§ 111.3 Amendment to the Domestic Mail Manual.

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39 CFR Part 111

Addressing Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the postal regulations which govern the addressing of mail matter in order to promote a clearer understanding of proper addressing procedures. Formerly, addressing regulations provided some guidelines but did not clearly differentiate between requirements, restrictions, and recommendations. Thus, some post offices attempted to enforce addressing recomendations as requirements. To solve this problem we have revised the regulations to use the word "must" when requirements or restrictions are imposed; when recommendations are intended the regulations use the word "should." The Postal Service believes that if customers will follow the changed regulations, whether required to do so or not, the Postal Service will be able to operate at a more efficient and less costly level, and customers will, at the same time, increase the likelihood that their own mail will be delivered more expeditiously.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George E. Thomas, (202) 245-4512.

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Postal Service published for comment in the **Federal Register** (50 FR 6007) proposed changes in certain sections of the Domestic Mail Manual relating to addressing. Interested persons were invited to submit comments on the proposed changes by March 15, 1985.

Written views were received from ten commenters, none of whom were opposed to adoption of the proposed regulations. However, some questions were raised and suggestions were made for further clarification.

For example, one commenter suggested that section 129 of the rule should be amended to make it clear that in window envelopes, the window may be the "standard" ⅛ inch from the bottom edge of the envelope, but that ⅝ inch is preferred. We amended the rule as suggested.

Two commenters suggested that the name or identification of the intended recipient should not be required, but only recommended. The Postal Service declines to make the suggested change because of its negative effect on our ability to deliver mail to the person intended by the sender. Moreover, previous regulations were not ambiguous on this point. The proposed regulation was merely carrying forward existing long-standing regulations.

One commenter suggested that proposed 122.12 and 122.33 of the DMM imply that an address with the ZIP Code as the bottom line is an acceptable address format. The commenter said there ought to be an illustration of this format if it is acceptable. We refer the commenter to existing 122.642 of the DMM, which shows such an illustration. The same commenter also suggested that an address which contains the name of the addressee plus the house number and the street name need not contain the city and State so long as the ZIP Code is contained in the address. Theoretically, mail that lacks the city and State but has the correct ZIP Code will be delivered to the intended addressee. However, in the absence of city and State information mail might well be undeliverable should one or more digits of the ZIP Code be incorrect. Accordingly, in the interest of more consistent delivery, the Postal Service continues to require the city and State to be part of the address.

Another commenter said that it would be very beneficial for direct mail efforts if the same information would be available about post office boxholders as is available about the rural routes. Under new 122.43c postmasters will furnish without charge information on the route numbers and the number of families on each rural route. However, information about post office boxholders does not specify whether the box is used by a family or a business. We are not adopting this suggestion at the present time, but are referring it to the appropriate division for further study.

Another commenter said that the second line of an address, the line that follows the name or identification of the intended recipient, may not always be available and gave an example of mail addressed to Postmaster, Englewood, New Jersey 07631-9998 which would supposedly not be mailable under the terms of proposed section 122.12(b). Perhaps the commenter has not noticed that the street number and street name etc., must be used "if necessary". The requirement is not absolute.

Another commenter appears to be confused over the requirement to use in the address the name of the post office, which is actually the city and State where the post office is located. The commenter seems to believe that putting the branch, the station, the community post office or the place name might conflict with the requirement to use the name of the parent post office. Since the branch or station is merely a part of the parent post office, the city and State is the proper address to use.

One commenter thought the placement of the postage stamp should be optional and not required to be placed in the upper right corner of a letter size envelope, or in the upper right corner of the address area on other mail. Cancellation of stamps on letter mail, which is done mostly by machines, and other practical considerations make it necessary that stamps be in a particular place and not any place the mailer decides, so we cannot change this requirement.

We have also made the following minor changes, some at the request of commenters, and some at our own instigation. We changed some of the examples in 122.16 to show current endorsements. The illustration in 122.22 has been changed to add the post office station or branch name after the post office box number as a preferred address format.

Former sections 122.23, 122.24 and 122.25, which were inadvertently omitted from the proposed rule, have been renumbered 122.37, 122.37a and 122.37b and adopted as renumbered without change.

New 122.38 has been added, dealing with enclosing inside a parcel the address of the sender and the addressee. While this has not been a requirement, and is not here, it seems prudent to follow this practice in view of the possibility of obliteration or defacing of the outside address. This recommendation also appears at 121.41a of the DMM.

A new 122.39 has also been added, recommending that the address be parallel or nearly parallel to the longest edge of the mailing piece. This puts into the regulations the "normal" or "usual" way of addressing mail.

We eliminated the proposed revision of 122.635, dealing with directory assistance, since that subject is being handled in another, later proposed rule on correct ZIP Codes that was published

in the Federal Register on March 19, 1985 (50 FR 10991).

Certain erroneous typographical references have also been corrected, and minor textual changes have been adopted or illustrations added to improve clarity in the following DMM sections: 122.12b; 122.12d; 122.12d(7); 122.12d(9); 122.12d(10); 122.13; 122.14; 122.15; 122.16; 122.17; 122.31; 122.33; 122.641; 127c; 129.3b; 352.21c; 452.1f; and 651.212c.

Finally, a commenter observed that bulk third-class mail, other than carrier route rated, is not exempt from the address placement restriction in 651.2. The commenter's observation is accurate. However, bulk third-class mail is not subject to a nonstandard surcharge. Thus, as a practical matter, address placement on bulk third-class mail can only affect its ability to meet minimum size standards governing mailability.

Upon consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service, Incorporation by reference.

PART 111—[AMENDED]

The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14.

PART 122—ADDRESSES

Revise 122 to read DELIVERY ADDRESS.

Revise 122.1 thru 122.3 to read as follows:

122.1 Requirements.

The purpose of an address is to indicate the specific delivery location of a mailing piece.

.11 Mail must bear the legible address of the intended recipient on one side only. See 124.63a(13) for exception on live-day-old poultry.

.12 At a minimum, an address must consist of the following elements and appear in the following order (except simplified address mail as prescribed in 122.51):

a. Name or identification of the intended recipient;

b. Street and number, or box number, or general delivery, or rural or highway contract route designation and box number, if necessary;

c. City and state. The "city" is the name of the post office serving the intended recipient (the delivery post office), and

d. ZIP Code (5-digit or ZIP+4 codes) where required. ZIP Codes (5-digit or ZIP+4 codes) are required on:

(1) Presort First-Class Mail (361.3);

(2) ZIP+4 First-Class Mail (361.4);

(3) Postal cards and post cards, not mailed as presorted First-Class Mail, which are mailed under 322.31h, i, or j (322.32);

(4) Second-class mail (452 and 455.2f);

(5) Bulk third-class mail (661.2); and

(6) Fourth-class (761.1);

(7) Business Reply mail (917.525);

(8) Merchandise Return (919.43, 919.531 and 919.532);

(9) Mail sent to Military Addresses within the United States (122.82);

(10) Penalty mail (137.263a(3));

(11) Printed stamped envelopes (141.242);

(12) Return addresses of mail on which postage is paid by stamps precanceled by bars only (143.421a);

(13) The sender's return address where return service is requested on second-class mail (493).

122.13 Placement of Address.

.131 Letter-Size Mail. See section 322.3 regarding address placement on post cards. The placement of the address on letter-size mail determines which dimensions constitute the height and length, and may subject the mail to a surcharge or render it nonmailable (see sections 127, 324, 352.21, 353, 651.212 and 652).

.132 Other Mail Processing Categories. See Exhibit 452.6 regarding address placement on second-class publications. A clear space must be provided on other mail for the address, stamps, postmarks, and postal endorsements.

.14 Return Address. The return address contains elements corresponding to those for the destination address in 122.12. The mail listed below must bear, in legible form, the return address of the actual sender:

a. Mail of any class, when its return, and/or address correction service is desired —122.16;

b. Penalty mail—137.27 and 137.285;

c. Mail matter on which postage is paid by stamps precanceled by bars only—143.421

d. Matter bearing company permit imprints—145.44;

e. Priority mail—361.2;

f. Second-class mail in envelopes or wrappers—453.2a;

g. Fourth-class mail—761.12;

h. Registered mail—911.31;

i. Insured mail—913.13e;

j. COD mail—914.131.

.15 Special Addressing Instructions. The following mail items must be addressed in accordance with the sections listed below:

a. Overseas military mail—122.8;

b. Department of State mail—128.2;

c. Window envelope mail—129.3;

d. International mail—International Mail Manual.

.16 A mailer's specific instructions for forwarding mail (see 159.2), as well as requests for address correction service or return (see 159.3) must appear below the sender's return address. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece; on other mail, the information must appear in the upper left corner of the address area. The endorsements must be clearly visible.

EXAMPLES:

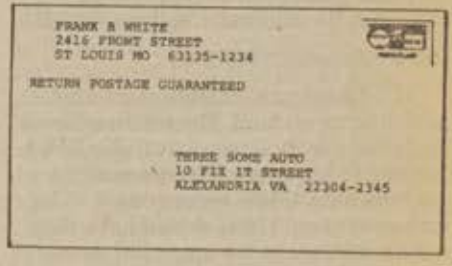
a.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
RETURN POSTAGE GUARANTEED

b.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
FORWARDING & RETURN POSTAGE GUARANTEED

c.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
ADDRESS CORRECTION REQUESTED

d.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
FORWARDING & RETURN POSTAGE GUARANTEED
ADDRESS CORRECTION REQUESTED

e.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
FORWARDING & ADDRESS CORRECTION REQUESTED



.17 At the sender's request the delivery post office will retain mail, other than registered, insured, and certified, for not less than 3 days or more than 30 days. To request a specific retention time, the sender in his return address must request that mail be held. Requests to lengthen or shorten retention periods to not less than 3 nor more than 30 days will be honored only at the sender's request. See 159.333 for registered, insured, and certified mail retention periods.

Examples:

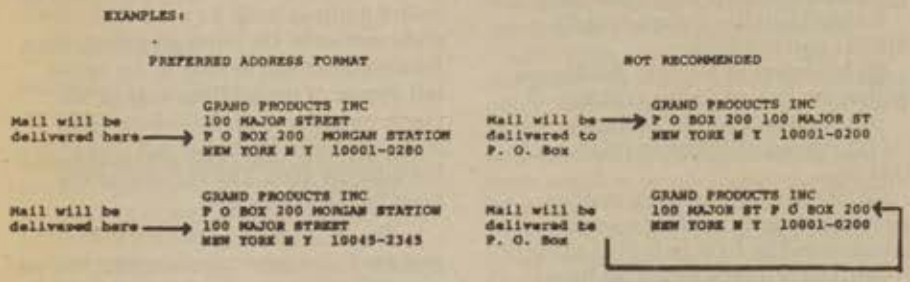
a. Return in 3 days to:
Frank B. White,
2416 Front Street,
St. Louis, MO 63135-2134

b. Return in 30 days to:
Frank B. White,
2416 Front Street,
St. Louis, MO 63135-2134
RETURN POSTAGE GUARANTEED

122.2 Restrictions.

.21 Mail bearing both a street address and a post office box number on different address lines will be delivered to the address element appearing on the line immediately above the city and state. If a ZIP Code (ZIP + 4 or 5-digit code) is used, it must correspond with the address element immediately above the city and state. These restrictions also apply to return addresses on mail matter.

.22 Mail bearing both a street address and a post office box number on the same address line will be delivered to the post office box. If a ZIP Code (ZIP + 4 or 5-digit code) is used, it must correspond with the post office box number in the address. This type of addressing is not recommended.



.23 Mail bearing the name of more than one post office in either the address or return address is not acceptable for mailing.

.24 An endorsement directing return to point of mailing (postmark) will not be honored.

.25 Postage (stamps, meter stamps, or permit imprints) must be placed in the upper right corner of the address side for letter size mail (see 128.2). All other processing categories (see 128.1) must have the postage in the upper right corner of the address area (see 122.132).

122.3 Recommendations.

.31 The return address should be included on all mail. The return address on letter-size mail (see 128.2) should be located in the upper left corner of the address side. Other processing categories (see 128.1) should have the return address in the upper left corner of the address area (see 122.132). The return address should not be placed below the delivery address. It should not appear on any but the address side.

.32 The use of ZIP Codes is recommended on all mail because they enable the Postal Service to achieve greater reliability and efficiency in dispatch and delivery. Although its use is voluntary, except where a ZIP + 4 discount is claimed, use of the ZIP + 4 Code is preferred over the 5-digit ZIP Code.

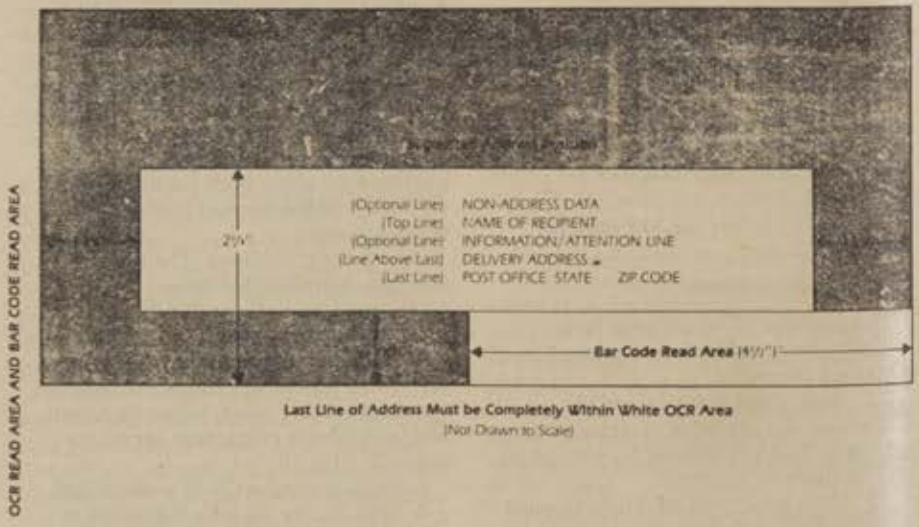
.33 The Postal Service also requests that mailers follow certain addressing guidelines which permit the efficient processing of letter-size mail on automated optical character readers (OCRs) and bar code sorters (BCSs). The address, or at a minimum, the city, state, and ZIP Code line(s) of the address, on letter-size mail should be located within an imaginary rectangle (the OCR read area) on the front of the mail piece formed by the following boundaries:

a. At least 1 inch from the left edge;
b. At least 1 inch from the right edge;
c. At least ⅝ inch from the bottom edge (bottom line of rectangle);
d. No more than 2¼ inches from the bottom edge (top line of rectangle.)

Note. See OCR Read Area and Bar Code Read Area Illustration.

.34 Nonaddress printing, computer punch holes, etc., should not be placed within the OCR read area, alongside or below the city, state, and ZIP Code line(s) of the address.

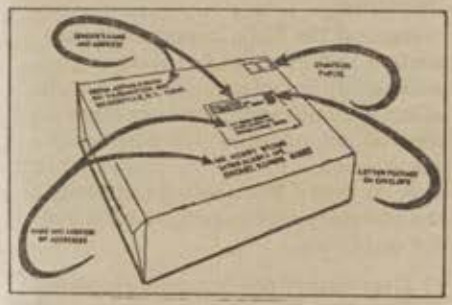
.35 Unit, apartment, mail receptacle, office, or suite number should be included in the address. Place that information at the end of the delivery address line. If there is not enough space on this line, place it on the line immediately above the delivery address. Special service endorsements should be placed on the right side below the postage and above the address.



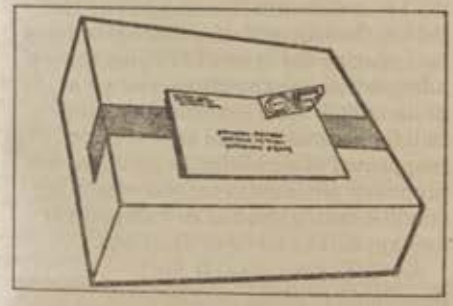
.36 Addresses should not be inverted (upside down).

.37 Addresses on Parcels

Illustration of how to affix a first-class letter on a parcel:



a. Parcels which bear address labels shall have the regular or postage meter stamps affixed by accepting postal employees so that the stamps overlap the upper right corner of the label, as shown in the following illustration:



b. Postmasters should seek the cooperation of business mailers by asking them to affix postage in this manner. Parcels bearing address labels covering any portion of the postage or showing other significant evidence of overlabeling shall be withheld from dispatch or delivery and must be immediately reported to the nearest postal inspector or postal inspector in charge.

.38 A slip should be attached to articles enclosed in parcels showing the address of the sender and addressee.

.39 On all mail processing categories the address should be parallel or nearly parallel to the longest edge of the mailing piece. (See the requirement for letter-size mail in 122.131.)

122.4 Simplified Address.

Revise 122.43 to read as follows:

.43 Number of Customers. Delivery statistics for all carrier routes and post office box sections are included in the CRIS Scheme. See 622.11(e) for CRIS ordering information. On request, postmasters will furnish, without charge, information as follows:

a. Number of post office boxholders;

b. Route number and number of boxholders on each rural and highway contract route;

c. Route numbers and number of families on each rural route;

d. Number of families served or number of business places served within the total delivery area or on particular carrier routes.

122.6 ZIP Code System.

Revise 122.61 to correct typographical error on the penultimate line "routine" is changed to read "route." Revise 122.632 to correct typographical error on line 5 "signed" is changed to the read "assigned."

Revise 122.641 and 642 to omit punctuation marks in the examples.

Revise the text of 122.641 to delete the words "A space not less than 3/10 of an inch nor more than 5/10 of an inch", and insert the words "From one to two character spaces."

122.8 Military Mail.

All examples appearing in this section are revised to omit punctuation marks.

127 Minimum Sizes.

Omit the "Note" following 127b and insert new 127c reading as follows:

c. Address placement can subject First-Class Mail and single piece third-class mail to a nonstandard surcharge or render it incompatible with the above minimum size standards. Mailing pieces which do not meet the minimum size standard are prohibited from the mails.

Note.—With the exception of mail sent at third-class carrier route rates, the placement of the address establishes which dimensions are the height and length.

129 Envelopes and Cards.

Revise 129.3 a, b and c to read as follows:

a. The address window on all lettersize envelopes should be located within the area described in 122.33. The window can be placed ½ inch from the bottom of the envelope, but ⅝ inch is preferred. See 122.131 regarding address position. The address window must be parallel with any edge of the envelope on flat-size mail (see 128.3). See 122.38 for recommendation. See 127 for size standards.

b. The window must be of sufficient size and transparency so that each character in the address and optional endorsement line (if used) is visible throughout an insert's movement within its envelope. Mail which does not conform to this standard may be rejected or returned.

c. The provisions in Part 122 governing addressing also apply to window envelopes. Nonaddress printing, computer punch holes, or other extraneous information should not be placed alongside or below the city, state, or ZIP Code line of the address.

159.3 Address Correction Service and Return.

Revise 159.332b to change reference 122.32 to read 122.17.

322.3 Restrictions on the Use of Double and Single Postal and Post Cards.

Revise 322.32b to read as follows:

b. The addresses on the cards must include either the ZIP + 4 code or the 5-digit ZIP Code and must be placed in accordance with 122.131.

323 Presorted First-Class Mail.

Revise 323.2 to insert the word CRIS after Postal Service and before scheme on line 19.

352.2 Shape, Ratio, and Sealing.

Omit the "Note" following 352.21b and insert new 352.21c reading as follows:

c. Address placement can subject First-Class Mail to a nonstandard surcharge or render it incompatible with the above minimum size standards. First-Class Mail which does not meet these minimum standards is prohibited from the mails.

Note.—The placement of the address establishes which dimensions are the height and length of First-Class Mail.

452 Addressing.

Revise 452.1f to read as follows:

See 122.131 and 127 regarding address placement and minimum size standards on letter-size pieces. On unenveloped and unwrapped flat size pieces (see 128.3) it is suggested the address be placed so that when the bound (or folded) edge is grasped in the right hand, the address should be along the bound edge or the top edge near the bound edge as illustrated in Exhibit 452.6.

651.2 Size, Shape, and Ratio.

Omit the "Note" following 651.212b(3) and add new 651.212c reading as follows:

c. Address placement can render third-class mail incompatible with the minimum size standards above or subject single piece rated third-class mail to a nonstandard surcharge. Third-class mailing pieces other than keys and identification devices which do not meet these minimum size standards are prohibited from the mails.

Note.—With the exception of mail sent at third-class carrier route rates, the placement

of the address establishes which dimensions are the height and length.

951 Post Office Box (P.O. Box) Service.

Revise 951.86 to change reference 122.32 to 122.17.

952 Caller Service.

Revise 952.46 to change reference 122.32 to 122.17.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

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BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 433

[BPO-11-F]

Medicaid Program; Medicaid Management Information Systems; Conditions of Approval and Reapproval and Procedures for Reduction of Federal Financial Participation

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

ACTION: Final rule.

SUMMARY: This final rule provides the additional requirements to the conditions and procedures for initial approval and reapproval of Medicaid Management Information Systems (MMIS) that were added by section 1903(r) of the Social Security Act (as amended by section 901 of the Mental Health Systems Act of 1980, Pub. L. 96-398). These provisions are intended to improve States' MMIS, ensure efficient system operations, and make the procedures for detection of fraud, waste, and abuse more effective. In addition, this final rule specifies the procedures we follow in reducing the level of Federal financial participation in State administrative expenditures if a State fails to meet the conditions for initial operation, initial approval, or reapproval of an MMIS.

EFFECTIVE DATE: These regulations are effective August 29, 1985. Paragraphs (e) and (g) of 42 CFR 433.116 contain information collection requirements with which the public is not required to comply until the office of Management and Budget approves these requirements. (See Section VI for this preamble for a discussion of information collection.)

FOR FURTHER INFORMATION CONTACT: Guy Harriman, (301) 594-4880

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicaid Management Information Systems

An MMIS is a mechanized system of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system is used to process Medicaid claims and to retrieve and produce utilization data and management information about recipients and services. Under section 1903(a)(3)(A) of the Act and regulations at 42 CFR 433.112, Federal financial participation (FFP) is available at a rate of 90 percent in State expenditures for design, development, installation or improvement of the systems. (As with all Medicaid FFP rates for fiscal years (FY) 1982-1984, the rates presented in this preamble and in the regulations are subject to any adjustment that occurs under sections 1903 (s) and (t) of the Act.) Under section 1903(a)(3)(B) of the Act and § 433.116, FFP is available at 75 percent for operation of an approved MMIS. These rates are higher than the normal matching rate of 50 percent under section 1903(a)(7) of the Act for general administrative operations of the State agency.

B. Title IX of the Mental Health Systems Act of 1980

Title IX of Pub. L. 96-398, the Mental Health Systems Act of 1980, added a new paragraph (r) to section 1903 of the Social Security Act (42 U.S.C. 1396b(r)). That legislation requires each State with a Medicaid program, with certain exceptions, to have an approved operating MMIS before established deadlines and, if the State fails to do so, prescribes FFP reductions by increments in the funding available under sections 1903(a) (2) and (7) of the Act. (Those sections provide 75 percent FFP for compensation and training of skilled medical, professional and support staff, and 50 percent FFP for general administrative expenditures.) The legislation also imposes new conditions for approval and reapproval of systems and prescribes FFP reductions by increments for failure to meet the conditions. However, the law requires us to waive the FFP reductions and modify deadlines if we determine that a State has good cause for being unable to comply or the State cannot comply due to circumstances beyond its control. We are required to report to Congress all waivers of FFP reductions, the bases for the determinations, and modifications of deadlines.

Because the basic requirements of section 1903(r) of the Act were sufficiently complete and clear to take effect without regulations, we have already put into effect the portions of that section for which we had to act by specific dates. We notified the States of the statutory requirements well before the deadlines.

C. Overview of the Notice of Proposed Rulemaking

On March 3, 1983, we published in the **Federal Register** at 48 FR 9039 a notice of proposed rulemaking (NPRM) to solicit comments on our proposed changes to the regulations that govern MMIS. That NPRM included additional requirements added by section 1903(r) of the Act (as amended by section 901 of the Mental Health Systems Act of 1980, Pub. L. 96-398) and specified procedures for reducing the level of FFP in a State's administrative expenditures when a State fails to meet the conditions for initial operation, initial approval, or reapproval of an MMIS. In addition, we proposed procedures for waivers of the conditions of approval and reapproval and appeals of adverse decisions.

As part of the process for development of the performance standards for reapproval to be used during fiscal year 1984, we also solicited comments on Part 11 of the State Medicaid Manual (SMM), which contains both the performance standards (including their factors and elements) for reapproval and system requirements for initial approval and reapproval. After consideration of the public comments concerning the NPRM and Part 11 of the SMM, we have decided to adopt the proposed rule without substantial modification as a final rule. (Changes included in this final rule that were not included in the NPRM are explained in section **IV. Summary of Changes**, below.) The reader is referred to the NPRM for a more complete discussion of the provisions of these regulations. However, for the convenience of the reader, we have briefly summarized the major provisions, below.

II. Major Provisions of These Regulations

The provisions of these regulations revise 42 CFR Part 433, Subpart C,

Mechanized Claims Processing and Information Retrieval Systems.

A. Advance Planning Document

We have clarified § 433.112 of the regulations to state more clearly that FFP is available at the 90 percent rate in State expenditures for the design, development, installation, or improvement of mechanized claims processing and information retrieval system only if the advance planning document (APD) is approved by HCFA prior to the State's expenditure of funds for these purposes. (An APD is a written plan of action to acquire the initial system or a replacement system.) This means that a State expenditure may qualify for the 90 percent rate only if the expenditure is made after HCFA approves the APD.

Section 433.112 is required by section 1903(a)(3)(A) of the Act, which provides for FFP at the 90 percent rate in State expenditures for the design, development, and installation of mechanized claims processing and information retrieval systems "which the Secretary determines are likely to provide more efficient, economical and effective administration of the plan. . . ." (The Secretary has delegated the approval of mechanized claims processing systems for Medicaid to HCFA.) We believe that section 1903(a)(3)(A) of the Act requires HCFA to approve the APD before the State's expenditure of funds, for FFP to be provided at the 90 percent rate, because it is important that HCFA know at the outset, that is, before the system is developed, about the system the State is proposing. The APD provides HCFA with this information.

Regulations at 45 CFR Part 95, Subpart F prescribe the conditions under which the Department will approve FFP at applicable rates for costs of automatic data processing incurred under an approved Medicaid State plan and may appear to conflict with the regulations at 42 CFR 433.112. However, unless the Secretary makes the determination that the system is likely to satisfy the section 1903(a)(3)(A) requirements, the applicable rate of FFP would be 50 percent. 45 CFR Part 95 restricts us in imposing prior approval requirements at the 50 percent rate, since the statute does not require an advance determination in order for a State to receive this percentage rate. However, since the Secretary must make this prospective determination in order for the State expenditures to qualify for the 90 percent rate, the prior approval demanded by the MMIS regulations (§ 433.112) is to obtain the enhanced rate and is not a condition limiting State procurements, which would be precluded by 45 CFR Part 95. Therefore, there is no conflict between 45 CFR Part 95, which limits our authority to require prior approval, and the requirements of § 433.112.

The § 433.112 requirement that the APD be approved before a State's expenditure of FFP for design, development, installation, or improvement of a system for receipt of the 90 percent rate of FFP applies to both an initial system and a replacement system. Section 433.113 contains other rules for obtaining approval of a State's original system. Section 433.117 contains the rules for approval of a replacement system and incorporates rules contained in § 433.113.

B. Initial Operation

Section 433.113(a) provides that a State (unless a waiver was obtained) must have in operation an MMIS that the State detailed in an advance planning document (APD) that was approved by HCFA. Under § 433.113(a), the system must have been in operation by the earlier of—(1) September 30, 1982; or (2) the last day of the sixth month following the date specified for operation of the system in the State's most recently approved APD submitted before October 7, 1980 (the date of enactment of Pub. L. 96-398). This means that a State that submitted an APD after October 7, 1980 had to have its system operating by September 30, 1982. If the State submitted an APD before October 7, 1980 that was approved by HCFA and that contained an operating date before March 1, 1982, the system must have been operating by the last day of the sixth month following the specified operating date. These deadlines were delayed only if HCFA determined under § 433.131 that the State was unable to comply for good cause or for circumstances beyond its control (see sections II-M and II-N below).

When system operation begins, the State receives 50 percent FFP in its expenditures for system operation until the system is approved. Under § 433.116, FFP in State expenditures for system operation increases to 75 percent, effective with the first day of the calendar quarter after the system was determined to be operating safisfactorily. Section 1903(r)(3) (A) of the Act provides for the 75 percent rate if we determine the system to have been operational for an entire calendar quarter before the quarter in which the system received its initial approval.

If a system had not been in operation by the specified deadline, under § 433.113(b), we would have reduced the rate of FFP in both State expenditures for skilled medical personnel and staff (section 1903(a)(2)) and general administrative expenses (section 1903(a)(7)) by 5 percentage points for every two-quarter period of non-operation beyond the deadline described above. (The rate of FFP under section 1903(a) (2) and (7) would not have been reduced more than 25 percentage points for each type of FFP.)

C. Initial Approval of an Operating System

Section 433.113(a)(3) provides that a State must have an operating system initially approved by HCFA by the last day of the fourth quarter that begins after the date on which HCFA establishes that the system became operational or be subject to reductions in FFP, described below.

Retroactive funding at the 75 percent rate is provided under § 433.116 for operation of an approved system from the first quarter beginning after the system became operational. If a system is operating but not approved by the specified deadline, under § 433.113, we reduce FFP in State expenditures under section 1903(a) (2) and (7) by 5 percentage points each for every two-quarter period for which the system is operating but not approved beyond that deadline. Again, the rate of FFP may not be reduced more than 25 percentage points for each type of FFP.

If the State is subject to a reduction of FFP because it did not meet the deadline for initial approval, § 433.113(c) requires that the State be subject to reductions in the retroactive FFP otherwise available for operating an approved system at the rate of five percentage points for every two-quarter period beyond the deadline for initial approval. Funding of the system for the quarters following the the quarter in which the system is initially approved is at the 75 percent rate.

To determine whether a system qualifies for initial approval, HCFA needs information retrieved from six months of system operation. Since FFP reductions could occur if there is a delay in the approval process, we encourage States to contact us to request initial approval of the system, when the State's system has been in operation between three and six months. At that time, we will review and evaluate State-furnished information developed by the system.

A State that is now without an operating system or that wishes to replace a currently approved system must submit its request for approval with the supporting documentation within three months after the system begins operating to allow us the needed

time to complete our evaluation within the first year of system operation.

D. Appeals of Initial Operations and Approval Decisions

A State may appeal reductions in FFP resulting from the denial of initial approval and reductions in FFP for expenses of the system for initial operations under the procedures of the Departmental Grant Appeals Board contained in 45 CFR Part 16 (governing reconsiderations of disallowances of claims for FFP under section 1903 of the Act). The appeal may be filed only when a claim (or a portion of a claim) made by the State for FFP in these expenditures has been disallowed.

E. Replacement Systems

Rules for initial approval of replacement systems are located at § 433.117. Replacement systems have to be approved by us in accordance with the initial approval conditions, and the APD, which the State files for a new system, must include: (1) The date the new system will become operational; and (2) a plan that assures an orderly transition from the system being replaced.

FFP is available at 90 percent in expenditures for the design, development and installation of the replacement system if the State owns the software. While the replacement system is being prepared to become operational, we will continue to fund, at 75 percent, the already approved operating system. (If the current system has been disapproved, it would be funded at a reduced rate under § 433.120, the regulation governing FFP in expenditures for disapproved systems.) When a replacement system becomes operational, FFP is available at 50 percent of expenditures for operation of the replacement system until we approve it. At that time, FFP is increased to 75 percent of expenditures for operation of the approved replacement system, retroactively to the date HCFA determines the replacement system met all conditions for initial approval. However, although a State may be operating both systems for a limited period of time, FFP is available at 75 percent of expenditures for operation of only one system at any time. (FFP is available at 50 percent of expenditures for the other operating system.)

F. Replacement of System Operators

A State may replace the operator of an approved MMIS. FFP continues to be available at 75 percent for an approved operating system regardless of who operates it. The following Departmental requirements apply also: 45 CFR Part 74, Administration of Grants, and 45 CFR Part 95, which prescribes the conditions under which the Department will provide FFP for the costs of automated data processing.

G. Conditions of Approval and Reapproval

In order to receive 75 percent FFP for operation of an MMIS, States must meet these new requirements of 42 CFR 433.116:

1. The State must provide that information on probable fraud or abuse obtained from, or developed by, the system, is made available to the State's Medicaid fraud control unit (if any) certified under section 1903(q) of the Act.

2. The system must meet all performance standards and other conditions for initial approval that we develop and about which we notify the States.

Except for the requirements in 1 and 2 above, there are no changes in the existing conditions in the regulations for initial approval in redesignated § 433.116 (c) through (g). In addition, no changes have been made in the conditions for initial approval in Part 11 of the SMM on which we solicited public comments in the NPRM. For yearly reapproval under § 433.119, States are required to meet the first requirement above, and also, performance standards and other conditions for reapproval. These include the system requirements in Part 11 of the SMM. The initial list of performance standards that must be met for reapproval has also been published in the **Federal Register** (see 46 FR 33653—June 30, 1981 and 48 FR 24204—May 31, 1983) and Part 11 of the SMM. For purposes of clarity, we publish separate notices in the **Federal Register** to specify conditions for initial approval and conditions for reapproval.

H. Reapproval: Basis for and Amount of Reduction

Section 1903(r)(4)(B) of the Act requires us to reduce FFP to no more than 70 percent, but not less than 50 percent, for an MMIS that fails to meet the conditions of reapproval. We may not reduce FFP by more than 10 percentage points in any four-quarter period. That is, a State whose system fails to meet the conditions of reapproval three years in a row and that is subject to the maximum potential reduction each year will receive 65 percent FFP the first year, 55 percent FFP the second year, and 50 percent the third year. In such a case, only 50 percent FFP will be available to the State until it meets the conditions of reapproval in a subsequent yearly review period.

Under § 433.120, we will reduce FFP by increments from 75 percent to 50 percent of State expenditures, in accordance with the statutory provisions, if successive yearly reviews of a State's MMIS operations show that the system no longer meets the requirements for reapproval specified in § 433.119 (performance standards, system requirements, and other conditions of reapproval). To avoid a further reduction in FFP because of the requirements, the State must demonstrate that the system meets all the current requirements during the next annual review.

I. Reapproval: Notice of Results of Review

During each yearly review, we evaluate performance for each State's MMIS over a period of at least six months. We are continuing to provide technical assistance, as in the past, to aid States in correcting system deficiencies. As early as possible in the first quarter after the end of the fiscal year under review, we notify each State whether its system has met the conditions of reapproval. If the system failed to meet these conditions, the notice includes—

1. A statement that the State's FFP for systems operation will be reduced, and the percentage to which it is reduced, for the four quarters immediately following the quarter in which the notice is issued;

2. The findings of fact on which we made our determination; and

3. A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

J. Reapproval: Timing, Duration and Restoration of the FFP Reduction

By law (section 1903(r)(6)(C) of the Act), the first review that could have resulted in a reduction of FFP to a State could not begin before Federal fiscal year 1982 (October 1, 1981 to September 30, 1982). Under § 433.119, review periods continue to coincide with Federal fiscal years and any reduction of FFP begins in the January following the end of the fiscal year.

We interpret section 1903(r) of the Act to establish the mechanism under which States that have had their MMIS disapproved will have their FFP reduced for at least four quarters after the quarter in which the disapproval is made and up to the first quarter beginning after the system is

reapproved. Section 1903(r)(4)(A) of the Act requires us to review at least once each fiscal year; we are conducting reviews and making review determinations only once each fiscal year. We conduct the required regular yearly reviews in all MMIS States to determine whether systems receiving reduced funding subsequently meet the conditions of reapproval, and whether systems receiving full funding continue to meet those conditions.

As we make regular review determinations once each calendar year, we do not resume full FFP for a system receiving reduced funding until we complete the next regular yearly review that results in a favorable determination. Yearly review determinations actually take effect after the end of the calendar year (i.e., we resume 75 percent FFP for MMIS operation, or reduce it if applicable, effective the following January).

Under § 433.122, a State that receives reduced FFP because of deficiencies found during the review process could receive the withheld amount retroactively, if the next yearly review determination shows that the system then meets all conditions of reapproval. The restoring of withheld FFP is also subject to our judgment that return of the funds would improve the effective administration of the State's plan. This provision for retroactive adjustment is intended as an incentive for States to correct the system deficiencies as soon as possible.

Our decision whether to restore one, two, three, four or five quarters of FFP is discretionary and, therefore, not subject to appeal to the Grant Appeals Board. In making this decision we will consider any relevant information, including the amount of improvement shown as a result of the latest yearly review.

Because section 1903(r)(4)(C) of the Act precludes restoration of the withheld FFP for more than four quarters immediately prior to the quarter in which the system is approved, the withheld FFP will be lost permanently for the first three quarters of the calendar year in question if the subsequent yearly review shows the system still failing to meet any condition of reapproval. Thus, the Secretary has the discretion to retroactively restore the enhanced FFP that was reduced because of a disapproval of a system, but only for a maximum period of five quarters—the quarter in which the system is reapproved plus the immediately preceding four quarters.

During the period in which a State receives FFP for MMIS operation at a reduced rate, claims by the State for FFP at any higher level for MMIS will be disallowed; i.e., the State will not be eligible to receive 75 percent FFP for MMIS funding.

K. Reconsideration by the Departmental Grant Appeals Board

States have the opportunity to request a reconsideration from the Board of the disallowance of claims for FFP. Where FFP in State expenditures for operating an MMIS is reduced or FFP under section 1903 (a)(2) and (a)(7) is reduced because of the State's failure to meet the requirements of section 1903(r) of the Act, the State could request Grant Appeals Board review of the resulting disallowance by filing a written request with the Board. Procedures for consideration of such requests were described in the preamble of the NPRM and are detailed in § 433.121.

L. Notification to States of Changes in Conditions of Approval and Reapproval

We announce the changes in conditions of approval and reapproval once a year by publishing a notice in the **Federal Register** describing the proposed revisions and inviting public comment. We then respond in the **Federal Register** to comments on revisions making substantive changes.

Also, we publish changes in performance standards, system requirements, and other conditions for reapproval in the SMM after first publishing a notice in the **Federal Register** advising the public of the changes and inviting comment, and after responding to the comments received, if any, in a subsequent **Federal Register** notice. Under section 1903(r) of the Act, we are required to inform the States of conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards and other conditions will be used.

M. Waiver of Conditions for Initial Operation and Approval

We will continue to waive the requirements for initial approval and for operating an MMIS for States with small populations if a State has demonstrated to HCFA's satisfaction that an MMIS will not significantly improve the efficiency of the administration of the State plan.

Section 1903(r)(7)(A)(ii) also directs the Secretary to waive these requirements for the Commonwealths, territories, and possessions of the United States under the same conditions as described above for States with small populations. Therefore, without necessity for a further showing, we granted waivers of MMIS requirements to Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

N. Waiver of Reductions for Good Cause

Under §433.131(a), we will waive the FFP reductions for failure to gain initial approval or reapproval for not more than two quarters if we determine that a State is unable to comply with a requirement of these regulations for good cause. We interpret the two-quarter waiver to apply to FFP reductions arising from two quarters of inadequate performance of a State's system.

This means that absent significantly poor performance for more than two quarters, we have the discretion to completely waive the reductions in FFP in State expenditures for operation of the State's system if good cause exists to do so. For example, in the first two quarters of a fiscal year, a State fails to produce its reports timely or accurately; however, in the next two quarters, the State's reports are both timely and accurate. Because the FFP reductions result from State performance in the first two quarters only, and we found good cause for the State's poor performance (for example, because of the lack of experience with a new requirement), HCFA would apply the good cause waiver and not reduce FFP during the next fiscal year even though this State system has not been reapproved. (Since passage of section 1903(r) of the Act in 1980, we have granted a number of good cause waivers for State inability to comply with several provisions in section 1903(a) of the Act.)

O. Waiver of Reductions Due to Circumstances Beyond the Control of the State

We will waive the FFP reductions for a period during which a State is unable to comply due to circumstances beyond its control, as provided in § 433.131(b). This situation will exist when a State or the contractor responsible for the MMIS is without fault in being unable to comply; e.g., a natural disaster occurred or a delay was caused by us. We will also defer all remaining deadlines for the initial approval process for the same length of time.

III. Analysis and Response to Public Comments

We received seven letters concerning the proposed regulations, all from State agencies. These State agencies express concern that the proposed regulations will be applied too stringently and that the concerns of State agencies will not continue to be taken into account.

Reapproval Requirements That Measure Performance Not Within the Scope of the MMIS

Comment: One State agency, while agreeing that the proposal reflects the provisions of section 1903(r) of the Act, requests that we apply the FFP reduction provisions only to MMIS items on which there is wide agreement. For example, the commenter urges us not to apply these funding provisions to any items not included in present rules or in the MMIS General System Design documents (explained in § 11300 of Part 11 of the SMM). The commenter says that this comment is consistent with the position taken by State members of the Systems Technical Advisory Group, who object to including items in the MMIS reapproval requirements that measure functions outside the scope of the system itself.

Response: An MMIS is described both in sections 1903(a)(3) and 1903(r) as a system that the Secretary determines is likely to provide more efficient, economical, and effective administration of the State plan for medical assistance. To this end, Congress has authorized enhanced FFP for design, development, installation, and operation of a system that meets this objective. In turn, the Secretary has determined that a system is not likely to provide more efficient, economical, and effective administration of the plan unless it is provided with quality data. Thus, in making the statutory determination of what qualifies a system for enhanced FFP, the Secretary has decided not to look at MMIS in a vacuum. Instead she has decided to look at it in the context of the Medicaid program as a whole. In complying with the mandate of section 1903(r), which requires her to adopt performance standards, the Secretary opted to measure the performance of an MMIS by reference to the quality of the data that is put into the system as well as the quality of the system that manipulates that data. Since adopting the commenter's proposal could result in enhanced funding for a system that merely processes worthless data (that is, garbage in; garbage out), we have chosen to reject the commenter's suggestion.

We have worked with and will continue to work with States through the Systems Technical Advisory Group to identify items to be included in reapproval reviews. In addition, through the MMIS Relook Project, we are reviewing the relationship between system operations funding and system evaluation. Based on these efforts, some revision may be made in the FY 1985 reapproval review package and subsequent reviews. We will also retain the perspective of approving systems operations which contribute to efficient, economical and effective administration of the State plan, as required by sections 1903(a)(3) and 1903(r) of the Act. We will continue to seek consensus with States on the best means of applying the law through system reviews.

Frequency of Review

Comment: One State agency recommends that a complete reapproval procedure take place once every three years, rather than on an annual basis as we proposed. This commenter suggests that only system functions requiring frequent monitoring be reviewed annually.

Response: This comment would require a legislative change. Section 1903(r)(4)(A) of the Act requires the Secretary to review all approved systems and to reapprove or disapprove such systems not less often than once each fiscal year. The statute does not allow exceptions so that certain areas of the MMIS will be subject to review on a less frequent basis. We make annual changes to our reapproval requirements to reflect changes in State performance, new conditions of approval, and Medicaid needs. These changes are applied uniformly to all systems.

Failure To Comply With Reapproval Standards

One commenter requests that we provide technical assistance, instead of fiscal sanctions, to resolve State agency dificiencies, suggesting that it is contradictory to impose fiscal sanctions at a time when a State needs funds to eliminate deficiencies.

Response: Section 1903(r)(4)(B) of the Act requires that the Secretary impose FFP reductions if an MMIS is disapproved.

Since the inception of the annual MMIS reapproval process, it has been our policy to make technical assistance available to States upon request in an effort to assist in improving their MMIS operations and avoiding FFP reductions. This technical assistance is provided principally by HCFA regional offices. In addition, since FY 1982, an early warning system has been in place to alert any State as early as possible to actual or potential failure of the reapproval requirements. The early warning system requires reviews to be conducted during the first two quarters of each fiscal year of elements and standards failed by any State during the preceding reapproval review cycle. This aids a State in avoiding final failure by alerting it to needed remedial actions. If requested, we will provide technical assistance so that a State can take actions to avoid system disapproval and FFP reductions. Furthermore, if deficiencies are rectified promptly, the reductions of FFP for operating a disapproved system may be restored retroactively.

Reduction of FFP for a Disapproved MMIS

The proposed rules indicated that upon disapproving an MMIS, we would reduce FFP by increments of up to 10 percentage points beginning with the next calendar quarter and continuing until the "next yearly review." This implies that the reduction always will be applied for a minimum of four full quarters regardless of when the State modified its system to conform to the MMIS standards. One State agency suggests that a State be allowed to request a review when the State has made the necessary changes in order to reduce the potential loss of funds. The commenter claims that this type of request is allowable in the law but the proposed rules refer to yearly reviews only, with no other options available.

Response: Section 1903(r)(4)(A) of the Act indicates that the Secretary shall reapprove or disapprove an MMIS and notify the State not later than the end of the first quarter following the review period. We have established the review period as the Federal fiscal year; that is, four quarters. There will not be another notification or reapproval determination until after the next yearly review.

As noted above, we have establihed an early warning system to alert States to operational problems in certain key functions and in areas where the States experienced difficulties during the previous reapproval review cycle. This early warning affords States an opportunity to adjust system operations and avoid failure of performance standards and other conditions of reapproval.

It is simply not administratively feasible for us to be on call for follow-up reviews. The staffing and paperwork burdens inherent in the State's proposal are unmanageable. Indeed, our recent experience with reapproving two previously disapproved State systems prior to the end of the fiscal year demonstrated that we do not have the capacity to handle follow-up reviews if they become a widespread practice. This is one reason why we have established the review cycle on a fiscal year basis. We do not have the resources to staff more frequent reviews.

Of course, as provided in § 433.122(b), HCFA may restore the reduced FFP if the system meets all conditions of reapproval in the next yearly review and if HCFA determines that restoring the reduced FFP could improve the administration of the State Medicaid plan.

Time period for an appeal to the Grant Appeals Board

Comment: One State agency claimed that there was an inconsistency between the preamble and the proposed regulations text concerning when we will notify the State agency of disapproval of a system and the time period for the State agency to appeal to the Grant Appeals Board. The commenter claimed that the proposed rule stated that an appeal must be filed within 30 days from the date of the letter notifying the State of the disapproval. The preamble indicates that the States would not be able to challenge the disallowance until after the end of the first quarter in which FFP is reduced. The commenter suggested that an appeal be allowed as soon as the written notice is received, with a reasonable amount of time provided in which to file the appeal, such as sixty days.

Response: We do not believe that there is a conflict between the preamble and the regulations text of the NPRM. The commenter apparently confused the notice of disapproval (which does not confer an immediate right to appeal) with the notice of disallowance (which does confer an immediate right to appeal).

The Act provides a mechanism by which a State is able to contest a reduction in FFP. Specifically, section 1116(d) of the Act provides for a reconsideration by the Secretary (which the Secretary has delegated to the Departmental Grants Appeal Board) of a determination concerning any item for which FFP is claimed and disallowed. Because there is no disallowance until a State submits a claim for FFP and a letter of disallowance is sent to the State, the Grant Appeals Board does not have the authority to take any action on the earlier notice of disapproval. If we were to provide a predisallowance appeal right, a State could relitigate the issue at a later time by claiming enhanced FFP that had been denied in the predisallowance appeal and then, by contesting the resulting predisallowance before the Board under section 1116(d) of the Act. We do not believe it would be appropriate to provide for duplicative appeals.

Under 42 CFR 433.121(a) and 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board, the State has 30 days to file a notice of appeal (the notice can be very brief) from the date it receives a letter of disallowance. Under 45 CFR 16.8, the State will also have an additional 30 days to prepare its argument after the Grant Appeals Board acknowledges the notice of appeal.

Decisions That May Not Be Appealed to the Grant Appeals Board

Comment: One State agency objects to the provisions of proposed § 433.121 that decisions concerning the following issues are not subject to appeal to the Grant Appeals Board—

(1) The amount of the percentage reduction of FFP (if within the range set by title XIX of the Act);

(2) Whether to restore FFP retroactively; and

(3) The number of quarters restored.

The commenter's objection is based on the absence of these exclusions in title XIX of the Act.

Response: We have determined that these issues are not subject to appeal. Section 1903(r)(4)(C) indicates that decisions involving the restoration of FFP are within the Secretary's discretion. In addition, section 1903(r)(4)(B) of the Act explicitly covers the authorized range for the Secretary's reducing FFP. Therefore, such decisions are not subject to review or appeal to the Grant Appeals Board unless they exceed the range authorized by law or unless the Secretary delegates review of this exercise of discretionary authority to the Board. For the reasons presented below, we concluded that it would be unwise to delegate review of this discretionary authority.

The law explicitly authorized the Secretary the discretion to establish the appropriate reduction within certain statutory limits upon a finding of disapproval, we believe that the Board's proper role should be limited to questions of fact; that is, whether the performance of the MMIS failed to meet the standards, requirements, or other conditions of reapproval. The amount of actual reduction must, out of necessity, be based on multiple operational and administrative issues that do not readily admit to quasi-judicial review. As for the decisions for restoration and the number of quarters to be restored, the statute does not establish restoration as a State right. Even were a State to meet all criteria for restoration, no obligation to grant such restoration is imposed upon the Secretary. Therefore, to allow a reconsideration review by a third party is not desirable.

Postponement of FFP Reductions

Comment: One State agency, believing that section 1903(r) of the Act does not require immediate reductions in FFP, urges us to modify § 433.121(c) to allow postponement of FFP reductions for failure to meet the conditions of reapproval until completion of all administrative appeals. If the disallowance is upheld, this commenter suggests that the State would pay interest from the date of the disallowance.

Response: This recommendation is not compatible with section 1903(r) of the Act, and therefore, a legislative change would be required to delay the reduction of funding until a final decision by the Grant Appeals Board. Section 1903(r)(4)(A) of the Act requires us to reapprove or disapprove a State's MMIS and to notify the State by the end of the first quarter following the yearly review period. This requirement is the basis for § 433.119(b).

In the event HCFA disapproves a State's MMIS, HCFA is required to reduce the State's FFP in accordance with the range specified in section 1903(r)(4)(B) of the Act. That section of the statute also requires us to implement the reduction for the four quarters beginning after the determination of disapproval. Should the State request a reconsideration, such request does not delay implementation of the reduction in FFP because, once the disapproval notice is issued, the State is no longer eligible for full enhanced funding for MMIS operations.

Section 1903(d) of the Act provides for interim payments to the State based upon an estimate of what its quarterly expenditures will be for the upcoming quarter. Therefore, since section 1903(r)(4)(B) requires FFP to be reduced if the system is not reapproved (and since section 1904(r)(4)(C) contemplates retroactive waivers of the reduction if the system is reapproved in the next review and certain other conditions are met), we believe delaying the reduction until all administrative appeals are exhausted would frustrate the Congressionally-enacted scheme of reduction of FFP for disapproved systems with a possibility for retroactive restoration of FFP.

Moreover, specific statutory authority would be necessary to permit a State to receive the full enchanced matching after its system is disapproved and then compel the State to pay interest from the date of the disallowance on the increment of FFP that could have been reduced. However, section 1903(d)(5) of the Act provides a mechanism under

which a State may keep FFP that has been overpaid pending a final determination on the disallowance. If a State keeps the disallowed funds during this period, section 1903(d)(5) of the Act requires the State to repay the amount plus interest if the disallowance is upheld. However, this provision applies only when the State has been overpaid and does not apply in the context of an MMIS reduction under section 1903(r) of the Act because section 1903(r) of the Act requires that the FFP be reduced prospectively, thereby eliminating the possibility of an overpayment. Since section 1903(d)(5) of the Act provides the exclusive authority for a State to keep disallowed funds and then repay them with interest at the end of the appeals process if the State does not prevail, and since it does not apply to the reductions under section 1903(r) of the Act, we could not adopt the comment without a legislative change.

Use of Published Summaries of Changes to MMIS Performance Standards, System Requirements, and Other Conditions of Reapproval

Comment: One State agency is concerned that our proposal to publish for comment a summary of proposed changes rather than the changes themselves will not provide sufficient opportunity for the States to interpret the proposed changes. The commenter recommends that either the content of the entire change be published or the comment period be extended so that the States can obtain the details of the proposed changes and assess them thoroughly.

Response: States will be notified of the detailed text for the MMIS performance standards, system requirements, and other conditions of reapproval concurrent with or prior to the publication of the summary of those conditions of reapproval in the **Federal Register**. This has in fact been our practice over the past few years.

As was indicated in the preamble to the proposed rule, section 1903(r)(6)(E) of the Act requires us to inform the States of the conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards, or other conditions will be used. For example, in addition to HCFA's publishing a notice in the **Federal Register** that summarizes any changes, the States will have the detailed text of any change at least one quarter before the date of expected implementation. This will also enable the States to have sufficient time to comment on the summary or to obtain more detailed information and comment on all the changes.

Also, whenever HCFA proposes to modify the performance standards, system requirements or other conditions of approval or reapproval, these proposals will be published in a notice in the **Federal Register**, and there will be opportunity for comment (at least 30 days) on these proposals. HCFA will respond in a subsequent **Federal Register** notice to any comments that were received and will announce any changes.

State Participation in the Development of Performance Standards and System Requirements

Comment: One State agency suggests that we develop new performance standards, system requirements or other conditions of reapproval with State agency participation because—

- State participation worked well in the original MMIS development.
- The use of the notice and comment procedure by itself is not adequate for changes that will have great impact upon State funding.

Response: In the future, we will make greater use of both the State Medicaid Directors Group and the Systems Technical Advisory Group, which is composed of State agency representatives, whenever possible in developing the new standards and systems requirements. In addition, since 1980 whenever we have modified system requirements and other conditions for initial approval or annual reapproval, we have first published the proposal in the **Federal Register** to provide an opportunity for States and members of the public to comment on the proposals.

Reducing the Approval Procedure Burden for New System Requirements

Comment: One State agency suggests that the approval procedure for new system requirements be streamlined to reduce the inappropriate burden on the States.

Response: In a further effort to foster State participation, approval of enhanced FFP (at the 90 percent rate) for improvements made to a system in order to meet new system requirements has been moved to the regional offices. The requirements for approval for improvements to existing approved systems have been added to the language of the regulation at § 433.112(b). The procedure to be followed to obtain prior approval is detailed in Part 11 of the SMM. At any time, a State may submit recommendations about how the process may be further streamlined.

Length of Time Period Allowed for Compliance With New Conditions of Reapproval

Comment: One State agency is worried that the "appropriate period" allowed for the States to comply with new MMIS conditions of reapproval will not be long enough for the many States whose legislatures appropriate funds on a two-year basis.

Response: The time period for implementing new conditions of reapproval is set forth in each proposed rule or notice with a comment period that proposes new conditions of reapproval. During the notice and comment period, a State that needs additional time to implement the new requirements should write to us explaining just how much time the State needs. Then, we will take that into account when issuing the effective date in the final rule or notice. So far this procedure has worked well, and, to our knowledge, all States have had enough time to comply with any new conditions of reapproval.

In addition, § 433.123 requires that HCFA provide at least one calendar quarter before the review period to which the new or modified performance standards and other conditions for reapproval apply.

Time Period To Dispute a Finding of Disapproval

Comment: One State agency suggest that a State would need more time than we propose to allow to dispute a finding that the State has not met a condition of reapproval.

Response: The State actually has a great deal of time to present its case. In addition to responding to the regional office findings, the State may submit evidence of satisfactory performance at any time prior to receipt of the notice of disapproval. The State may then continue to prepare its case for use before the Grant Appeals Board should it intend to contest the disallowance.

Notification of Proposed Changes to Performance Standards and System Requirements

Comment: Two State agencies quoted section 1903(r)(6)(E) of the Act, which requires the Secretary to "notify all States of proposed procedures, standards, and other requirements at least one quarter prior to the fiscal year in which such procedures, standards, and other requirements will be used for conducting reviews for reapproval." The commenters questioned whether the statute's time frame coincided with our proposal in § 433.123(c) that we will notify agencies at least one calendar

quarter before the review period to which the new or modified standards or conditions apply. The State agencies recommended that we allow the maximum time to respond to changes and provide for State participation in developing new performance standards, system requirements or other conditions of approval or reapproval.

Response: The reapproval review package containing the required standards of performance for reapproval of a State's MMIS is issued by the end of June each year to all State Medicaid directors. The actual review is conducted on the Federal fiscal year basis. This means the period to be reviewed is from October through September annually. This time frame, as reflected in this final regulation, corresponds to the statutory requirements. We do discuss proposed changes with States and have postponed adding requirements, based on the concerns of States. Implementation of proposed claims processing review requirements has been delayed and is being revised as a result of the notice and comment process.

Comments Concerning the Claims Processing Assessment System (CPAS)

A number of comments addressed a statement in the Supplementary Information portion of the NPRM that we intended to include a quality control component as a condition of MMIS approval and reapproval. Subsequent to publication of this NPRM, we published a notice and NPRM (August 9, 1983, 48 FR 36151) dealing with a new claims processing assessment system (CPAS), which we proposed as a new condition for MMIS approval and reapproval.

Comments relating to the quality control component were considered and responded to in the final rule concerning CPAS, which is entitled Medicaid Program: Claims Processing Assessment System (CPAS), BQC-18-F. That final rule was published on May 29, 1985 (40 FR 21839).

IV. Summary of Changes

42 CFR 400.310 has been amended to include the currently valid OMB control numbers for the information collection requirements in 42 CFR 433.112 and 433.117 (see section VI. Reporting Requirements, below, for additional information). In addition, although these final regulations contain the same substantive rules that were proposed in the NPRM, the following sections of the regulations have been changed solely for clarity:

(1) Section 433.110 has been revised to indicate that the requirements under section 1903(r) of the Act do not apply to American Samoa.

(2) In § 433.112, FFP for design, development, installation or improvement of mechanized claims processing and information retrieval systems, paragraph (b) has been changed to indicate that HCFA will approve the APD (rather than the system) if the several listed conditions are met. For purposes of obtaining 90 percent FFP in expenditures for design, development, or installation of a system, it may not be appropriate to refer to "approving the system".

This is because the "system" may not exist in the developmental stage. Therefore, we have changed the reference to "approval of the system" to approval of the APD. Approval of the APD prior to the expenditure of funds is a prerequisite to receipt of 90 percent FFP. This approval must be received prior to the award of the enhanced FFP.

(3) Section 433.112(b)(4) now refers to peer review organizations; that term currently includes Professional Standards Review Organizations and Utilization and Quality Control Peer Review Organizations, rather than Professional Standards Review Organizations only.

(4) Section 433.113(c) has been amended to provide that the amount of FFP that would be available retroactively for operating a system that later receives initial approval will be reduced by HCFA by the same percentage points for the same periods of time as the reduction in FFP in expenditures for compensation and training of skilled medical personnel and support staff and for general administration until the system is approved.

(5) Section 433.120(b) has been amended to explain that HCFA—

(a) Will not reduce FFP by more than 10 percentage points (rather than 10 percent) in any four-quarter period; and

(b) Will also consider the actual and potential program impact attributable to the unsatisfactory conditions in determining the amount of the FFP percentage reduction.

V. Regulatory Impact Analyses

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

We believe that this final rule will not result in any significant economic impact. The final regulations implement statutory provisions for which the estimated annual impact will be no more than $34 million in FY 1985. The difference between the NPRM estimate of $25 million in FFP reductions and the current $34 million figure is the impact of inflation between FY 1982 and FY 1985. As in the NPRM, our FY 1985 figure is based on a "worst case" estimate in which ten percent in FFP for system operations would be reduced if all currently approved systems were found deficient during the next yearly review. However, based on program experience, we do not expect the actual impact of this rule to be anywhere close to $34 million in FY 1985 or meet any of the other threshold criteria of the Executive Order. Therefore, this rule does not constitute a major rule.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this final rule will not have a significant economic impact on a substantial number of small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction", which means "governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand". No State or the District of Columbia meets this definition, and, as these regulations only affect States and the District of Columbia, a regulatory flexibility analysis is not required.

VI. Reporting Requirements

The system requirements in 42 CFR 433.112 (a) and (b)(2), 433.116 (e) and (g), and 433.117(b) of this final rule contain information collection requirements. As required by section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its approval of these information collection requirements. OMB approved the information collection requirements in §§ 433.112(a) and 433.117(b) under control number 0990-0058, and the information collection requirements in § 433.112(b)(2) under control number 0938-0247. When we obtain OMB approval of the information collection requirements in paragraphs (e) and (g) of § 433.116, we will publish the control number in the **Federal Register.**

Comments on the information collection requirements in this final rule should be sent directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C., 20503; Attn: Fay Iudicello.

List of Subjects

42 CFR Part 400

OMB control numbers, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (agreements), Cost allocation, Federal Financial participation (FFP), Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems (MMIS), Medicaid, State fiscal administration, Third party liability.

42 CFR Chapter IV is amended as set forth below:

I. Part 400 is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart C—OMB Control Numbers for Approved Collection of Information

42 CFR 400.310 is amended by reprinting the title of the table for the convenience of the reader and adding the following in section numerical order as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control number
• • • • •	
433.112(a)	0990-0058
• • • • •	
433.112(b)(2)	0938-0247
• • • • •	
433.117(b)	0990-0058
• • • • •	

II Part 433, Subpart C is amended to read as follows:

1. In the Table of Contents to Part 433, Subpart C is revised by redesignating § 433.113 as § 433.116, § 433.114, as § 433.127, § 433.115 as § 433.123, and revising the title; and by adding new §§ 433.113, 433.114, 433.117, 433.119, 433.120, 433.121, 433.122, 433.130, and 433.131. The authority citation for Part 433 is also revised.

PART 433—STATE FISCAL ADMINISTRATION

• • • • •

Subpart C—Mechanized Claims Processing and Information Retrieval Systems

Sec.

• • • • •

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. Section 433.110 is revised to read as follows:

§ 433.110 Basis, purpose, and applicability.

(a) This subpart implements the following sections of the Act:

(1) Section 1903(a)(3) of the Act, which provides for FFP in State expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures for implementing these regulations are in 45 CFR Part 74, 45 CFR Part 95, Subpart F, and Part 11, State Medicaid Manual; and

(2) Section 1903(r) of the Act, which—

(i) Requires reductions in FFP otherwise due a State under section 1903(a) if a State fails to meet certain deadlines for operating a mechanized claims processing and information retrieval system or if the system fails to meet certain conditions of approval or conditions of reapproval;

(ii) Requires at least an annual Federal performance review of the mechanized claims processing and information retrieval systems; and

(iii) Allows waivers of conditions of approval, conditions of reapproval, and FFP reductions under certain circumstances.

(b) The requirements under section 1903(r) of the Act do not apply to Puerto Rico, Guam, the Virgin Islands, American Somoa and the Northern Mariana Islands.

3. Section 433.111 is amended by reprinting the introductory text of the section for the convenience of the reader and revising the first definition to read as follows:

§ 433.111 Definitions.

For purposes of this section:

"Advance Planning Document (APD)" means a written plan of action to acquire the proposed system. Content requirements for the APD are in 45 CFR Part 95, Subpart F, and in Part 7–71–00 of the Medical Assistance Manual.

• • • • •

4. Section 433.112 is amended by changing the words "the Administrator" to "HCFA" wherever they appear, and by revising paragraph (a), the introductory text of paragraph (b) and paragrahs (b) (2), (4), and (7) to read as follows:

§ 433.112 FFP for design, development, installation or improvement of mechanized claims processing and information retrieval systems.

(a) FFP is available at the 90 percent rate in State expenditures for the design, development, installation, or improvement of a mechanized claims processing and information retrieval system only if the APD is approved by HCFA prior to the State's expenditure of funds for these purposes.

(b) HCFA will approve the system described in the APD if the following conditions are met:

• • • • •

(2) The system meets the system requirements and performance standards in Part 11 of the State Medicaid Manual, as periodically amended.

• • • • •

(4) The system supports the data requirements of peer review organizations established under Part B of title XI of the Act.

* * * * *

(7) The costs of the system are determined in accordance with 45 CFR 74.171.

§ 433.113 [Redesignated from § 433.116]

5. Section 433.113 is redesignated as § 433.116.

6. A new § 433.113 is added to read as follows:

§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.

(a) Except as waived under § 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval system that meets the following conditions:

(1) The APD for the system was approved by HCFA;

(2) The system is operational by the earlier of—

(i) September 30, 1982; or

(ii) The last day of the sixth month following the date specified for operation in the State's most recently approved APD that was submitted before October 7, 1980; and

(3) The system is initially approved by the last day of the fourth quarter that begins after the date the system became operational as determined by HCFA.

(b) HCFA will reduce FFP in expenditures for compensation and training of skilled professional medical personnel and support staff under section 1903(a)(2) of the Act, and for general administration under section 1903(a)(7) of the Act, by the following increments applied separately to those two categories of expenditures:

(1) Five percentage points for the first two quarters beginning after a deadline in paragraph (a) of this section;

(2) An additional five percentage points during each additional two-quarter period, through the quarter in which the State achieves compliance with the conditions for initial operation or initial approval of an operating system. FEP reductions will not exceed 25 percentage points for each type of reduction.

(c) The amount of FFP (determined under section 1903(a)(3)(B)) that would be available retroactively for operating a system that later receives initial approval will be reduced by HCFA by the same percentage points for the identical periods of time described in subparagraph (b)(1) of this section, until the system is initially approved. No reduction will be made after the first quarter during which the system is initially approved.

§ 433.114 [Redesignated as § 433.127]

7. Section 433.114 is redesignated as §433.127.

8. A new § 433.114 is added to read as follows:

§ 433.114 Procedures for obtaining initial approval; notice of decision.

(a) To obtain initial approval, the Medicaid agency must inform HCFA in writing that the system meets the conditions specified in § 433.116(c) through (h).

(b) If HCFA disapproves the system, or determines that the system met requirements for initial approval on a date later than the date required under § 433.113(a)(3), the notice will include—

(1) The findings of fact upon which the determination was made; and

(2) The procedures for appeal of the determination in the context of a reconsideration of the resulting disallowance, to the Departmental Grant Appeals Board.

§ 433.115 [Redesignated as § 433.123]

9. Section 433.115 is redesignated as § 433.123.

10. The redesignated § 433.116 is amended by revising paragraphs (a), (b), (c), and (h) to read as follows:

§ 433.116 FFP for operation of mechanized claims processing and information retrieval systems.

(a) Subject to § 433.113(c), FFP is available at 75 percent of expenditures for operation of a mechanized claims processing and information retrieval system approved by HCFA, from the first day of the calendar quarter after the date the system met the conditions of initial approval, as established by HCFA (including a retroactive adjustment of FFP if necessary to provide the 75 percent rate beginning on the first day of that calendar quarter).

(b) HCFA will approve the system operation if the conditions specified in paragraphs (c) through (h) of this section are met.

(c) The conditions of § 433.112(b) (1) through (4) and (7) through (9), as periodically modified under § 433.112(b)(2), must be met.

* * * * *

(h) If the State has a Medicaid fraud control unit certified under section 1903(q) of the Act and § 455.300 of this chapter, the Medicaid agency must have procedures to assure that information on probable fraud or abuse that is obtained from, or developed by, the system is made available to that unit. (See § 455.21 of this chapter for State plan requirements.)

11. New §§ 433.117, 433.119, 433.120, 433.121, 433.122 are added to read as follows:

§ 433.117 Initial approval of replacement systems.

(a) A replacement system must meet all conditions of initial approval of a mechanized claims processing and information retrieval system.

(b) The agency must submit a APD that includes—

(1) The date the replacement system will be in operation; and

(2) A plan for orderly transition from the system being replaced to the replacement system.

(c) FFP is available at—

(1) 90 percent in expenditures for design, development, and installation in accordance with the provisions of § 433.112; and

(2) 75 percent in expenditures for operation of an approved replacement system in accordance with the provisions of § 433.16(b) through (h), from the date that the system met the conditions of initial approval, as established by HCFA.

(d) FFP is available at 75 percent in expenditures for the operation of an approved system that is being replaced (or at a reduced rate determined under § 433.120 of this subpart for a system that has been disapproved) until the replacement system is in operation and approved.

§ 433.119 Conditions for yearly reapproval; notice of decision.

(a) HCFA will review yearly each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of § 433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of § 433.116 (d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in Part 11 of the State Medicaid Manual as periodically amended.

(b) HCFA will issue to each Medicaid agency, by the end of the first quarter after the fiscal year of the review, a written notice informing the agency whether its system is reapproved or disapproved. If the system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage

to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

§ 433.120 Procedures for reduction of FFP after yearly reapproval review.

(a) If HCFA determines after the yearly review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

(b) HCFA will reduce FFP in expenditures for system operations from 75 percent to no more than 70 percent and no less than 50 percent; however, HCFA will not reduce FFP by more than 10 percentage points in any four-quarter period. The percentage to which the FFP is reduced will depend primarily on the following criteria:

(1) The number of conditions judged unsatisfactory;

(2) The extent to which conditions were not met;

(3) The significance of the unsatisfactory conditions in overall mechanized claims processing and information retrieval system operations; and

(4) The actual and potential program impact attributable to the unsatisfactory conditions.

§ 433.121 Reconsideration of the decision to reduce FFP after the yearly review.

(a) The agency may appeal to the Departmental Grant Appeals Board, under 45 CFR Part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's MMIS. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(4)(B) of the Act.

(b) The decisions concerning whether to restore any FFP retroactively and the actual number of quarters for which FFP will be restored under § 433.122 of this subpart are not subject to administrative appeal to the Grant Appeals Board under 45 CFR part 16.

(c) An agency's request for a reconsideration before the Board under paragraph (a) of this section does not delay implementation of the reduction in FFP. However, any reduction is subject to retroactive adjustment if required by the Board's determination on reconsideration.

§ 433.122 Reapproval of a disapproved system.

When FFP has been reduced under § 433.120(a), and HCFA determines upon subsequent yearly review that the system meets all current performance standards, system requirements and other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the yearly review determination that the system again meets the conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter before the fourth quarter immediately preceding the quarter in which HCFA issues the determination (as part of the yearly review process) stating that the system is reapproved.

12. The redesignated § 433.123 is revised to read as follows:

§ 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever HCFA modifies system requirements or other conditions for approval under § 433.112 or § 433.116, or performance standards or other conditions of reapproval under § 433.119, HCFA will—

(1) Publish a notice in the **Federal Register** making available the proposed changes for public comment;

(2) Respond in a subsequent **Federal Register** notice to comments received; and

(3) Issue the new or modified standards or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) For performance standards and other conditions for reapproval, HCFA will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

§ 433.127 [Amended]

13. The redesignated § 433.127 is amended by changing the words "The Administrator" to "HCFA" wherever they appear.

14. New §§ 433.130 and 433.131 are added to read as follows:

§ 433.130 Waiver of conditions of initial operation and approval.

(a) HCFA will waive requirements for initial operation and approval of systems under § 433.113 for a State meeting the requirements of paragraph (b) of this section and that had a 1976 population of less than one million and made total Federal and State Medicaid expenditures of less than $100 million in fiscal year 1976. Population figures are those reported by the Bureau of the Census. Expenditures for fiscal year 1976 are those reported by the State for that year.

(b) To be eligible for this waiver, the agency must submit its reasons to HCFA in writing and demonstrate to HCFA's satisfaction that an MMIS will not significantly improve the efficiency of the administration of the State plan.

(c) If HCFA denies the waiver request, the notice of denial will include—

(1) The findings of fact upon which the denial was made; and

(2) The procedures for appeal of the denial.

(d) If HCFA determines, after granting a waiver, that an MMIS would significantly improve the administration of the State Medicaid program, HCFA may withdraw the waiver and require that a State obtain initial approval of an MMIS within two years of the date of waiver withdrawal.

433.131 Waiver for noncompliance with conditions of approval and reapproval.

If a State is unable to comply with the conditions of approval or of reapproval and the noncompliance will cause a percentum reduction in FFP, HCFA will waive the FFP reduction in the following circumstances:

(a) *Good Cause.* If HCFA determines that good cause existed, HCFA will waive the FFP reduction attributable to those items for which the good cause existed. A waiver of FFP consequences of the failure to meet the conditions of approval or reapproval based upon good cause will not extend beyond two consecutive quarters.

(b) *Circumstances beyond the control of a State.* The State must satisfactorily explain the circumstances that are

beyond its control. When HCFA grants the waiver, HCFA will also defer all other MMIS deadlines for the same length of time that the waiver applies.

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

Dated: March 25, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration

Approved: May 6, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-17875 Filed 7-29-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Guidelines on Minimum Criteria for Identification of Nontoxic Shot Zones for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Final Guidelines.

SUMMARY: This final notice contains guidelines for determining areas where sickness and/or death of waterfowl from lead poisoning due to ingestion of spent lead shotshell pellets is considered to be a significant problem and where nontoxic shot should be used by waterfowl hunters. When waterfowl eat spent lead shotshell pellets during the course of feeding, and when these pellets are retained in the digestive tract, the birds receive a hightly concentrated dosage of lead. Sickness and death may result. The use of nontoxic shot has been found to reduce lead poisoning sickness and mortality from this source of lead. The only nontoxic shot currently available on the market is steel shot. These criteria have been developed on the basis of extensive consultation with state wildlife agencies, conservation organizations, and other interested groups. The Fish and Wildlife Service believes that they represent a practical, scientific way to identify areas that should be considered as nontoxic shot zones.

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Managment, Fish and Widlife Service, Department of the Interior, Washington, D.C. 20240 (telephone 202-254-3207).

SUPPLEMENTARY INFORMATION: The FWS is seeking to reduce losses of waterfowl from preventable causes such as disease and lead poisoning. When waterfowl eat spent lead shotshell pellets, the birds may become sick or die. The ingested pellets provide a highly concentrated and intensive dosage of lead in a rather short period of time.

In dealing with the lead problem, the FWS initiated several actions in recent months of which this criteria proposal is one of the most important. Other actions include: implementation of a lead monitoring program; preparation of a technicial supplement to the 1976 Final Environmental Impact Statement on the Use of Steel Shot for Waterfowl Hunting; in-depth analysis of the nature and extent of lead poisoning in bald eagles and other species; implementation of nontoxic shot zones to minimize the threat of lead poisoning in bald eagels; analysis of research needs relevants to the issue; analysis of past and on-going efforts to develop nontoxic shot substitutes as well as identifying opportunities for expediting such development work; and development of an information plan to ensure delivery of objective scientific information to waterfowl hunters and other concerned groups and individuals.

The reason that the criteria are important is that they provide a scientifically sound and practical way to identify and designate nontoxic shot zones on a reasonably uniform basis throughout each waterfowl flyway within the United States. Since 1976, the manner in which these zones were established has varied by region and state. Because of this, the method of zone selection has been controversial. By having developed these criteria in an open manner, with full public input, the FWS believes that the criteria represent a general consensus of the states, conservation organizations, waterfowl hunters and other interested groups.

Further, this public input has been an important supplement to the FWS's data and analysis.

As indicated in 50 CFR 20.21(j) and 50 CFR 20.108, nontoxic shot is required for hunting waterfowl in certain designated zones. Since 1978, no nontoxic shot zone could be implemented or enforced by the FWS without approval of the appropriate authorities in each state affected. The restriction on use of funds by FWS has been contained in the Interior Department Appropriations Bill each year since 1978. As a consequence, the FWS has proposed additions and deletions to the designated nontoxic shot zones for hunting waterfowl only with the approval of state authorities.

As stated in the FWS proposal of January 16, 1985 (50 FR 2298-2301) the Department's policies on lead poisoning are designed to focus designation of nontoxic shot zones on problem areas, in a partnership basis with the states. Futher, the Department's efforts in this regard apply only to hunting of ducks, geese, swans, and coots (*Fulica americana*).

Officials of the Department have heard from many interested organizations, states, and individuals concerning the nature, extent, and significance of lead poisoning of waterfowl. Through these discussions it has become clear that states, flyway councils, private organizations, and individuals want greater participation from the FWS in dealing with this problem. The FWS has responded to these requests by implementing the various actions outlined above. Specific actions leading to these final guidelines are described below.

On Spetember 25, 1984, the FWS published in the **Federal Register** a Notice of Intent (49 FR 37672). The notice solicited comments and recommendations from interested parties as to the specific criteria that should be used in proposing and selecting nontoxic shot zones within the four administrative flyways used in managing the waterfowl resource. Comments were received until October 30, 1984.

On January 16, 1985, the FWS published in the **Federal Register** (50 FR 2298-2301) a notice of draft guidelines. These guidelines contained two proposals that would provide guidance in making decisions on the use of nontoxic shot. One was recommended by representatives of the flyway councils, the other FWS. Both proposals would have established two levels of criteria: triggering criteria and decision criteria.

Triggering criteria identify counties or other designated waterfowl habitat areas as having a potential for a significant lead poisoning problem. Desiganted areas may be specific units of waterfowl habitat within a county or within several counties, as identified by the state.

Under the FMS proposal a county or designated area would have been triggered for further monitoring if it had a 3-year average annual harvest of 10 waterfowl per square mile or if 3 or more birds were diagnosed to have died from lead poisoning. Under the council representatives' proposal, the triggering would have been a harvest of 5 waterfowl per square mile or one dead bird.