waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Nevada's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until July 24, 1996. Copies of Nevada's applications for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Nevada's program revisions is effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Nevada is applying for authorization for changes and additions to the Federal RCRA implementing regualtions that occurred between July 1, 1994 and July 1, 1995, including the following Federal hazardous waste regulations:

Federal requirement	State analog
Recovered oil exclusion; (59 *FR* 38536, July 28, 1994)	Nevada Revised Statutes (NRS) 459.485 and 459.490; Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Section 4 of LCB File No. R027–95.
Removal of the conditional exemption for certain slag residues; (59 *FR* 43496, August 24, 1994)	Same as above.
Universal treatment standards and treatment standards for organic toxicity characteristic wastes and newly listed wastes; (59 *FR* 47982, September 19, 1994).	Same as above.
Organic air emission standards for tanks, surface impoundments, and containers; amendment; (59 *FR* 62896, December 6, 1994 and 60 *FR* 26828, May 19, 1995).	Same as above.
Hazardous Waste Management System; Testing and monitoring activities amendment I; (60 *FR* 3089, January 13, 1995).	Same as above.
Carbamate production identification and listing of hazardous waste; (60 *FR* 7824, February 9, 1995)	Same as above.
Hazardous Waste Management System; Testing and monitoring activities amendment II; (60 *FR* 17001, April 4, 1995).	Same as above.
Universal Waste Rule; (60 *FR* 25492, May 11, 1995) Removal of legally obsolete rules; (60 *FR* 33912, June 29, 1995).	Same as above.

NOTE: NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987. NAC 444.8632 adopts by reference 40 CFR part 2, subpart A; part 124, subparts A and B; parts 260 through 270, inclusive; part 273 and part 279 as modified by NAC 444.8633, NAC 444.8634, 444.86325 and the regulations included as Section 4 of LCB file no. R027–95 (filed with the Secretary of State on November 9, 1995).

Nevada agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Nevada agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Nevada is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Nevada's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Nevada is granted final authorization to operate its hazardous waste program as revised.

Nevada is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) (''HSWA''). Nevada also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 USC 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 20, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–13986 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 417, 431, 473, and 498

[BPD–704–FC]

Medicare and Medicaid Programs; Provider Appeals: Technical Amendments

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

ACTION: Final rule with comment period.

SUMMARY: This rule amends the HCFA regulations pertaining to appeals procedures available to providers and suppliers dissatisfied with determinations that affect their participation in Medicare or Medicaid.

These are technical amendments that simplify, clarify, and update existing rules without substantive change.

DATES: Effective date: July 24, 1996.

Comment date: August 23, 1996.

ADDRESSES: Please mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–704–FC, P.O. Box 26676, Baltimore, MD 21207,

If you prefer, you may deliver your comments (original and three copies) to either of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201

Room C5–09–26 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–704–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of the document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690–6383.

SUPPLEMENTARY INFORMATION:

A. Background

Part 498 of the HCFA regulations sets forth the rules for administrative and judicial review of Federal determinations that affect participation in Medicare and, in some instances, in Medicaid. Part 431 of those regulations sets forth the appeals procedures for State determinations that affect participation in Medicaid.

A final rule identified as HSQ–156–F (Survey, Certification, and Enforcement for Skilled Nursing Facilities and Nursing Facilities), published on November 10, 1994 (59 FR 56116) amended both of those parts. The changes made by HSQ–156–F implement statutory amendments which provide that, for long-term care facilities with deficiencies, the State must establish remedies to be imposed in lieu of, or in addition to, termination of the facility's provider agreement.

B. Provisions of This Rule

This rule makes the following technical and editorial changes:

1. Makes nomenclature changes throughout chapter IV to reflect the fact that review of a hearing decision is now the responsibility of the Departmental Appeals Board, not the Appeals Council.

2. Simplifies and clarifies §§ 431.151 and 431.153 of the Medicaid appeals regulations, primarily by putting related content together and by providing descriptive headings for more paragraphs and paragraph subdivisions.

3. Updates § 498.1 (Statutory basis) to conform to changes in the applicable statutory provisions (for example, section 1866(h) rather than 1869(c), and section 1128A instead of previously specified subsections of section 1866(b)(2)). This requires removal of paragraph (e). Paragraph (f) is removed because there have been changes in delegations of authority and, since those changes are likely to continue, it is not possible to ensure that the paragraph could always be kept up to date.

4. Amends § 498.2 (Definitions) to substitute a definition of ''Departmental Appeals Board'' for the definition of ''Appeals Council'', make the conforming nomenclature changes, and amend the definition of ''provider'' to remove reference to ''a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR)''. These Medicaid providers are not subject to all part 498 provisions and are appropriately covered in the Medicaid rules and as indicated under items 6 and 7, below.

5. Expands § 498.3 (Scope and applicability) to identify and give the location of other rules that make the part 498 provisions applicable to certain determinations that do not affect participation in Medicare.

6. Amends § 498.5 (Appeal rights) to specify the appeal rights of NFs.

7. Amends §§ 498.60 (Conduct of hearing) and 498.61 (Evidence) to make clear that limits on the scope of review in appeals from civil money penalties affect the conduct of the hearing.

8. Amends § 498.74 (Administrative Law Judge's decision) to make the nomenclature changes and to specify that, for civil money penalties, judicial review must be sought in a United States Court of Appeals (rather than in a United States District Court, as is the case for other alternative sanctions).

9. Revises § 498.90 (Effect of Departmental Appeals Board decision) to simplify and clarify the policy. This requires reorganization and moving recently added content to a more appropriate location, the section on appeal rights, specifically current paragraph (c) and new paragraph (k) of § 498.5.

C. Waiver of Proposed Rulemaking

The changes made by this rule are technical and editorial in nature. They simplify, clarify, and update certain existing regulations without substantive change. They have no impact on program costs.

Accordingly, we find that prior notice and opportunity for public comment are unnecessary and contrary to the public interest, and that, therefore, there is good cause to waive proposed rulemaking procedures.

However, as previously indicated, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance. Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

D. Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

E. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each regulation unless we can certify that the particular regulation will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines ''small entity'' as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as

a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is not located in a Metropolitan Statistical Area.

We have not prepared a regulatory flexibility analysis because we have determined, and we certify, that this rule will not have a significant impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and record keeping requirements, Rural areas, X-rays

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities Health insurance, Health maintenance organizations(HMOs), Loan programs—health, Medicare, Reporting and record keeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer review organizations,(PROs), Reporting and record keeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart G is amended as set forth below.

1. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 1102, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

§§ 405.718a, 405.718c, 405.718e, 405.724, 405.730, 405.750 [Amended]

2. In the following sections, ''Appeals Council'' is revised to read ''Departmental Appeals Board'' each time it appears: §§ 405.718 introductory text, 405.718a(b)(4), 405.718c(a)(2)(ii), 405.718e, 405.724, 405.730, and 405.750 heading and paragraph (b) introductory text.

B. Part 405, subpart H is amended as set forth below.

1. The authority citation for subpart H continues to read as follows:

Authority: Secs 1102, 1842(b)(3)(C), 1869(b), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b), and 1395hh).

§ 405.815 [Amended]

2. In § 405.815, ''Appeals Council'' is revised to read ''Departmental Appeals Board''.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

C. Part 417 is amended as set forth below.

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Title XIII of the Public Health Service Act (42 U.S.C. 300e through 300e–17), and 31 U.S.C. 9701, unless otherwise noted.

§§ 417.634, 417.636, 417.638, 417.830, 417.840 [Amended]

2. In the following sections, ''Appeals Council'' is revised to read ''Departmental Appeals Board'': §§ 417.634 heading and text, 417.636 paragraphs (a)(1), and (b) heading and introductory text, 417.638, 417.830, and 417.840.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

D. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

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

§ 431.151 [Revised]

2. Section 431.151 is revised to read as follows:

Subpart D—Appeals Process

§ 431.151 Scope and applicability.

(a) *General rules.* This subpart sets forth the appeals procedures that a State must make available as follows:

(1) To a nursing facility (NF) that is dissatisfied with a State's finding of noncompliance that has resulted in one of the following adverse actions:

(i) Denial or termination of its provider agreement.

(ii) Imposition of a civil money penalty or other alternative remedy.

(2) To an intermediate care facility for the mentally retarded (ICF/MR) that is dissatisfied with a State's finding of noncompliance that has resulted in the denial, termination, or nonrenewal of its provider agreement.

(b) *Special rules.* This subpart also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.

§ 431.152 [Amended]

3. In § 431.152, ''§§ 431.153 through 431.154'' is revised to read ''§§ 431.153 and 431.154''.

4. Section 431.153 is revised to read as follows:

§ 431.153 Evidentiary hearing.

(a) *Right to hearing.* Except as provided in paragraph (b) of this section, and subject to the provisions of paragraphs (c) through (j) of this section, the State must give the facility a full evidentiary hearing for any of the actions specified in § 431.151.

(b) *Limit on grounds for appeal.* The following are not subject to appeal:

(1) The choice of sanction or remedy.

(2) The State monitoring remedy.

(3) The loss of approval for a nurse-aide training program.

(4) The level of noncompliance found by a State except when a favorable final administrative review decision would affect the range of civil money penalty amounts the State could collect.

(c) *Notice of deficiencies and impending remedies.* The State must give the facility a written notice that includes:

(1) The basis for the decision; and

(2) A statement of the deficiencies on which the decision was based.

(d) *Request for hearing.* The facility or its legal representative or other authorized official must file written request for hearing within 60 days of receipt of the notice of adverse action.

(e) *Special rules: Denial, termination or nonrenewal of provider agreement.* (1) *Appeal by an ICF/MR.* If an ICF/MR requests a hearing on denial, termination, or nonrenewal of its provider agreement—

(i) The evidentiary hearing must be completed either before, or within 120 days after, the effective date of the adverse action; and

(ii) If the hearing is made available only after the effective date of the

action, the State must, before that date, offer the ICF/MR an informal reconsideration that meets the requirements of § 431.154.

(2) *Appeal by an NF.* If an NF requests a hearing on the denial or termination of its provider agreement, the request does not delay the adverse action and the hearing need not be completed before the effective date of the action.

(f) *Special rules: Imposition of remedies.* If a State imposes a civil money penalty or other remedies on an NF, the following rules apply:

(1) *Basic rule.* Except as provided in paragraph (f)(2) of this section (and notwithstanding any provision of State law), the State must impose all remedies timely on the NF, even if the NF requests a hearing.

(2) *Exception.* The State may not collect a civil money penalty until after the 60-day period for request of hearing has elapsed or, if the NF requests a hearing, until issuance of a final administrative decision that supports imposition of the penalty.

(g) *Special rules: Dually participating facilities.* If an NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State's denial or termination of participation in Medicaid is also a basis for denial or termination of participation in Medicare, the State must advise the facility that—

(1) The appeals procedures specified for Medicare facilities in part 498 of this chapter apply; and

(2) A final decision entered under the Medicare appeals procedures is binding for both programs.

(h) *Special rules: Adverse action by HCFA.* If HCFA finds that an NF is not in substantial compliance and either terminates the NF's Medicaid provider agreement or imposes alternative remedies on the NF (because HCFA's findings and proposed remedies prevail over those of the State in accordance with § 488.452 of this chapter), the NF is entitled only to the appeals procedures set forth in part 498 of this chapter, instead of the procedures specified in this subpart.

(i) *Required elements of hearing.* The hearing must include at least the following:

(1) Opportunity for the facility—

(i) To appear before an impartial decision-maker to refute the finding of noncompliance on which the adverse action was based;

(ii) To be represented by counsel or other representative; and

(iii) To be heard directly or through its representative, to call witnesses, and to present documentary evidence.

(2) A written decision by the impartial decision-maker, setting forth the reasons for the decision and the evidence on which the decision is based.

(j) *Limits on scope of review: Civil money penalty cases.* In civil money penalty cases—

(1) The State's finding as to a NF's level of noncompliance must be upheld unless it is clearly erroneous; and

(2) The scope of review is as set forth in § 488.438(e) of this chapter.

§ 431.154 [Amended]

5. In § 431.154, the following changes are made:

a. Paragraph (a) and the designation ''(b)'' are removed.

b. Paragraphs (b)(1), (b)(2), and (b)(3) are redesignated as paragraphs (a), (b), and (c), respectively.

PART 473—RECONSIDERATIONS AND APPEALS

E. Part 473 is amended as set forth below.

1. The authority citation for part 473 continues to read as follows:

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

§§ 473.22, 473.46, 473.48 [Amended]

2. In the following sections, ''Appeals Council'' is revised to read ''Departmental Appeals Board'' each time it appears: §§ 473.22(b)(5), 473.46 heading and paragraphs (a) and (b), 473.48 paragraphs (b) heading and text, and (c).

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN MEDICARE AND FOR DETERMINATIONS THAT AFFECT PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN MEDICAID

F. Part 498 is amended as set forth below.

1. The authority citation for part 498 continues to read as follows:

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

2. Nomenclature change.

a. In the following locations, ''Appeals Council'' is revised to read ''Departmental Appeals Board'' wherever it appears:

498.10(b).
498.15.
498.17 heading and paragraph (a).
498.44 paragraphs (a), (b), and (c).
498.45(c)(2).
498.71(b).
498.76 heading.
Subpart E heading.
498.80 heading and text.
498.82 heading and paragraphs (a)(1) and (a)(2).
498.83 heading and paragraphs (a) and (c).
498.85 heading and text.
498.86 (a).
498.88 heading and paragraph (a).
498.95(a).
Subpart F heading.
498.100 paragraphs (a), (b)(1), and (b)(2).
498.102 paragraphs (a) introductory text, and (b)(1), and (b)(2).
498.103 paragraphs (a), (b)(1), and (b)(2) heading.

b. In the following locations, ''Council'' is revised to read ''Board'' wherever it appears:

498.17 paragraph (b)(1).
498.76 paragraphs (a) and (c).
498.82 paragraph (a)(2).
498.83 paragraph (b) introductory text and paragraphs (b)(4) and (d).
498.86 paragraphs (a), (b), and (d).
498.88 paragraphs (a) through (e) and paragraph (f) introductory text and (f)(1)(i).
498.95 paragraphs (a) through (c).
498.100 heading and paragraph (a).
498.102 paragraph (a)(2)(ii).
498.103 paragraphs (a) and (b)(2).

c. In § 498.88(f)(1) introductory text and (f)(2), and in § 498.95(a), ''Council's'' is revised to read ''Board's''.

d. In § 498.17(b)(2), ''council'' is revised to read ''Board''.

§ 498.1 [Amended]

3. In § 498.1, the following changes are made:

a. In paragraph (a), ''1869(c)'' is revised to read ''1866(h)''.

b. In paragraph (c), ''section'' is revised to read ''sections'', the period is removed, and ''and section 1128(f) provides for hearing and judicial review for exclusions.'' is added at the end.

c. Paragraphs (e) and (f) are removed and reserved.

d. Paragraphs (g) and (h) are revised, and paragraphs (i), (j) and (k) are added, to read as set forth below.

§ 498.1 Statutory basis.

* * * * *

(g) Although § 1866(h) of the Act is silent regarding appeal rights for suppliers and practitioners, the rules in this part include procedures for review of determinations that affect those two groups.

(h) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected entity has had notice and opportunity for a hearing.

(i) Section 1819(h) of the Act—

(l) Provides that, for SNFs found to be out of compliance with the

requirements for participation, specified remedies may be imposed instead of, or in addition to, termination of the facility's Medicare provider agreement; and

(2) Makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on SNFs.

(j) Section 1891(e) of the Act provides that, for home health agencies (HHAs) found to be out of compliance with the conditions of participation, specified remedies may be imposed instead of, or in addition to, termination of the HHA's Medicare provider agreement.

(k) Section 1891(f) of the Act—

(1) Requires the Secretary to develop a range of such remedies; and

(2) Makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on HHAs.

§ 498.2 [Amended]

4. In § 498.2, the following changes are made:

a. The definition of ''Appeals Council'' is removed.

b. A definition of ''Departmental Appeals Board'' is added, in alphabetical order, to read as set forth below.

c. In the definition of ''provider'', the words ''a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR)'' are removed.

§ 498.2 Definitions.

* * * * *

Departmental Appeals Board or Board means a Board established in the Office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department.

* * * * *

5. In § 498.3, the introductory text of paragraph (b) is republished; paragraphs (a), (b)(4), (b)(7), (b)(8), (b)(12), (b)(13), (d) introductory text and (d)(1) are revised, paragraphs (d)(10) through (d)(12) are redesignated as paragraphs (d)(10)(i) through (d)(10)(iii), newly designated paragraph (d)(10) is revised, a new paragraph (d)(11) is added, and paragraphs (d)(13) and (d)(14) are redesignated as paragraphs (d)(12) and (d)(13) respectively, to read as follows:

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that HCFA makes with respect to the matters specified in paragraph (b) of this section and that the OIG makes with respect to the matters specified in paragraph (c) of this section.

(2) The determinations listed in this section affect participation in the Medicare program. Many of the procedures of this part also apply to other determinations that do not affect participation in Medicare. Examples are:

(i) HCFA's determination to terminate an NF's Medicaid provider agreement;

(ii) HCFA's determination to cancel the approval of an intermediate care facility for the mentally retarded (ICF/MR) under section 1910(b) of the Act; and

(iii) HCFA's determination, under the Clinical Laboratory Improvement Act (CLIA), to impose alternative sanctions or to suspend, limit, or revoke the certificate of a laboratory even though it does not participate in Medicare.

(3) The following parts of this chapter specify the applicability of the provisions of this part 498 to sanctions or remedies imposed on the indicated entities:

(i) Part 431, subpart D—for nursing facilities (NFs).

(ii) Part 488, subpart E (§ 488.330(e)—for SNFs and NFs.

(iii) Part 493, subpart R (§ 493.1844)—for laboratories.

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(4) Whether a prospective supplier meets the conditions for coverage of its services as those conditions are set forth elsewhere in this chapter.

* * * * *

(7) The termination of a provider agreement in accordance with § 489.53 of this chapter, or the termination of a rural health clinic agreement in accordance with § 405.2404 of this chapter, or the termination of a Federally qualified health center agreement in accordance with § 405.2436 of this chapter.

(8) HCFA's cancellation, under section 1910(b) of the Act, of an ICF/MR's approval to participate in Medicaid.

* * * * *

(12) With respect to an SNF or NF, a finding of noncompliance that results in the imposition of a remedy specified in § 488.406 of this chapter, except the State monitoring remedy, and the loss of the approval for a nurse-aide training program.

(13) The level of noncompliance found by HCFA in an SNF or NF but only if a successful challenge on this issue would affect the range of civil money penalty amounts that HCFA could collect. (The scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter.)

* * * * *

(d) *Administrative actions that are not initial determinations.* Administrative actions that are not initial determinations include but are not limited to the following:

(1) The finding that a provider or supplier determined to be in compliance with the conditions or requirements for participation or for coverage has deficiencies.

* * * * *

(10) With respect to an SNF or NF–

(i) The finding that the SNF's or NF's deficiencies pose immediate jeopardy to the health or safety of its residents;

(ii) Except as provided in paragraph (b)(13) of this section, a determination by HCFA as to the facility's level of noncompliance; and

(iii) The imposition of State monitoring or the loss of the approval for a nurse-aide training program.

(11) The choice of alternative sanction or remedy to be imposed on a provider or supplier.

* * * * *

6. Section 498.5 is amended to revise paragraph (c) and to add a new paragraph (k), to read as follows:

§ 498.5 Appeal rights.

* * * * *

(c) *Appeal rights of providers and prospective providers.* Any provider or prospective provider dissatisfied with a hearing decision may request Departmental Appeals Board review, and has a right to seek judicial review of the Board's decision.

* * * * *

(k) *Appeal rights of NFs.* Under the circumstances specified in § 431.153 (g) and (h) of this chapter, an NF has a right to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

7. Section 498.60 is amended to add a new paragraph (c), to read as follows:

§ 498.60 Conduct of hearing.

* * * * *

(c) *Scope of review: Civil money penalty.* In civil money penalty cases—

(1) The scope of review is as specified in § 488.438(e) of this chapter; and

(2) HCFA's determination as to the level of noncompliance of an SNF or NF must be upheld unless it is clearly erroneous.

§ 498.61 [Amended]

8. In § 498.61, the designation ''(a)'' and paragraph (b) are removed.

§ 498.74 [Amended]

9. In § 498.74, the following changes are made:

a. In paragraph (b)(1), ''within the stated time period'' is revised to read ''within the time period specified in § 498.82''.

b. In paragraphs (b)(1), (b)(2), and (b)(3), ''Appeals Council'' is revised to read ''Departmental Appeals Board'' in paragraphs (b)(1) and (b)(4), ''Council'' revised to read ''Board'',

c. In paragraph (b)(2), ''in a Federal district court;'' is revised to read ''in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals;''.

10. Section 498.90 is revised to read as follows:

§ 498.90 Effect of Departmental Appeals Board Decision

(a) *General rule.* The Board's decision is binding unless—

(1) The affected party has a right to judicial review and timely files a civil action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals; or

(2) The Board reopens and revises its decision in accordance with § 498.102.

(b) *Right to judicial review.* Section 498.5 specifies the circumstances under which an affected party has a right to seek judicial review.

(c) *Special rules: Civil money penalty.*

(1) *Finality of Board's decision.* When HCFA imposes a civil money penalty, notice of the Board's decision (or denial of review) is the final administrative action that initiates the 60-day period for seeking judicial review.

(2) *Timing for collection of civil money penalty.* For SNFs and NFs, the rules that apply are those set forth in subpart F of part 488 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance; Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: May 16, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–13521 Filed 6–21–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2920

[WO–350–1430–00–24 1A; Circular No. 2661]

RIN 1004–AB51

Leases, Permits, and Easements; Effective Dates of Permit Decisions; Appeal Procedure

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the general lease and permit regulations of the Bureau of Land Management (BLM). It provides that BLM general use, occupancy, and development permit decisions will take effect immediately if the contemplated uses meet the requirements for minimum impact permits under the existing regulations. Permits issued under such decisions will remain in effect during the pendency of any appeal to the Interior Board of Land Appeals (IBLA), unless IBLA stays the decision. The regulatory text in the rule pertains only to minimum impact permits. If a proposed use does not satisfy the requirements for a minimum impact permit under the existing regulations (that is, if the proposed use would conflict with BLM plans, policies, and programs for the affected lands, or local zoning ordinances, or cause appreciable damage to public lands or resources or improvements), the requested permit would not qualify as a minimum impact permit and the provision adopted today would not apply. In such a case, BLM would not issue a permit until the applicant meets all the requirements contained in the existing regulations. Appeals of permits other than minimum impact permits are not affected by this final rule. Similarly, appeals of BLM lease decisions are not affected by this rule. These appeals of BLM decisions to issue leases and non-minimum impact permits will continue to be governed by the general appeal procedures of the Department of the Interior, and the use authorizations appealed will not take immediate effect under this rule. The amendments to the appeals process in this final rule are needed to avoid delays in BLM's issuance of permits for environmentally benign public land uses.

EFFECTIVE DATE: July 24, 1996.

ADDRESSES: You may send inquiries or suggestions to: Director (350), Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Vanessa Engle, as to the permit program, (202) 452–7776, or Jeff Holdren, as to the rule or the permit program, (202) 452–7779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule and Response to Comments
III. Procedural Matters

I. Background

A. Summary of the Bureau of Land Management Permit Program

The existing regulations in 43 CFR part 2920 contain procedures for many types of land users to obtain authorizations in the form of permits, leases, and easements to use, occupy, and develop public lands and their resources. BLM's statutory authority to allow these uses is found in Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) (FLPMA). BLM's general authority for issuing regulations is found in Section 310 of FLPMA (43 U.S.C. 1740). This final rule relates only to permits issued for uses causing minimal environmental impacts on lands and resources, and does not pertain to leases, easements, or other permits.

BLM authorizes only those uses that conform to applicable law, and to BLM plans, policies, objectives, and resource management programs. Permits are normally issued for short-term uses that do not exceed 3 years. (Uses with terms shorter than 3 years but involving heavier impacts may require leases.) Permits are required for activities that disrupt normal visitor activity or other authorized uses, or involve the placement, storage, or use of temporary structures or facilities, or materials or equipment. BLM may terminate a permit immediately for noncompliance, or to allow another disposition or use of the lands. Typical uses requiring permits under these regulations are equipment storage, beekeeping, motion picture and advertising photography, and scientific research. The regulations in part 2920 do not cover specific activities governed by other regulations in this title, such as grazing (43 CFR part 4100), mining (parts 3700 and 3800), mineral leasing (parts 3100, 3200, 3400, and 3500), mineral material sales (part 3600), and timber sales (part 5400). Also, certain activities require no authorization, such as still photography not intended for advertising purposes. There is no need to apply for a permit or lease for such activities.

Section 2920.2–2 authorizes the issuance of permits for activities that cause no appreciable impacts on the public lands, their resources or