

Dated: June 25, 1991.

Dick Thornburgh,
Attorney General.

[FR Doc. 91-15980 Filed 7-3-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN: 1024-AB85

Ozark National Scenic Riverways; Restriction for Motorized Vessels

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking amends 36 CFR 7.83 by revising paragraph (a) which designates zones of motorboat operation; restrict horsepower; and specify dates when the use of motors is restricted. This revision is necessary in order to resolve user conflicts, protect the quality of the rivers and the recreational experiences, and address visitor safety concerns. The intended effects are to increase safety, reduce conflicts and provide maximum recreational benefits to all river users.

EFFECTIVE DATE: This regulation is effective on August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur L. Sullivan, Superintendent, Ozark National Scenic Riverways, Telephone: (314) 323-4236.

SUPPLEMENTARY INFORMATION:

Background

When the Ozark National Scenic Riverways was created in 1964, outboard motorboats were not a problem. The only outboard motorboats operation on the Current and Jacks Fork Rivers were the conventional propeller-driven motors with elongated shafts. These motors worked fine in deeper waters, but in shallow waters the propellers could hit bottom, resulting in damage and frequent change of propellers. To get around this problem, local boaters fitted their motors with a lever that when lowered, would lift the shaft and propeller out of the water while the operator skimmed across shallow areas in the rivers, in many places only a few inches deep. It took a great deal of skill and coordination to maneuver a boat through the shallows as the operator was required to increase his speed as approaching the shallows and press down on this lever at the right moment in order to lift the shaft and propeller out of the water to avoid damage while maintaining sufficient

momentum to get across the shallows and into deeper waters where normal operations could be resumed. Because of this situation, most of the motorboats operating on the Current and Jacks Fork Rivers did not exceed 20 h.p. as larger motors were more difficult to lift with a lever because of the increased weight. However, a few motorboats up to 40 h.p. could be found in the lower Current River where the river is broader and deeper than the upper reaches of the Current River and Jacks Fork River. The very nature of the narrow, winding and frequently shallow rivers coupled with the skill and coordination required to maneuver these streams tended to self-limit both the motor sizes and number of boaters operating on the rivers. Motorboats and other rivers users co-existed rather peacefully so long as that situation prevailed.

Beginning in 1976 this situation changed abruptly when the first outboard motors retrofitted with jet pumps were introduced on the streams comprising the Ozark Riverways. It soon became evident to boating enthusiasts that the newly introduced "jet motors" could operate easily in only inches of water and that no special skills were required. As a consequence, the number of boaters increased dramatically, as did the size of outboard motors no longer encumbered by the shallowness of the rivers. From approximately 11,000 boaters in the early 1970's, about 40,000 boaters were recorded in 1989. The smaller traditional motors with shaft and propellers have all but disappeared from the rivers and Ozark Riverways is now dominated by large outboard jet motors, some with as much as 265 horsepower. Along with the increase in the number of boaters and the size of motors came a rise in conflicts with other rivers users—canoeists, tube floaters, fishermen and swimmers. The large motors generated greater speed, some in excess of 50 mph, larger wakes, and required more space in proportion to their speed. They became a serious safety concern as well as a source of widespread dissatisfaction among other river user groups. Coincident with the increase in the number and size of boats and motors was an increase in the number of canoeists and tubers. Canoe floater days increased from about 143,000 in 1975 to a high of 308,000 in 1982. Tubing statistics were first gathered in 1974 showing this form of river use to be a relatively minor activity with only 2,500 tubers counted that year. Yet this use too has grown dramatically to where nearly 38,000 tubers were recorded in 1988.

The National Park Service first addressed river use issues in a General

Management Plan initiated in 1979, with a completed draft in 1981. During the planning process and extensive public involvement, two issues emerged as cause of greatest public concern—perceptions of overcrowding by canoeists and oversized motorboats. These issues were addressed in the GMP but final approval of the plan was deferred, primarily because commercial canoe use became involved in litigation. Since the court decision might have affected the GMP, an administrative decision was made in 1984 to address river use issues in a separate River Use Management Plan so that management could proceed with implementation of the non-controversial issues discussed in the GMP. On this basis, the GMP was approved December 7, 1984, and the park proceeded with the development of a River Use Management Plan, completing the draft in November, 1986. In 1985 the United States District Court handed down its final decision clearly establishing the authority of the Federal Government to control commercial canoe operations at Ozark Riverways, thus concluding the litigation.

During the preparation of the River Use Management Plan, seven public meetings were held in nearby communities, as well as St. Louis, Kansas City, Columbia, Cape Girardeau, Missouri. More than 1,250 copies of the draft were distributed to various public agencies, organizations and individuals. In addition to comments received at public meetings, 1,680 mail responses were received and analyzed for consideration in preparing the final document.

Again, public response overwhelmingly favored reducing canoe-use densities and placing horsepower limits on outboard motors. The River Use Management Plan, which was ultimately approved May 11, 1989, has successfully addressed public perceptions of overcrowding through the establishment of canoe density levels ranging from low (up to 10 canoes per mile) to high (up to 70 canoes per mile) and assigning these density levels to ten separate river zones. The general public has been made aware of this system through the development of a River Use Guide as an aid to river users in selecting the type of river recreational experience which meets their preference. The proposed outboard motor horsepower regulations, with respect to maximum limits, assigned zones and times of year, were designed to reduce conflicts between other river users (particularly canoeists), increase safety, provide year-round fishing

opportunities, and enhance visitor enjoyment of the resources.

The need to define the horsepower rating method was prompted by the recent advent of rating horsepower at the propulsion device by some manufacturers, rather than ratings based on the use of the prevailing industry standard that measures output at the propeller shaft. This resulted in different interpretation of what size engine could be used on park waters.

The very nature of the shallow, narrow rivers precludes the use of boats with inboard motors. Thus, this regulation only addresses outboard engines, the tradition engine used on the rivers.

The outboard motor horsepower restrictions are intended to complement other elements in the River Use Management Plan for Ozark Riverways. River zoning, canoe-density levels, horsepower restrictions and public education are all essential ingredients for a diversified, well-balanced river recreation program that will minimize river use conflicts, maximize public safety and enhance visitor enjoyment of park resources.

Discussion of Public Comments

Public comments were invited in response to the proposed rule published in the March 8, 1990 edition of the *Federal Register* (55 FR 8487-8489). A total of 41 individual comments and a petition with 423 names were received by the Superintendent, Ozark National Scenic Riverways, during the 30-day public comment period beginning March 8, 1990 and ending April 9, 1990.

Of the 41 individual comments on the proposed rule the national Park Service received, thirty (30) generally supported the proposed rule or favored even stricter regulations regarding designating zones, conditions, and periods of motorboat operation, while eleven (11) generally opposed the regulation, favoring either lesser restrictions or no regulation at all. In addition, one petition with 423 names, 230 of which were identifiable and contained addresses, was received opposing any limitation on horsepower for motorized vessels. Although this petition made no specific reference to the published proposed regulations, its timing and purpose was clearly to oppose any regulation restricting horsepower limits on boats and, therefore, was considered among the respondents.

Clearly, the issue of horsepower limitations is the most controversial aspect of the regulation. Nineteen (19) individual commenters felt that motors should not be allowed to exceed 25

horsepower, especially north of the Current River bridge at Van Buren. Sixteen (16) respondents opposed the idea of allowing unlimited motor size south of the Big Spring landing. All respondents in both of these groups shared the view that motors over 25 horsepower served no legitimate purpose on park streams, arguing that motors of this size or smaller were adequate to negotiate the river or enjoy fishing. It was the general view of these respondents that larger motors posed a serious threat to the safety of other rivers users and diminished the recreational quality of the Riverways.

The National Park Service does not agree that such restrictive horsepower limits are necessary. The legislation establishing Ozark National Scenic Riverways requires the Service to provide for the " * * * use and enjoyment of the outdoor recreation resources thereof by the people of the United States * * * " (16 USC 460m). As noted earlier, some 40,000 boaters were recorded in 1989 on the waters of Ozark Riverways, demonstrating that boating is an established recreational use in the park. Registrations of boat motors in the counties adjacent to Ozark Riverways, conducted in 1984, indicated 19 percent exceeded 40 horsepower. One commenter in the boat sales business suggested that by 1990, this number had risen to around 40 percent. Concerns over safety and the protection of recreational values other than motorboating are addressed through the implementation of Ozark Riverways' River Use Management Plan, of which the regulation discussed here is but a part. Complementing the regulation is a system of river zoning, tied to canoe-density levels. By taking into account the channel and flow characteristics of different sections of the Current and Jacks Fork Rivers, and establishing maximum levels of canoe use appropriate to each section based on the respective demands of each river-using group, the safety and diversity of recreational opportunities can be reasonably assured. Therefore, the National Park Service has not changed the horsepower limitations as originally proposed.

One commenter supported the regulation based on a feeling that wave-action from large engines was damaging the river's banks and shallows, ruining spawning beds and causing a decline in fish populations. No definitive studies have been done in the park on the physical and biological wave action of motor operations, but so far no evidence indicates that motorboats are significantly affecting fishery reproduction.

Eleven (11) written comments and one petition opposed any restriction or further regulation on the size of boat motors. Specific arguments cited in support of this view included the asserted right to operate any-sized boat one could afford anywhere one might choose. The National Park Service believes it must limit the size of motors according to time of year and location to ensure public safety and protect the variety of recreational resources in the Riverways. Recognizing that some area boaters operate motors much larger than 40 horsepower, that portion of park waters below Big Spring landing will be available for their use and enjoyment. The overall width and depth of the channel on this section of river are at their maximum in the park, affording the best opportunity for boats with more powerful motors to safely navigate around obstacles and other users.

One commenter recommended the Riverways be reopened to larger engines after the floating season, i.e., the summer. While the bulk of canoe and tube floaters use Ozark National Scenic Riverways in the summer, canoeing in particular occurs in all months of the year. Moreover, other activities favor other seasons; streamside fishing in the upper reaches of the Current River is heaviest in the early spring, while canoeing on the upper Jacks Fork is rarely possible much beyond May or June. Seasonal changes in horsepower to minimize potential use-conflicts was addressed in the proposed regulation, with reduced horsepower in specific zones during periods of high use by canoeists. To eliminate restrictions on horsepower throughout the Riverways during the fall, winter and spring would risk compromising resource use by other recreationists and, again, introduce concerns about safety. Consequently, the seasonal limitations in the proposed regulations have been left unchanged in these final regulations.

Several commenters expressed the view that added law enforcement would preclude the need for a regulation, and that such enforcement should be largely directed toward canoeists and tube floaters. Although some violations of park rules may be symptomatic of user conflicts, the two are not synonymous. The regulation is intended to ensure the enjoyment of the park's recreational resources; while additional law enforcement might further public safety, it cannot guarantee the diversity of recreational opportunities.

After reviewing all comments, the National Park Service has determined that the regulation as proposed represents a reasonable balance of use

and resource protection for all concerned. Therefore, the regulations are published as final without change.

Drafting Information

The authors of this regulation were Arthur L. Sullivan, Superintendent, and Tom Graham, Chief Ranger, both of Ozark National Scenic Riverways.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332) the Service prepared an Environmental Assessment and Draft River Use Management Plan in November, 1985. Public input was provided during a series of public hearings and workshops. Extensive public comments, both oral and written, was received regarding the matter of motorized vessel horsepower limitations and zoning. The Service has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291 ((46 FR 13193); Feb. 19, 1981). In accordance with the Regulatory Flexibility Act (Pub. L. 96-511), which became effective January 1, 1981, the Service has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Ch. I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 402(KK); Section 7.69 also issued under D.C. Code 8-137 (1981); and D.C. Code 40-721 (1981).

2. Section 7.83 is amended by revising paragraph (a) to read as follows:

§ 7.83 Ozark National Scenic Riverways.

(a) *Restrictions for motorized vessels.*
(1) On waters situated within the boundaries of Ozark National Scenic Riverways, the use of a motorized vessel is limited to a vessel equipped with an outboard motor only.

(2) For the purposes of this section, horsepower ratings on a particular

motor will be based upon the prevailing industry standard of power output at the propeller shaft as established by the manufacturer.

(3) The use of a motorized vessel is allowed as follows:

(i) Above the Big Spring landing on the Current River and below Alley Spring on the Jacks Fork River with an outboard motor not to exceed 40 horsepower.

(ii) Above Round Spring on the Current River and above Alley Spring on the Jacks Fork River with an outboard motor not to exceed 25 horsepower.

(iii) Above Akers Ferry on the Current River from May 1 to September 15 with an outboard motor not to exceed 10 horsepower.

(iv) Above Bay Creek on the Jacks Fork River from March 1 to the Saturday before Memorial Day with an outboard motor not to exceed 10 horsepower.

(4) Operating a motorized vessel other than as allowed in § 7.83(a) is prohibited.

* * * * *

Dated: November 29, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received by the Office of the Federal Register on June 28, 1991.

[FR Doc. 91-15863 Filed 7-3-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[HSQ-189-F]

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

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

ACTION: Final rule.

SUMMARY: This final rule amends the portions of the Medicaid regulations under which an intermediate care facility for the mentally retarded (ICF/MR) with substantial deficiencies that did not pose an immediate jeopardy to the health and safety of clients could continue participation in the Medicaid program. These regulations gave State Medicaid agencies the option of submitting written plans to either correct deficiencies or permanently reduce the number of beds in the certified portion of the facility.

This rule removes all requirements for submitting, approving, and monitoring correction plans for ICFs/MR. The requirements for submitting and approving correction plans are being removed because the time limit for submission of these plans has passed. The provisions for monitoring correction plans are being removed because there are no remaining facilities for which these provisions apply.

This final rule also removes requirements for submitting and approving reduction plans for ICFs/MR because the time limit for submitting these plans has passed. It retains and updates the requirements for monitoring and compliance that apply to those ICFs/MR for which reduction plans were approved by January 1, 1990.

EFFECTIVE DATE: The regulations are effective August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Margaret Sparr (301) 966-6832.

SUPPLEMENTARY INFORMATION:

I. Background

The intermediate care facilities for the mentally retarded (ICF/MR) program was established when the intermediate care program was transferred from title XI to title XIX in 1972 by Public Law 92-223. This legislation enacted section 1905(d) of the Social Security Act (the Act) permitting Medicaid coverage for services furnished by ICFs/MR. The primary purpose of ICFs/MR is to furnish health and rehabilitative services for individuals with mental retardation and other related conditions.

ICFs/MR participate in the Medicaid program under provider agreements with State Medicaid agencies. To enter into a provider agreement, an ICF/MR must be certified by a State survey agency as complying with standards set forth in 42 CFR part 442, subpart C. Facilities are surveyed at least annually by State survey agencies to ascertain their continued compliance with these requirements. Section 1910(b) of the Act authorizes the Secretary to conduct validation (direct Federal) surveys to determine the correctness of Medicaid certification actions taken by the designated State survey agency. In addition, if the Secretary finds that an ICF/MR substantially fails to meet the requirements of participation in the Medicaid program, the Secretary may terminate the ICF/MR's participation in the Medicaid program.

Section 1910(b)(2) of the Act sets forth the appeals procedures available when we terminate a facility's participation in the program. Under that provision, ICFs/MR have a right to a full evidentiary

hearing before the effective date of termination of the provider agreement unless the Secretary makes a written determination that the facility's deficiencies pose an immediate and serious threat to the clients.

During the early days of the program, in an effort to promote the correction of all deficiencies without excluding ICFs/MR from the Medicaid program, State Medicaid agencies were given options to submit to the Secretary written plans to either make the corrections or reduce permanently the number of beds in certified units. HCFA extended the deadlines for correcting deficient Life Safety Code and living, dining and therapy area physical plant requirements several times. The last extension (published as §§ 442.112 and 442.113) enabled ICFs/MR which had earlier failed to ask for an extension and had completed at least 25 percent of their original correction plans to receive an extension for the completion of their plans to July 18, 1982.

New criteria permitting correction and reduction plans were included in The Consolidated Budget Reconciliation Act of 1985 (Pub. L. 99-272) enacted on April 6, 1986. Section 9516(a) of Public Law 99-272 amended title XIX of the Act by adding section 1919. Section 1919 of the Act provided State Medicaid agencies options under which ICFs/MR that were found by the Secretary to have substantial deficiencies only in physical plant and staffing that did not pose an immediate threat to clients' health and safety could remedy those deficiencies. A State Medicaid agency could submit written plans to the Secretary either to (1) make all necessary staff and physical plant corrections and correct all other minor deficiencies as well, within 6 months of the approval date of the plan, or (2) reduce permanently the number of beds in certified units within 36 months of the approval date of the plan. Section 1919 of the Act also set forth requirements for approving and monitoring correction and reduction plans including actions to be taken if an ICF/MR failed to meet the plan requirements.

In accordance with section 9516(b)(1) or Public Law 99-272, the requirements for correction and reduction plans were effective on the date of enactment of Public Law 99-272 (that is, April 7, 1986). The provisions applied only to specific plans approved by the Secretary before April 7, 1989. To implement Public Law 99-272, we published a proposed rule on July 25, 1986 (51 FR 26718) and a final rule on January 25, 1988 (53 FR 1984). The Omnibus Budget and Reconciliation Act of 1987 (Pub. L. 100-203 enacted on

December 22, 1987) redesignated section 1919 of the Act as section 1922.

The criteria permitting the submission of correction and reduction plans set forth in Public Law 99-272 were expanded as part of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, enacted on November 10, 1988). Section 8433 of Public Law 100-647 revised section 1922 of the Act to permit States the option of submitting correction or reduction plans for ICFs/MR with substantial deficiencies in any area, including failure to provide active treatment, as long as the deficiencies did not pose an immediate threat to the health and safety of the clients. The approval date for correction and reduction plans was extended to January 1, 1990.

II. Provisions of This Final Rule

This final rule deletes expired provisions permitting the submission of correction and reduction plans and retains the requirements for monitoring and compliance of reduction plans still in effect.

Section 442.105(e), the last sentence of § 442.110(a), § 442.112, and § 442.113 are being removed because these provisions applied to plans correcting Life Safety Code and living/dining/therapy area deficiencies. These plans were required to have been completed by July 18, 1982 and, therefore, these regulations are no longer of any effect.

Sections 442.114, 442.115 and parts of § 442.116 are being removed because the Secretary's approval authority for section 1922 correction and reduction plans expired on January 1, 1990, as a result of section 8433 of Public Law 100-647.

The portions of § 442.116 regarding the monitoring and compliance of reduction plans still in effect are being retained and updated to include the provisions set forth in section 8433 of Public Law 100-647.

III. Waiver of Notice of Proposed Rulemaking

We ordinarily publish general notice of proposed rulemaking in the *Federal Register* and invite prior public comment on the proposed rule. The rule includes a reference to the legal authority under which it is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

In this final rule, we are deleting or revising regulations either because they are no longer of any legal effect or because they need to be conformed to statutory changes. In the first category, are those regulations governing the correction of deficiencies in ICFs/MR that have had no applicability since July 18, 1982, the last date on which affected facilities could have attempted to achieve compliance under the terms of those regulations. In the second category, are those regulations implementing section 1922 of the Act which no longer offer the opportunity for the submission and approval of either correction or reduction plans since those options have been eliminated by the Secretary's ability to approve such plans after January 1, 1990. Also in the second category, is the technical revision to the regulations necessitated by Public Law 100-647 that expanded the ability of correction and reduction plans to facilities having substantial deficiencies in areas other than physical plant and staffing. With respect to none of these changes do we have any discretion.

Accordingly, we believe that it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed rule and solicit comments on these kinds of changes to the regulations. We, therefore, find good cause to waive notice of proposed rulemaking.

IV. Information Collection Requirements

These final regulations do not impose information collection and recordkeeping requirements. Consequently, they need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule": that is, a rule likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We published an initial regulatory impact statement in the proposed rule (51 FR 26723) on July 25, 1986 and a final statement in the final rule on January 25, 1988 (53 FR 1992). These statements addressed the impact that the regulation would have on entities. Since this final rule merely deletes obsolete requirements and makes only editorial changes to the remaining requirements, there is no impact on entities beyond that previously addressed.

This final rule does not meet the \$100 million criterion nor does it meet the other E.O. 12291 criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

For similar reasons, we are not preparing analyses for either the RFA or section 11002(b) of the Act. We have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR part 442, subpart C is amended as follows:

PART 442—STANDARDS FOR PAYMENT FOR NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES

1. The authority citation for part 442 continues to read as follows:

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

§ 442.105 [Amended]

2. In § 442.105, remove paragraph (e).

§ 442.110 [Amended]

3. In § 442.110(a), remove the last sentence "However, NFs with deficiencies that may require more than 12 months to correct may be certified under § 442.112."

§§ 442.112–442.115 [Removed]

4. Sections 442.112 through 442.115 are removed.

5. Section 442.116 is revised to read as follows:

§ 442.116 Reduction plans for ICFs/MR

(a) *Basis and scope.* Under section 1922 of the Act, a Medicaid agency could have chosen to submit reduction plans for ICFs/MR that were found to have substantial deficiencies that did not pose an immediate threat to the health and safety of its clients. States that elected to submit reduction plans must reduce permanently the number of beds in certified units and correct deficiencies within 36 months of the approval date of the reduction plan. The section 1922 requirements apply to reduction plans that HCFA approved by January 1, 1990.

(b) *Failure to meet requirements.* If, at the conclusion of any 6-month period of the reduction plan, HCFA determines that the Medicaid agency has substantially failed to meet the requirements of the reduction plan, HCFA proceeds with one of the following actions:

(1) Termination of the ICF/MR's participation in the Medicaid program in accordance with section 1910(b) of the Act.

(2) Disallowance of FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it may have made.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 9, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: May 9, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-15899 Filed 7-3-91; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[PR Docket No. 90-260; FCC 91-178]

Elimination of Grandfathering Provisions Applicable to Licensees on MAS Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule updates and clarifies the grandfathering provisions affecting licensees of Multiple Address Systems (MAS). These provisions have been modified to enhance our effective management of the spectrum by requiring many MAS licensees to adhere to current bandwidth and channelization standards.

DATES: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Maria Strong, Rules Branch, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 90-260, FCC 91-178, adopted June 11, 1991 and released June 27, 1991. The full text of this Report and Order is available for inspection during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

The FCC published a notice of proposed rule making on the elimination of the MAS grandfathering provisions in the *Federal Register* on May 31, 1990 [55 FR 22038]. As demand for MAS frequencies has increased, the Commission has imposed increasingly stringent technical standards to promote the efficient use of MAS spectrum. The Notice proposed to require most licensees on the 900 MHz MAS frequencies to comply with current channelization and bandwidth requirements within a specified timeframe. Three public comments were received, and all were supportive of the Notice. We adopt the proposals in the Notice that affect groups of MAS licensees authorized before January 1, 1981. One commenter suggested an optional approach, creating a spectrum review transition plan if other groups of MAS licensees were required to comply with recent technical standards. In the