program payment rules similar to those used under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The supplemental care program is the program which provides for the payment to civilian (non federal-governmental) health care providers for care provided to active duty members of the uniformed services. This final rule would adopt CHAMPUS payment amounts for the supplemental care program.

EFFECTIVE DATE: May 24, 1991.

ADDRESSES: Office of the Assistant Secretary of Defense (Health Affairs), Health Services Financing, Room 1B657, Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Ray Kincy, USAF, Room 1B657, Pentagon, Washington, DC 20301-1200, telephone: (703) 697-8975.

SUPPLEMENTARY INFORMATION: This final rule is based on a notice of proposed rulemaking issued on March 20, 1991, for public comment. A commenter asked whether DoD had authority to require hospitals to accept the authorized payment, and the answer is that 10 U.S.C. 1074(c) gives the Secretary of Defense legal authority to link supplemental care under CHAMPUS, which in turn, is linked to medicare. The final rule makes no substantive change to the proposed rule.

I. Background

The primary DoD program for purchasing health care services from private sector providers for uniformed services beneficiaries is the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), which is administered pursuant to 32 CFR part 199. CHAMPUS, however, does not cover active duty members of the uniformed services, who receive most of their health care from military medical treatment facilities. In those limited circumstances in which active duty members need care from private sector providers, such as in emergency situations, when they are stationed in an area not served by a military facility or when care is unavailable in the military treatment facility, this care is provided under the supplemental care program.

This program currently is operated entirely independently from CHAMPUS and is administered by the respective uniformed services.

The implementation by CHAMPUS in recent years of more economical payment methods, particularly the DRG-based payment system for most inpatient hospital services, gave rise to a provision in the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, section 729, authorizing DoD to establish for the supplemental care program "the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under [CHAMPUS]". This final rule partially implements this new statutory authority by implementing for the supplemental care program the CHAMPUS DRG-based payment system for most inpatient hospital care.

This final rule is being issued as an amendment to the CHAMPUS regulation because we intend, over time, to integrate the Supplemental Care Program into the CHAMPUS administrative system. This is somewhat akin to the current CHAMPUS administration of the CHAMPVA program for the Department of Veterans Affairs. However, initially, this final rule addresses only DRG-covered hospital charges. Other services, such as inpatient and outpatient professional services, are expected to be addressed in the future under the authority of the statute.

II. Concept

Highlighting several of the provisions of the final rule, it would establish for hospitals covered by the CHAMPUS DRG-based payment system an obligation to be participating providers under the supplemental care program. This means that, just as these hospitals must accept the DRG system payment amount as payment in full for CHAMPUS care, they must accept the same for services to active duty members of the uniformed services. The failure of any hospital to meet this obligation can result in termination from CHAMPUS, which, in turn, can lead to

termination of the hospital's Medicare provider agreement. (See 42 U.S.C. 1395 cc(a)(1)(J))

The general rule for hospital payments that would be established pursuant to this final rule is that the methods established for the CHAMPUS DRG-based payment system will also apply to the supplemental care program in the same way. CHAMPUS rates are well established and would be adequate for active duty members. Based on this general approach, the supplemental care program will use the same DRG weights, the same standardized amounts, the same outlier thresholds, the same wage indices and the same adjustments that CHAMPUS uses to pay claims for inpatient hospital services. Services and facilities currently exempt under CHAMPUS DRGs will be exempt for active duty members.

There are some exceptions to the general rules arising from the different statutory nature of the supplemental care program for active duty members. One difference is that active duty members, unlike CHAMPUS beneficiaries, have no cost sharing for health care services purchased in the civilian community. Another difference is that for other than emergent care civilian community care must be pre-authorized for active duty members. These special rules and procedures are set forth in the final rule.

As noted above, we recognize that some CHAMPUS rules and procedures may be inappropriate for the supplemental care program in certain cases. Therefore, the final rule will allow authorized officials of the Office of the Assistant Secretary of Defense (Health Affairs), or the uniformed service concerned to waive any restriction or limitation, if not statutorily required, if necessary to assure the availability of adequate services to active duty members.

Finally, the final rule notes authorities pertinent to the supplemental care program and the administration of CHAMPUS payment methods. The final rule will not effect services provided, only the payment of those services.

III. Regulatory Procedures

With respect to regulatory procedures, this final rule is not a major rule as defined by Executive Order 12291. In addition, we certify that this final rule will not have a significant impact on small entities within the scope of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Military personnel.

For the reasons set forth in the preamble, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. The Table of Contents is amended to add:

Sec. 199.16 Supplemental Health Care Program for Active Duty Members.

3. Section 199.6 is amended by adding paragraph (a)(9) as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(9) *Authorized provider.* A hospital or institutional provider, physician, or other individual professional provider, or other provider of services or supplies specifically authorized in this chapter to provide benefits under CHAMPUS. In addition, to be an authorized CHAMPUS provider, any hospital which is a CHAMPUS participating provider under paragraph (a)(7) of this section, shall be a participating provider for all care, services, or supplies furnished to an active duty member of the uniformed services for which the active duty member is entitled under 10 U.S.C. 1074(c). As a participating provider for active duty members, the CHAMPUS authorized hospital shall provide such care, services, and supplies in accordance with the payment rules of § 199.16 of this part. The failure of any CHAMPUS participating hospital to be a participating provider for any active duty member subjects the hospital to termination of the hospital's status as a CHAMPUS authorized provider for failure to meet the qualifications established by this part.

4. Section 199.16 is added as follows:

§ 199.16 Supplemental health care program for active duty members.

(a) *Purpose and applicability.* (1) The purpose of this section is to implement, with respect to certain hospital services provided under the supplemental health care program for active duty members of the uniformed services, the provision of 10 U.S.C. 1074(c). This statute authorizes DoD to establish for the supplemental care program the same payment rules, subject to appropriate modifications, as apply under CHAMPUS.

(2) This section applies to the program, known as the supplemental care program, which provides for the payment by the uniformed services to private sector health care providers for health care services provided to active duty members of the uniformed services. Although not part of CHAMPUS, the supplemental care program is similar to CHAMPUS in that it is a program for the uniformed services to purchase civilian health care services for active duty members. For this reason, the Director, OCHAMPUS assists the uniformed services in the administration of the supplemental care program.

(3) This rule applies to inpatient hospital services covered by the CHAMPUS DRG based payment method.

(b) *Obligation of hospitals concerning payment for supplemental health care for active duty members.* For a hospital covered by the CHAMPUS DRG based payment method to maintain its status as an authorized provider for CHAMPUS pursuant to § 199.6, that hospital must also be a participating provider for purposes of the supplemental care program. As a participating provider, each hospital must accept the DRG-based payment system amount determined pursuant to this section as payment in full for the hospital services covered by the system. The failure of any hospital to comply with this obligation subjects that hospital to exclusion as a CHAMPUS-authorized provider.

(c) *General rule for payment and administration.* Subject to the special rules and procedures in paragraph (d) of this section, and the waiver authority in paragraph (e) of this section, as a general rule the provisions of § 199.14(a)(1) shall govern payment and administration of claims from hospitals covered by the CHAMPUS DRG-based payment method under the supplemental care program as they do claims under CHAMPUS. To the extent necessary to interpret or implement the provisions of § 199.14(a)(1), related provisions of this part 199 shall also be applicable.

(d) *Special rules and procedures.* As exceptions to the general rule in paragraph (c) of this section, the special rules and procedures in this paragraph shall govern payment and administration of claims from hospitals covered by the CHAMPUS DRG-based payment system under the supplemental care program. These special rules and procedures are subject to the waiver authority of paragraph (e) of this section.

(1) There is no patient cost sharing under the supplemental care program. All amounts due to be paid to the provider shall be paid by the program.

(2) Preauthorization by the uniformed services of each hospital admission,

except for an emergency inpatient admission (the definition in § 199.2 shall apply), is required for the supplemental care program. It is the responsibility of the active duty member to obtain preauthorization for each admission. With respect to each emergency inpatient admission, after such time as the emergency condition is addressed, authorization for any proposed continued stay must be obtained within two working days of admission.

(3) With respect to the filing of claims and similar administrative matters under the CHAMPUS DRG-based payment system for which this part 199 refers to activities of the CHAMPUS fiscal intermediaries, for purposes of the supplemental care program, responsibilities for claims processing, payment and some other administrative matters will be assigned to the nearest military medical treatment facility or medical claims office.

(4) The annual cost pass-throughs for capital and direct medical education costs that are available under the CHAMPUS DRG-based payment system are also available, upon request, under the supplemental care program. To obtain payment include the number of active duty bed days as a separate line item on the annual request to the CHAMPUS fiscal intermediaries. The fiscal intermediaries will process the requests on behalf of the supplemental care program. However, payment will be issued by the Department of Defense.

(e) *Waiver authority.* With the exception of statutory requirements, any restrictions or limitation pursuant to the general rule in paragraph (c) of this section and special rules and procedures in paragraph (d) of this section may be waived by an authorized official of the uniformed service concerned based on a determination that such waiver is necessary to assure adequate availability of health care services to active duty members.

(f) *Authorities.* (1) The Uniformed Services may establish additional procedures, consistent with this part, for the effective administration of the supplemental care program in their respective services.

(2) The Assistant Secretary of Defense for Health Affairs is responsible for the overall policy direction of the supplemental care program and the administration of this part.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12375 Filed 5-23-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 356

[DoD Directive 5110.4]

Washington Headquarters Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships, and authorities of the Director, Washington Headquarters Services (WHS), a Field Activity of the Department of Defense with the mission of providing administrative and operational support to specified activities in the National Capital Region and elsewhere as required. The revision assigns Director, WHS responsibility for providing information technology operating support to OSD and specified activities. It also assigns responsibility for administration of the Pentagon Reservation to the Director, WHS, pursuant to the FY 91 DoD Authorization Act mandated transfer of custody for the Pentagon Reservation from GSA to DoD, and delegates to the Director, WHS associated administrative authorities prescribed to the Secretary of Defense in Title 10, United States Code.

EFFECTIVE DATE: May 6, 1991.

ADDRESSES: Office of Organizational and Management Planning, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, telephone (703) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 356

Organization and functions (Government agencies).

Accordingly, 32 CFR part 356 is revised to read as follows:

PART 356—WASHINGTON HEADQUARTERS SERVICES

Sec.

Authority: 10 U.S.C. 131.

§ 356.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, this part updates the mission, functions, responsibilities, relationships, and authorities of the WHS.

§ 356.2 Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(b) *National Capital Region (NCR).* The geographic area located within the boundaries of the District of Columbia; Montgomery and Prince Georges Counties in the State of Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia; and all cities and other units of government within the geographic areas of such District, Counties, and City.

(c) *Pentagon Reservation.* That area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Office Building #2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

§ 356.3 Mission.

The WHS shall provide administrative and operational support to specified activities in the NCR and elsewhere as required.

§ 356.4 Organization and management.

(a) The WHS is established as a Field Activity of the Department of Defense. It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(b) The Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD), also shall serve as the Director, WHS.

§ 356.5 Functions and responsibilities.

The Director, Washington Headquarters Services, shall:

(a) Organize, direct, and manage the WHS and all resources assigned to the WHS.

(b) Provide administrative support to the OSD and those Defense Agencies, DoD Field Activities, and specified activities that do not have an internal administrative support capability. This support shall include all or part of the following:

(1) Budget and accounting.