§ 503.13 [Amended]

3. In § 503.13 (Environmental impact analysis) by amending § 503.13(b) by removing the phrase "lack of alternate fuel supply where an MFBI will not exceed 600 hours per year," and by adding in its place the phrase "lack of alternative fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours per year."

4. In § 503.21 (Lack of alternate fuel supply), by revising § 503.21(c) to read as follows:

§ 503.21 Lack of alternate fuel supply.

* * * * *

(c) *Certification alternative for installations.* If the MFBI for which this exemption is being requested will be operated less than 1500 full load equivalent hours on an annual basis, the petitioner may substitute, in lieu of the requirements in paragraph (b) of this section, a duly executed certification that the unit will be operated less than 1500 full load equivalent hours annually during the period of the exemption.

Note.—Under this paragraph, a petitioner may qualify for the certification alternative even if the installation is operated more than 1500 hours per year, so long as the installation does not burn more fuel than it would require at full load for 1500 hours.

* * * * *

§ 503.25 [Redesignated as § 503.24]

5. By correcting the section number "§ 503.25" published at 46 FR 59911, December 7, 1982, for the future use of synthetic fuels exemption to read "§ 503.24."

6. In § 503.32 (Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum), by revising § 503.32(c) to read as follows:

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

* * * * *

(c) *Certification alternative for installations.* If the MFBI for which this exemption is being requested will be operated less than 1500 full load equivalent hours on an annual basis, the petitioner may submit, in lieu of the requirements of paragraph (b) of this section, the following duly executed certifications:

(1) The unit will be operated less than 1500 full load equivalent hours annually;

(2) Use of mixture is not feasible (see § 503.9 of these regulations); and

(3) Environmental certifications, as required under § 503.13(b) of these regulations.

Note.—Under this subsection, a petitioner may qualify for the certification alternative even if the installation is operated more than 1500 hours per year, so long as the installation does not burn more fuel than it would require at full load for 1500 hours.

* * * * *

7. By revising § 503.35(a)(2) (Inability to obtain adequate capital) to read as follows:

§ 503.35 Inability to obtain adequate capital.

(a) * * *

(2) In the case of powerplants, the additional capital cannot be raised:

(i) Due to specific restrictions (e.g., convenants on existing bonds) which constrain management's ability to raise debt or equity captial;

(ii) Without a substantial dilution of shareholder equity;

(iii) Without an unreasonably adverse affect on the utility's credit rating; or

(iv) In the case of non-investor-owned public utilities, without jeopardizing the utility's ability to recover its capital investment, through tariffs, without unreasonably adverse economic effect on its service area (such as adverse impacts on local industry or undue hardship to ratepayers).

[FR Doc. 82-9249 Filed 4-8-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-000 (Texas-13) (Order No. 221)]

High-Cost Gas Produced From Tight Formations; Navarro Formation in Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Railroad Commission of Texas that the Navarro Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 or Victor Zabel, (202) 357-8616.

SUPPLEMENTAL INFORMATION:

Issued April 2, 1982.

In the matter of high-cost gas produced from tight formations; Docket No. RM 79-76-000 (Texas-13); Order No. 221; final rule.

The Commission hereby amends § 271.703(d) of its regulations to include the Navarro Formation in Texas as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by Director, OPPR, issued October 15, 1981 (46 FR 46142, October 21, 1981) [1] based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703(c) that the Navarro Formation be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the Navarro Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.[2]

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3101-3432; Administrative Procedure Act, 5 U.S.C. 553)

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[1] Comments were invited and none were received. No Party requested a public hearing and no hearing was held.

[2] In its recommendation Texas concluded that under § 271.703(c)(2)(i)(A), the median *in* situ permeability of the recommended formation is 0.0615 millidarcy (md), which is below the maximum allowable of 0.1 md. Texas also found that the median stabilized flow rate is not expected to exceed 107.5 Mcf/day, which is less than the maximum allowable rate of 336 Mcf/day under § 271.703(c)(2)(i)(B), based on the average depth to the top of the formation. Using the data submitted by Texas, the Commission has calculated the average permeability and flow rate, and has found that the averages of both are within the guidelines found in § 271.703(c)(2)(i) (A) and (B).

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective April 2, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section § 271.703(d) is revised by adding a new subparagraph (74) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(74) *Navarro Formation in the Laredo Field in Texas.* RM79–76 (Texas–13).

(i) *Delineation of formation.* The Navarro Formation in the Laredo Field is found in Webb County, Texas, Railroad Commission District 4.

(ii) *Depth.* The depth to the top of the Navarro Formation in the Laredo Field is approximately −7,227 feet (subsea) in the northwest portion of the area. The base of the Navarro Formation is found at −7,735 feet (subsea) in the southeastern portion of the area. The maximum thickness of the Navarro Formation is approximately 28 feet.

[FR Doc. 82–9524 Filed 4–8–82; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–000 (Colorado–18) (Order No. 220)]

High-Cost Gas Produced From Tight Formations; Dakota Formation in Colorado

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5) the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commisssion recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Dakota Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

In the matter of high-cost gas produced from tight formations; Docket No. RM79–76–000 (Colorado–18); Order No. 220; final rule.

Issued: April 2, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include a portion of the Dakota Formation in Colorado as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued October 8, 1981 (46 FR 50563, October 14, 1981) based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) that the Dakota Formation be designated as a tight formation.

As shown below, evidence submitted by Colorado supports the assertion that the Dakota Formation meets the guidelines contained in § 271.703(c)(2). The Commission therefore adopts the recommendation for the reasons set forth below.

Two parties filed comments in response to the Notice of Proposed Rulemaking. One party, Conoco, Inc., supported the Colorado recommendation. Southern California Gas Company (SoCal), the other commenter, filed a comment opposing the designation of the Dakota Formation as a tight formation. The basis for SoCal's position is as follows.

On November 9, 1959, Colorado issued Order 112–6, which established 640-acre spacing units in the Ignacio-Blanco Field for production of gas from the Dakota Formation, including among others, the area recommended in this proceeding. In Order 112–46, issued July 16, 1979, Colorado issued an infill drilling order which allowed additional wells to be drilled on the 640-acre units established in Order 112–6. Section 271.703(c)(2)(i)(D) of the Commission's regulations provides that areas which are authorized to be developed by infill drilling and which can be developed absent the incentive price should not be included in a recommendation for tight formation designation by the jurisdictional agency. In Order No. 137, issued March 30, 1981, the Commission excluded from tight formation designation some areas which had been authorized to be developed by infill drilling and which had been substantially developed at the time that infill drilling was authorized. Under this provision and the test applied by the Commission in Order No. 137, SoCal requests that the Commission exclude the Dakota Formation of the entire Ignacio-Blanco Field from designation as a tight formation. In support of its position SoCal stated:

> Testimony was submitted before [Colorado] to demonstrate that only 104 of the 540 available drilling units in the Ignacio-Blanco-Dakota Field were developed at the time the infill drilling order was issued. However, this is based upon the very extensive area which has been designated as the Ignacio-Blanco Field.
>
> If a more limited designation was made of only those portions of the Dakota Formation which have been found to contain producible hydrocarbon saturation, the number of "available drilling units" might be reduced to only one-third or one-quarter of the 540 which can be counted within the present field limits. Of course, this would mean that from 58 to 77 percent of the revised total "available drilling units" were developed by the 104 units on which drilling had taken place at the time of issuance of Colorado's 1979 infill drilling order.

SoCal claims that such a high percentage of drilling demonstrates that substantial development of the formation has occurred and that therefore, the entire Dakota Formation of the Ignacio-Blanco Field should be considered substantially developed prior to the issuance of the infill drilling order, Colorado Order 112–46.

The Commission has reviewed SoCal's comments, and has concluded that even if Colorado had limited its recommendation to only those portions of the Dakota Formation which have been found to contain producible hydrocarbon saturation, and the number of available drilling units was reduced accordingly, the percentage of developed units to units available would be 41 percent. The Commission calculated the percentage of developed units to undeveloped units as follows. Within the area designated by Colorado a more limited area was demarcated to encompass all the units in which a well had been drilled prior to the issuance of the infill drilling order (developed units). This marked area also included the undrilled units which are interspersed between the drilled units. Then, the total number of developed units was divided by the total number of available units in the marked area. The result was that 41 percent of the units in the marked area had been developed at the time of issuance of the infill drilling order. Thus, the percentages of developed units to non-developed units proffered by SoCal, ranging from 58 percent to 77 percent are not substantiated. Moreover, the

Commission does not believe that 41 percent development constitutes substantial development, justifying the exclusion of the area from the tight formation designation.

For the reasons discussed above, the Commission adopts the Colorado recommendation that the Dakota Formation be designated as a tight formation under § 271.703(d).

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High cost gas, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective April 2, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding a new subparagraph (75) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(75) *The Dakota Formation in Colorado.* RM79–76 (Colorado–18).

(i) *Delineation of formation.* The Dakota Formation underlies portions of Townships 32, 33 and 34 North (South of Ute Line), Ranges 6 through 11 West, in La Plata and Archuleta Counties, Colorado, and it is within the Ignatio-Blanco Field.

(ii) *Depth.* The Dakota Formation is below the Graneros Shale and above the Morrison Formation. The average depth to the top of the Dakota Formation is 7,950 feet. The formation is approximately 225 to 250 feet in thickness.

[FR Doc. 82–9522 Filed 4–8–82; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76–000 (Colorado–19); Order No. 219]

High-Cost Gas Produced From Tight Formations; Mesaverde Formation in Colorado

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts in part the recommendation of the Colorado Oil and Gas Conservation Commission that the Mesaverde Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: April 2, 1982.

In the matter of high-cost gas produced from tight formations; Docket No. RM79–76 (Colorado–19); Order No. 219; final rule.

The Commission hereby amends § 271.703(d) of its regulations to include the Mesaverde Formation in Colorado as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued October 8, 1981 (46 FR 50564, October 14, 1981) based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703(c) that the Mesaverde Formation be designated as a tight formation.

As shown below, evidence submitted by Colorado generally supports its assertion that the Mesaverde Formation meets the guidelines contained in § 271.703(c)(2). The Commission generally adopts the recommendation, with the modification discussed below.

Section 271.703(c)(2)(i)(D) of the Commission's regulations provides that in making recommendations of tight formation areas to the Commission, a jurisdictional agency should not include any formation or portion thereof

> [i]f the formation or any portion thereof was authorized to be developed by infill drilling prior to the date of recommendation and the jurisdictional agency has information which in its judgment indicates that such formation or portion subject to infill drilling can be developed absent the incentive price established in paragraph (a) of this section.

Colorado's submittal indicated that the Mesaverde Formation in the recommended area was authorized to be developed by infill drilling prior to the date that Colorado made its recommendation to the Commission that the Mesaverde Formation be designated as a tight formation. In Order 112–6, issued by Colorado on November 9, 1959, 320-acre drilling and spacing units for the production of gas from the Mesaverde Formation were established. On July 16, 1979, Colorado issued Order 112–46, in which it found that the drilling of additional wells on such drilling and spacing units was necessary to effectively and efficiently drain that part of the reservoir underlying said units.[1] This order allowed the drilling of an additional well on each 320-acre unit.

According to evidence contained in Colorado's recommendation, 399 of the 1,056 available drilling units in the Ignacio-Blanco-Mesaverde Field were developed at the time the infill drilling order was issued, on July 16, 1979. As of the date of Colorado's hearing in this tight formation recommendation, on July 21, 1981, 435 units were developed, with 80 of these units containing a second well.

Colorado stated in its recommendation that the number of wells drilled subsequent to the issuance of the infill order (an increase from 38 percent to 42 percent of the total available units with at least one well drilled), does not constitute significant development. Colorado further stated that "no information is available which would indicate that additional drilling would occur without the expectation of the incentive price."

A comment to the Notice of Proposed Rulemaking was filed by Southern California Gas Company (SoCal) in which SoCal urged the Commission to exclude from its designation as a tight formation portions of Colorado's

[1] Colorado's regulations require that "* * * no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well." Title 34, Article 60, C.R.S. 1973, Rule 116(2).

recommendation. SoCal claims that although only 399 out of 1,056 available drilling units were developed at the time the infill drilling order was issued, the number of available units which have been found to contain producible hydrocarbon saturation is only about half of 1,056. By reducing the number of available units to include only those on which producible hydrocarbons are known to exist, 75 percent of the total units would have been developed at the time the infill drilling order was issued. SoCal states that such a high percentage of drilling demonstrates substantial development in at least a portion of the recommended formation. SoCal then concluded:

> If the Mesaverde Formation is a blanket formation in which the formation is uniform throughout the designated Field area then the entire Field can be considered substantially developed. The reasons a Field may be drilled in only certain portions although the underlying formation is uniform, are, among others, the access to pipelines, the ability to market the gas, and the availability of drilling rigs in the area, etc. None of these issues were discussed extensively at the Colorado Commission's hearing. SoCal therefore believes that the entire Mesaverde Formation of the Ignacio-Blanco Field should be considered substantially developed prior to Colorado Order 112–46.

After reviewing the Ingacio-Blanco Field Area Mesaverde Level of Development Plat, submitted as an exhibit by Colorado, the Commission finds that the vast majority of Mesaverde producing wells are contained in a limited area of the field, which includes less than one-half the total number of drilling units. This "producible" area is located within the central and southern portions of the Ignacio-Blanco Field, bounded on the northwest where the Mesaverde Formation is found on the surface, within the recommended area, and in the northeast where the Mesaverde is close to the outcrop where the presence of producible gas is questionable. If this condensed area were treated as the known hydrocarbon bearing area, the status of development at the time of the infill order would have been, as SoCal stated, 75 percent.

The Commission believes that this degree of development prior to the date that infill drilling was authorized is substantial and such substantial development requires that the area be excluded under the guideline established in § 271.703(c)(2)(i)(D). Although Colorado states that it has no information indicating that the area would be developed absent the incentive price, the Commission believes that the substantial development of the area described above creates a contrary presumption. This presumption is further supported by the fact that in Colorado, an infill drilling order is evidence of the finding that the area can be *economically* drained by the number of wells authorized (see footnote 1). When the infill drilling order was issued, the available pricing for the gas produced from this area was considerably less than the incentive price for tight formation gas set by the Commission in Order No. 99. Thus, this further indicates that production of this gas was not dependent on the availability of the tight formation gas incentive price.

For the above reasons, the Commission is excluding from the designation of the Mesaverde Formation as a tight formation, 400 units of 320-acre spacing[2] which had been developed prior to the date of Colorado's infill drilling order. Exclusion of these units does not preclude them from future consideration as a tight formation if sufficient economic data should become available which would show that all or part of the excluded area would not be further developed absent the incentive price under NGPA section 107(c)(5). This finding is consistent with previous Commission action in Docket No. RM79–76, Order Nos. 124, 137 and 137–A, and 148. Over sixty-two percent of the recommended area is being designated as a tight formation.

SoCal also commented on the question of whether the recommended formation satisfied the stabilized flow rate guideline found in § 271.703(c)(2)(i)(B). Based on testimony presented at the hearing convened by Colorado on the recommendation, SoCal urged the Commission to look at this issue closely. The Commission has carefully reviewed the data presented by Colorado to satisfy the guideline found in § 271.703(c)(2)(i)(B), and finds that the evidence supports Colorado's finding that the stabilized flow rate is not expected to exceed the maximum allowable rate.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

[2] Exhibit No. 9 submitted by Colorado demonstrates that there were in fact a total of 400 units, not 399, that were developed prior to the issuance of the infill drilling order. A list of these areas is attached as an Appendix hereto.

List of Subjects in 18 CFR Part 271

Natural gas, high cost gas, tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

PART 271—CEILING PRICES

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below effective April 2, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

Section 271.703(d) is revised by adding a new subparagraph (76) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(76) *Mesaverde Formation in Colorado.* RM79–76 (Colorado–19).

(i) *Delineation of formation.* The Mesaverde Formation underlines Townships 32, 33 and 34 North (South of Ute Line), Ranges 6 through 11 West, in La Plata and Archuleta Counties, Colorado. The formation is within the Ignacio-Blanco Field.

(ii) *Depth.* The Mesaverde Formation is below the Lewis Shale Formation and above the Mancos Shale Formation. The average depth to the top of the Mesaverde Formation is 5,380 feet. The formation is approximately 900 feet in thickness.

Appendix

R6W T32N: Sections 5 S½, 6, 7, 8 W½, 10 W½, 12 S½, 13 S½, 14 N½, 15 W½, 16, 17 W½, 18, 19, 20 W½, 24 E½, and E½ of W 42.

R7W T32N: Sections 1–16, 17 N½, 18–22, 23 W½, 24 E½ and E½ of W½.

R7W T33N: Sections 7 E½, 8 S½, 15, 16 S½, 17 N½, 18 W½, 19 W½, 21, 22 N½, 23 S½, 25 S½, 26, 27 W½, 28 W½, 19 W½, 30–33, 34 E½, 35 and 36.

R8W T32N: Sections 1–3, 4 N½, 5, 6 W½, 9 E½, 10 E½, 11–14, 15 E½, 17 S½, 18, 19 W½, and W½ of E½, 22 E½ of E½, 23 and 24.

R8W T33N: Sections 1, 2, 3 S½, 4 S½, 5–9, 10 S½, 11 S½, 15–23, 24 S½, and 25–36.

R9W T32N: Sections 1 N½, 2 S½, 3 S½, 4 S½, 5 E½, 6–9, 10 S½, 11 S½, 13 N½, 15 W½, 16, 17, 18 E½, 19 W½, and W½ of E½.

R9W T33N: Sections 1 N½, 2 S½, 3 N½, 4–14, 15 W½, 17–20, 22, 23 S½, 24 W½, 25–28, 29 E½, 30, 31, 32 W½, 33, 34 S½, 35, and 36 W½.

R9W T34N: Sections 19 W½, 29 E½, 30 through 32, 33 W½.

R10W T32N: Sections 1, 2, 3 E½, 4 S½, 5 N½, 6 N½, 7, 8, 9 N½, and 10–24.

R10W T33N: Sections 1 W½, 2, 3, 4 S½, 5 S½, 6, 8, 9 W½, 10–15, 21 W½, 22 S½, 23, 24,

25 E½, 26, 27, 28 S½, 29 S½, 30 E½, 31 E½, 32 and 34–36.

R10W T34N: Sections 24 S½, 25, 26 E½, 27 S½, 28 S½, 31 S½, 32 N½, 33 N½, 34, 35 E½ and 36.

R11W T32N: Sections 1, 10–16, 18 S½, and 19–24.

R11W T33N: Sections 14 N½, 25 E½, 27 E½, and 34 S½.

[FR Doc. 82-9523 Filed 4-8-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income and Medicaid; Continuation of Benefits and Eligibility for Certain Severely Impaired Recipients Who Work

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations implement sections 201 (a) and (b) of Pub. L. 96–265, which provide, in part, for the continuation of Supplemental Security Income (SSI) benefits and eligibility for Medicaid for certain severely impaired SSI recipients who work. States which elect to do so may augment the cash benefits with State supplementary payments. The regulations also provide for retaining eligibility status for Medicaid for certain of these individuals who become ineligible for SSI cash benefits because of their earnings. Sections 201 (a) and (b) of Pub. L. 96–265 had provided that these recipients might also retain their eligibility for title XX social services. However, this potentiality for eligibility to title XX services was revoked, effective October 1, 1981, by section 2353(o) of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981.

Sections 201 (a) and (b) are effective for a 3-year period beginning January 1, 1981. The regulations will affect severely impaired SSI recipients who work and have earnings, including those whose earnings exceed the established substantial gainful activity (SGA) limits. As long as their earnings and other income do not exceed income limits prescribed in the SSI program (20 CFR Part 416, Subpart K) these individuals may receive special SSI cash benefits. If, because of their earnings, their income exceeds the income limits, they may still be considered SSI recipients for purposes of Medicaid eligibility if they meet certain conditions. SSI recipients who are blind are also covered under this latter provision.

EFFECTIVE DATE: These regulations are effective April 9, 1982.

FOR FURTHER INFORMATION CONTACT: Fred Miranda, Legal Assistant, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7341.

SUPPLEMENTARY INFORMATION:

Law and Regulations Governing the SSI Program

Under present law, an individual who is severely impaired may qualify for SSI disability payments only if he or she "* * * is unable to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (See 20 CFR 416.905.) Under current regulations (20 CFR 416.974), SGA is principally described in terms of dollar amounts of earnings above which an individual is presumed to be engaging in SGA. Earnings over this amount ($300 a month in years after 1979) are generally considered to show ability to do SGA other than during a period of trial work, and before 1/1/81 (the effective date of section 1619 of the Social Security Act) were a basis for stopping SSI benefits. The trial work period (TWP) is a period of up to 9 months, which do not have to be consecutive, during which an individual may test his or her ability to work and still be considered disabled (20 CFR 416.992).

Problems Under Pre-1981 Policies

In recent years there has been concern that the SSI disability program actually discouraged recipients from trying to go back to work. A severely impaired individual who became ineligible for SSI benefits could also lose Medicaid since eligibility for these benefits is frequently tied to receipt of SSI benefits. While earnings at least partially offset the loss of SSI cash benefits, Medicaid was rarely replaced. Thus, a severely impaired recipient who was thinking of going to work may have decided not to rather than face the combined loss of benefits under SSI and Medicaid which more than offset the potential gain from earnings.

Provisions of Pub. L. 96–265

Pub. L. 96–265, "The Social Security Disability Amendments of 1980," enacted on June 9, 1980, contains several work incentive provisions. Section 201(a) of Pub. L. 96–265 offers work incentives through a 3-year demonstration project. This demonstration project provides that an individual with a disabling impairment who loses eligibility for regular SSI benefits based on disability because he or she works and demonstrates the ability to perform SGA may become eligible for special SSI cash benefits. These benefits are computed in the same way as the regular SSI benefits payable to individuals who are disabled. They may be augmented by State supplementary payments if a State elects to do so.

An individual may qualify for these special SSI cash benefits if—

(1) In the month before the month for which eligibility is being determined, he or she was eligible for regular SSI benefits, special SSI cash benefits or State supplementary payments; and

(2) In the month for which eligibility is being determined, he or she is not eligible for regular SSI benefits based on disability because he or she works and demonstrates the ability to engage in SGA.

The special SSI cash benefits are payable for months through December 1983 so long as the individual continues to have a disabling impairment and to meet all other requirements for SSI eligibility.

An individual who receives special SSI cash benefits maintains his or her SSI recipient status for purposes of eligibility for Medicaid and title XX social services. Thus, the individual is determined eligible for Medicaid and title XX services on the same basis as a person who receives regular SSI benefits. (All references in this discussion to title XX services pertain only to potential eligibility for those services or our evaluation of the use of those services for purposes of section 1619 between January 1, 1981 and October 1, 1981.)

If an individual's earnings and other income are great enough to reduce his or her Federal SSI benefits to zero, eligibility for the special SSI cash benefit ends. (State supplementary payments may continue depending on the amount of his or her income). However, even if cash benefits are stopped because of earnings, a severely impaired or blind individual (under 65 years of age) who was eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments in the month before the first month for which eligibility is being determined, may still acquire a special SSI eligibility status for purposes of Medicaid and title XX social services. This special eligibility status, under which the individual is considered a blind or disabled individual receiving SSI benefits, applies as long as the

individual: (1) Continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the termination of eligibility for Medicaid or title XX social services; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the benefits (SSI, State supplementary payments, Medicaid and title XX social services) which would be available if he or she did not have those earnings.

The demonstration will produce information from which Congress can evaluate the effectiveness of the special benefits provisions in section 201(a) in promoting work by SSI recipients who are blind or have disabling impairments and consider any administrative problems that may arise. To facilitate this evaluation, the Social Security Administration is required to account separately for the funds that are spent in implementing sections 201 (a) and (b).

Provisions of Pub. L. 97–35

Effective October 1, 1981, the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) established title XX as a block grant to States for social services. The Act eliminated statutory eligibility requirements for title XX services, including eligibility based on receipt of SSI (Supplemental Security Income) benefits. A conforming amendment to the block grant (Section 2353(o)) deleted references to title XX from section 1619 of the Social Security Act. Prior to October 1, 1981, all individuals who applied for, and were found eligible to receive special SSI cash benefits or a special SSI eligibility status under section 1619 remained categorically eligible for title XX services based on their SSI status. However, beginning October 1, 1981, States are no longer required by Federal law or regulations to provide services to individuals based on their SSI status under section 1619.

As a result of Pub. L. 97–35, an individual who receives special SSI cash benefits maintains his or her SSI recipient status for purposes of eligibility to Medicaid only, rather than for purposes of eligibility for both Medicaid and title XX social services. The special SSI eligibility status that severely impaired or blind individuals (under age 65) may acquire under section 1619 of the Social Security Act applies only for purpose of eligibility for Medicaid. Also, the average expenditure for title XX services to disabled and blind SSI recipients will not be taken into consideration in establishing the criteria for section 1619(b) eligibility.

Prior Publication

Interim regulations describing the rules that SSA would follow in implementing sections 201 (a) and (b) of Pub. L. 96–265 were published on January 22, 1981 at 46 FR 6903. These interim rules provided for a 60 day comment period which expired on March 23, 1981. They explained the special SSI cash benefits that are available for severely impaired individuals who work and demonstrate the ability to perform substantial gainful activity. They also described the special SSI eligibility status that could apply to blind and severely impaired individuals who work and whose earnings caused him or her to have income that was too great to permit eligibility for SSI benefits. The interim regulations listed the two criteria an individual must meet to receive special benefits, and the two additional criteria needed to acquire the special eligibility status.

Comments on Prior Publication

Comments and views were expressed by several State social service and Medicaid offices, two legal services offices, a home health care agency and individual members of the public. Some comments dealt with the regulations generally, whereas others concerned specific aspects, such as the Medicaid or title XX social services provisions. We will not reply to the comments that concern title XX since the provisions of section 1619 no longer apply to that title.

General

Comment

Several State agencies expressed comments in favor of these regulations. They stated that the provisions of these regulations were a positive step toward providing work incentives. In addition, these agencies believe that the use of thresholds in determining special SSI eligibility status is both reasonable and functional.

Comment

One commenter expressed concern that these regulations are too complex to accomplish the intent of the legislation to encourage individuals to go back to work.

Response

We recognize the complexity of the new legislation and the implementing regulations. However, we have attempted to produce the simplest regulations possible while at the same time fulfilling the mandate of the legislation. In developing these regulations, we consulted various sources including regional offices, States and other interested parties, to ensure that our policies were feasible and would adequately carry out the intent of this provision.

Exchange of Information

Comment

Some commenters expressed concern about the procedure under which SSA notifies State Medicaid and title XX agencies, via the State Data Exchange (SDX), when special eligibility status is under evaluation and when a special eligibility status determination has been made. They indicated that States would need some lead time to modify their data systems to accept and react to new information.

Response

SSA was first capable of transmitting this information via SDX in April 1981, and program instructions were sent to States before that time. Before April, procedures were established to notify States of special eligibility status other than by SDX. We believe that by this time all States are capable of receiving eligibility data via SDX.

Comment

Two State agencies commented that States may not have the capability to supply SSA with a breakdown of an individual's actual Title XIX medical costs.

Response

We are aware that a State Medicaid agency may be unable to provide this information because it does not have an automated data processing system that is currently programmed to produce this data. As we noted in the preamble to the regulations published on January 22, 1981, in such cases SSA will request the information from the appropriate Medicaid providers. The recipient may also assist in obtaining this information.

Eligibility

Comment

Two State agencies believe that expanding the number of Medicaid eligibles would not be prudent in the face of current proposed budget cuts by the Administration. Another commented that this would lead to a drain on already limited titles XIX and XX funds.

Response

Since this expansion is mandated by statute (section 1619 of the Act), we are unable to consider any changes with respect to this recommendation. Title XX funds will, of course, not be involved after September 1981.

Comment

Two commenters suggested that SSI recipients should be permitted to maintain Medicaid eligibility regardless of certain factors; for example, even if an individual's income exceeds certain limits for SSI eligibility.

Response

We cannot adopt this recommendation because section 1619 specifies certain requirements that must be met for continued Medicaid eligibility. These requirements are that the individual:

(1) Continues to be blind or have a disabling impairment;

(2) Except for earnings, continues to meet all the other requirements for SSI eligibility;

(3) Would be seriously inhibited from continuing to work by the termination of eligibility for Medicaid or (until October 1, 1981) title XX social services; and

(4) Has earnings that are not sufficient to provide a reasonable equivalent of the benefits (SSI, State supplementary payments, Medicaid and, until October 1, 1981, title XX social services) which would be available if he or she did not have those earnings.

Utilization

Comment

One commenter suggested that there is no need to verify past utilization of services because future need for services would be sufficient to ensure eligibility.

Response

We are not verifying past utilization solely to establish eligibility. Section 201(e) of Pub. L. 96–265 requires the Secretary to provide for separate accounts with respect to benefits payable under these provisions in order to evaluate the effect of the programs established under this legislation. To properly evaluate the effect, we believe that accurate information is required regarding an individual's utilization of services before the implementation of these provisions as compared to after.

Comment

One State Welfare Department commented that many beneficiaries may find it difficult to supply information on past utilization of services and suggested that information of this type be obtained from State Medicaid and title XX agencies.

Response

Because not all State agencies will be able to produce this data, we believe the recipient is the appropriate initial source for this information. However, we do see merit in the commenter's suggestion. Therefore, in those situations where a State has an automated data processing system that is currently programmed to produce this data, we may obtain the information from the State agency rather than requiring it from the recipient.

Threshold Amount

Comments

One commenter expressed concern that the Medicaid threshold figures used to determine if criterion four is met are out of date and, therefore, are too low. Further, a suggestion was made that we update threshold figures annually and publish them in the **Federal Register** and make these new figures available to States and other interested parties through Social Security district offices.

Response

As we indicated in our January 22 publication, these Medicaid threshold figures are based on the most appropriate data available for use in light of the limited time we had to implement the program. Adjustments were made for inflation (12 percent compounded annually). However, we plan to use and to distribute updated data to States and Social Security district offices when it becomes available.

Comment

One individual suggested that our threshold figures should, in some manner, reflect the degree of an individual's impairment; for example, there could be two sets of threshold figures depending on how severe the impairment.

Response

We are unable to accept this recommendation for two reasons. First, the statute does not recognize distinctions between degrees of impairment for SSI eligibility; therefore, we do not believe it would be proper to reflect these distinctions in our threshold amounts. In addition, we know of no source from which to obtain data which distinguishes average medical expenses among different degrees of impairments.

Comment

One commenter believes that case-by-case determinations should be made under criterion four rather than using a threshold approach.

Response

We believe using a threshold formula as a means to implement criterion four expedites the eligibility process and reduces the administrative burden of making individualized evaluations. In addition, the threshold concept most closely approaches the stated Congressional intent that State-by-State information be used in establishing reasonable income limits to carry out criterion four. Further, we do make individualized evaluations where it is determined that the person's gross earnings exceed the threshold amount. Therefore, we have retained the use of a threshold for criterion four.

Comment

One organization believes that these regulations should address the matter of Medicaid spend-down; that is, an individual whose income exceeds the threshold amount under criterion four should be permitted to spend-down in order to meet this criterion.

This organization also suggested that in determining the first element of the threshold amount (SSI and State supplementary amount), all appropriate income exclusions should be applied rather than only those in 20 CFR 416.1112(c) (3) and (4). One example would be the exclusion of work-related expenses for the blind under § 416.1112(c)(5).

Response

Spend-down is a method used under title XIX by which an individual's excess income (the amount that exceeds the specified financial eligibility level) is offset by incurred medical expenses to establish Medicaid financial eligibility for certain groups of individuals. However, the determination of eligibility for special cash benefits and special eligibility status in these regulations is a determination of continued SSI status. Therefore, spend-down would not apply in making SSI determinations under these provisions, although individuals determined eligible under these provisions are treated as any other SSI eligible within a State. Thus, any State spend-down procedures established for SSI recipients would apply for these individuals as well.

As for the application of appropriate income exclusions to the threshold amount, we rejected this approach since the consideration of specific exclusions in the threshold formula would result exclusively in case-by-case determinations. For reasons stated previously, we do not believe a case-by-case approach is appropriate.

Reconsideration

Comment

One commenter believes that these regulations should address termination

and hearings procedures for individuals covered under this provision of the statute.

Response

The individuals affected by these regulations have the same rights as any other individuals being considered for SSI eligibility. Termination and hearings procedures would not differ for this group. These rules appear in Subparts M and N of current regulations at 20 CFR Part 416. Therefore, we believe there is no need to repeat current procedures in these regulations.

Changes in the Regulations

All of the changes to Part 416 of Chapter III of Title 20 of the Code of Federal Regulations which were published as interim rules on January 22, 1981 at 46 FR 6903 and subsequently codified in the Code of Federal Regulations on April 1, 1981, are shown for reader convenience. Some of these rules are being repeated even though they are not being changed by this final rule.

We made a clarifying change in § 416.268. This section now specifically identifies the information that we will be requesting when a person submits a statement of services. Since the interim regulations were not as specific as the revised § 416.268, a possibility existed for securing more information than we needed; the revised regulations preclude this possibility. In addition, we made a technical change in § 416.269(a) in order to make our description of the first element of the threshold amount simpler and clearer.

The final regulations also reflect the changes necessitated by section 2353(o) of Pub. L. 97–35. These changes were technical in nature, deleting as they did the references to title XX. Public comment on these changes would serve no useful purpose since they were mandated by statute and did not involve any exercise of discretion on our part. Accordingly, the proposed rulemaking procedures of the Administrative Procedure Act are unnecessary in this instance and thus waived under the authority of 5 U.S.C. 553(b)(B).

The Regulations

20 CFR 416.261–416.262 discuss the special SSI cash benefits and explain when these benefits are payable. 20 CFR 416.264–416.269 provide similar information about the special SSI eligibility status under which an individual is considered a blind or disabled individual receiving SSI benefits for purposes of Medicaid and until October 1, 1981, title XX social services. (Also, until October 1, 1981, social services under title XX were a factor in determining who was eligible for the special SSI eligibility status.) 20 CFR 416.266 explains that even though SSI payments have been stopped, an individual will continue to be considered an SSI recipient during the time it takes SSA to determine whether he or she qualifies for the special eligibility status. 20 CFR 416.268 specifically identifies the kinds of information SSA will have to obtain from other sources to determine whether an individual qualifies for the special eligibility status. 20 CFR 416.1402 explains that determinations of eligibility concerning the special SSI cash benefits and the special eligibility status are initial determinations subject to the same appeal procedures that apply to other SSI determinations. 20 CFR 416.2001 explains that a state which makes State supplementary payments has the option of making these payments to individuals who are eligible for the special SSI benefits.

When determining an individual's eligibility for the special SSI cash benefits and for the special SSI eligibility status, SSA will verify that the individual continues to be blind or to have a disabling impairment (first criterion) by applying the rules in 20 CFR Part 416, Subpart I (see 45 FR 55621). When determining whether an individual continues to meet all other requirements for SSI eligibility (second criterion), SSA will follow the rules in 20 CFR Part 416, Subpart B.

In determining whether the special SSI eligibility status applies SSA must also establish that the individual's ineligibility for SSI cash benefits is due to earnings from work which caused him or her to have excess income and that two additional criteria are met. The two additional criteria to be met for the special eligibility status are:

(a) The individual's ability to continue working would be seriously inhibited by the termination of eligibility for Medicaid (third criterion); and

(b) The individual's earnings would be insufficient to provide a reasonable equivalent of benefits under title XVI (SSI), and title XIX (Medicaid), which would be available to him or her in the absence of such earnings (fourth criterion).

To make a determination about the third criterion, SSA will first obtain a signed statement from the individual which:

(1) Describes the services received under Medicaid from each service provider in the present month and in the past 12 months. (The statement will include the provider's name and address, the type of treatment and the beginning and ending dates and frequency of treatment); and

(2) Identifies the types of services he or she expects to need in the next 12 months.

SSA will verify that services were provided when the statement shows that the individual has received services under Medicaid.

SSA will confirm the receipt of Medicaid services for the previous 12 months by obtaining information from the State Medicaid agency about the services received, dates of the services and amount paid for them. If the State Medicaid agency is unable to provide the information because it does not have an automated data processing system that is currently programmed to produce this data or if the information is not otherwise made available to SSA by the State, SSA will request the information from the appropriate Medicaid providers. The recipient may be required to assist in obtaining this information. Generally, SSA will accept recipient statements regarding the current month's use as well as expected use of Medicaid services.

If past use can be established, or if there is no past use and the need for current services or future use of Medicaid can be established, the individual meets criterion three.

To determine if the fourth criterion is met, SSA will apply an initial screen based on a review of earnings. This will involve comparing the individual's gross earnings to a threshold amount. Briefly, the threshold amount (which is explained more fully later) is defined as the sum of the following:

(1) The minimum level of earnings for an individual with no other income, living in his or her own household, which will reduce that individual's SSI and State supplementary payments to zero; and

(2) The average expenditures for Medicaid benefits for disabled SSI cash recipients in the individual's State of residence.

SSA will base the gross earnings used in this comparison on the first quarter for which special eligibility status is being determined and on a projection for the next three quarters. Whenever possible, SSA will verify earnings by using documents in the individual's possession or through contacts with the individual's employer(s). If the individual's earnings are less than or equal to the threshold amount, he or she meets criterion four. If the earnings are greater than the threshold amount, the individual may still meet criterion four if SSA can establish that the actual sum of past medical costs, together with the SSI

and State supplementary amount described earlier in number one, are greater than his or her gross earnings. If the person's gross earnings are less than or equal to this amount, he or she meets criterion four. If they are greater, the person does not qualify for the special SSI eligibility status.

Explanation of the Threshold Amount

SSI and State Supplementary Amount

The first element of the threshold amount is the minimum level of earnings for an individual with no other income, living in his or her own household, which will reduce that individual's SSI and State supplementary payments to zero. The amount will vary from State to State depending upon the amount of any State supplementary payment. (The basic Federal SSI benefit is currently $264.70 a month or $3,176.40 for 12 months.)

For purposes of illustration, let us suppose that a State's supplementary payment to a person living in his or her own household equals $62 a month, or $744 for 12 months. In that case, the combined Federal and State benefit for 12 months would equal $3,920.40 ($744+$3,176.40). To arrive at the amount of the first element used in the threshold we multiply the yearly benefit of $3,920.40 by 2 and add the yearly exclusions of $240 and $780 (See § 416.1112(c) (3) and (4)). In this example the first element of the threshold would be $8,860.80 for 12 months.

Adjusted Average Expenditures for Medicaid

The adjusted averages for Medicaid were obtained from information reported by the States for fiscal year (FY) 1977. Adjustments were made for the five States which did not report and all of the figures were adjusted for inflation (12% compounded annually). (States report this information on form HCFA 2082, Statistical Report on Medical Care: Recipients' Payments and Services, which was formerly form NCSS–2082).

Rationale for the Threshold Amount Formula and Figures Used in That Formula

A threshold formula was developed as a means to implement criterion four for several reasons. It expedites the eligibility process by permitting a determination to be made without an individualized evaluation of the personal medical expenses of every recipient who is being evaluated for special SSI eligibility. Also, in our view, it most closely approaches the Congressional intent in applying this criterion (as reflected in the House of Representatives Conference Report No. 96–944, page 50). This report makes clear that Congress intended that generally available State-by-State information be used in establishing reasonable income limits to carry out criterion four. Title XIX agencies are the primary sources of this information.

Computations for the Medicaid figures were based on the most appropriate data available for use in light of the limited time we had to implement the program (which did not permit us to obtain additional figures on a State-by-State basis). We plan to use updated data when it becomes available.

Continuing Eligibility Under the Special Status Provision

Eligibility for the special SSI eligibility status will be reevaluated at least annually. The verification procedures for initial eligibility will be applied in these reevaluations.

Federal and State Responsibilities—Federal Responsibility

(1) If a blind or disabled individual is no longer eligible for a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment (see 20 CFR 416.2001), SSA will automatically evaluate the person for the special SSI eligibility status. Until SSA makes this determination, eligibility for Medicaid on the basis of SSI status will continue as though the person were receiving SSI benefits. Federal financial participation will be available to States for the costs of otherwise reimbursable Medicaid provided to an individual during the time it takes SSA to make the special SSI eligibility status determination, since the individual will be presumed to meet the requirements of this special status until it is determined otherwise. Even if it is later determined that the individual was ineligible for the special eligibility status, Medicaid provided to the individual during the period of presumed eligibility would be proper State expenditures and thus qualify for Federal matching funds. SSA will notify the State Medicaid agencies via the State Data Exchange (SDX) system both when special eligibility status is under evaluation and when a special eligibility status determination has been made.

(2) The Health Care Financing Administration (HCFA) will be responsible for making available to SSA information concerning the initial and updated threshold amount figures for Medicaid that will be used under criterion four.

State Responsibility

(1) State Medicaid agencies, upon request, will be responsible for supplying SSA with an individual's client profile of medical services (services and dates received, provider and amount paid) if they have automated systems which are currently programmed to produce such data.

(2) When SSA informs State Medicaid agencies of an individual's pending special SSI eligibility status, the Medicaid agencies will be expected to obtain up-to-date third party liability (TPL) information from the individual, his or her employer(s) or other available sources (See TPL requirements under 42 CFR Part 433, Subpart D). This is necessary for purposes of claims payment since it is likely that an individual may have obtained health insurance through recent employment, while the State's last TPL inquiry may have been made when the person first became eligible for SSI benefits.

(3) For purposes of determining Medicaid eligibility, States must consider an individual who is being evaluated for or has been granted the special SSI eligibility status as a blind or disabled person receiving SSI benefits.

Some States have elected the option under section 1902(f) of the Act of applying Medicaid eligibility requirements for aged, blind or disabled individuals that are more restrictive than those used under SSI. Those States must allow all blind and disabled individuals who have the special SSI eligibility status the same opportunity to establish Medicaid eligibility under the State's more restrictive criteria, as those actually receiving SSI.

Amendments to Titles 42 and 45

In order to implement the provisions of sections 201(a) and (b) of Pub. L. 96–265 that applied to title XIX (Medicaid) of the Social Security Act, we made changes to 42 CFR 435.3, 435.4 and 435.120. On September 30, 1981, the Health Care Financing Administration, in order to implement sections 2171 and 2172 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) issued interim final rules which further amended our changes to § 435.120 (see 46 FR 47985). Therefore, our final regulations do not include this section of our interim rules. Further, since we made no changes in sections 435.3 and 435.4 as a result of the comments that we received we are not reprinting those sections as a part of these final rules.

Also, our final regulations do not include the changes that were made by

out interim rules in 45 CFR 1396.1, 1396.56, and 1396.60, the regulations that applied to the title XX social services program. On October 1, 1981, when the Department of Health and Human Services published its interim final rules for the block grants program, it removed Part 1396 (see 46 FR 48598). Therefore, the changes we made in 45 CFR Part 1396 are no longer applicable.

Regulatory Procedures

Executive Order 12291: These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these regulations affect only a limited number of individuals.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting requirements included in these regulations have been approved by OMB and assigned OMB approval #0960–0267.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; and No. 13.807, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public Assistance Programs, Supplemental Security Income

Dated: December 24, 1981.

John A. Svahn,

Commissioner of Social Security.

Approved: March 23, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 416 reads as follows:

Authority: Sec. 1102, 1611, 1616, 1618, 1619, 1631 and 1634 of the Social Security Act as amended, Sec. 212 of Pub. L. 93–66, as amended; 49 Stat. 647 as amended, 86 Stat. 1466, 1474, 1475, and 1478, 90 Stat. 2901, 87 Stat. 155, and 94 Stat. 445; 42 U.S.C. 1302, 1382e, 1382g, 1383, 1383c, 1382h and 1396.

2. Sections 416.260–416.269 are amended to read as follows:

Benefits for Persons with Disabling Impairments Who Perform SGA

Sec.

416.260 General.

Special SSI Cash Benefits

416.261 What are special SSI cash benefits and when are they payable.
416.262 Eligibility requirements for special SSI cash benefits.
416.263 No additional application needed.
416.264 When does the "special SSI eligibility status" apply.
416.265 Eligibility requirements for the special SSI eligibility status.
416.266 Continuation of SSI status for Medicaid.

How We Establish Your Special SSI Eligibility Status

416.267 General.
416.268 What is done to determine if you must have Medicaid in order to work.
416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

Benefits for Persons with Disabling Impairments Who Perform SGA

§ 416.260 General.

These regulations describe the rules for determining eligibility for special SSI cash benefits and for special SSI eligibility status for a person who works despite a disabling impairment. These benefits and this status are available for a 3-year period beginning January 1, 1981 and ending December 31, 1983. Under these rules a person who works despite a disabling impairment may qualify for special SSI cash benefits as well as for Medicaid and, until October 1, 1981, title XX social services when his or her earnings exceed the established SGA limits described in § 416.974(b). Also, for purposes of determining eligibility or continuing eligibility for Medicaid and, until October 1, 1981, title XX social services, a blind or medically impaired person (no longer eligible for SSI benefits) who, except for earnings, would otherwise be eligible for SSI benefits may be eligible for a special SSI eligibility status under which he or she is considered a blind or disabled individual receiving SSI benefits. We explain the rules for eligibility for special SSI cash benefits in §§ 416.261–416.262. We explain the rules for acquiring the special SSI eligibility status in §§ 416.264–416.269.

Special SSI Cash Benefits

§ 416.261 What are special SSI cash benefits and when are they payable.

Special SSI cash benefits are benefits that we may pay you for months during January 1, 1981 through December 31, 1983, if you are not eligible for regular SSI benefits because you demonstrate the ability to engage in SGA. You must meet the eligibility requirements in § 416.262 in order to receive special SSI cash benefits. Special SSI cash benefits are not payable for any month in which your countable income exceeds the limits established for the SSI program (see Subpart K of this part). If you are eligible for special SSI cash benefits, we consider you to be a disabled individual receiving SSI benefits for purposes of eligibility for Medicaid. We compute the amount of special SSI cash benefits according to the rules in Subpart D of this part. If your State makes supplementary payments which we administer under a Federal-State agreement, and if your State elects to supplement the special SSI cash benefits, the rules in Subpart T of this part will apply to these payments.

§ 416.262 Eligibility requirements for special SSI cash benefits.

You are eligible for special SSI cash benefits if you meet the following requirements—

(a) In the month before the month for which we are determining your eligibility for special SSI cash benefits, you were eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments (See § 416.2001);

(b) You are not eligible for a regular SSI benefit in the month for which we are making the determination because you demonstrate the ability to perform SGA;

(c) You continue to have a disabling impairment; and

(d) You continue to meet all the nondisability requirements for eligibility for SSI benefits (see subpart B).

We will follow the rules in this subpart in determining your eligibility for special SSI cash benefits.

§ 416.263 No additional application needed.

We do not require you to apply for special cash benefits nor is it necessary for you to apply to have the special SSI eligibility status determined. We will make these determinations automatically.

§ 416.264 When does the "special SSI eligibility status" apply.

The special SSI eligibility status applies only for purposes of establishing or maintaining your eligibility for Medicaid. For these purposes we continue to "consider you to be a blind or disabled individual receiving benefits" even though you are in fact no longer receiving SSI benefits." You must meet the eligibility requirements in

§ 416.265 in order to qualify for the special SSI eligibility status.

§ 416.265 Eligibility requirements for the special SSI eligibility status.

In order to be eligible for the special SSI eligibility status you must be under age 65 and, in the month before the first month for which we are making the special status determination, you must have been eligible to receive a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment (see § 416.2001). Also, we must establish that—

(a) You are blind or you continue to have a disabling impairment;

(b) Except for your earnings, you continue to meet all the non-disability requirements for eligibility for SSI benefits (see Subpart B);

(c) The termination of your eligibility for Medicaid would seriously inhibit your ability to continue working (see § 416.268); and

(d) Your earnings are not sufficient to allow you to provide yourself with a reasonable equivalent of the benefits (SSI benefits, State supplementary payments and Medicaid which would be available to you if you did not have those earnings (see § 416.269).

§ 416.266 Continuation of SSI status for Medicaid

If we stop your benefits because of your earnings and you are potentially eligible for the special SSI eligibility status you will continue to be considered an SSI recipient for purposes of eligibility for Medicaid during the time it takes us to determine whether the special eligibility status applies to you.

How We Establish Your Special SSI Eligibility Status

§ 416.267 General.

We determine whether the special SSI eligibility status applies to you by verifying that you continue to be blind or have a disabling impairment by applying the rules in Subpart I of this part, and by following the rules in this subpart to determine whether you meet the requirements in § 416.265(b). If you do not meet these requirements we determine that the special eligibility status does not apply. If you meet these requirements, then we apply special rules to determine if you meet the requirements of § 416.265 (c) and (d). If for the period being evaluated, you meet all of the requirements in § 416.265 we determine that the special status applies to you.

§ 416.268 What is done to determine if you must have Medicaid in order to work.

(a) *What we establish.* To determine that you need Medicaid in order to continue to work we must establish either:

(1) that you are currently using or have used Medicaid during the period which began 12 months before our first contact with you to discuss this use; or

(2) where there was no past use, that you expect to use these services within the next 12 months.

(b) *Statement about use of services.* We will ask you for a signed statement which:

(1) describes the services you received under Medicaid from each of the providers of these services in the present month and in the past 12 months including:

(i) the name and address of the provider,

(ii) the type of treatment received,

(iii) the beginning and ending dates of the treatment,

(iv) the frequency of the visits; and

(2) identifies the types of services that you expect to receive in the next 12 months.

(c) *Verification of services.* We then verify, as necessary, what you tell us in your statement about past services through the agency administering the Medicaid program in your State or from providers of the services. If you have not used Medicaid in the past 12 months, we accept your statement (unless we have evidence to the contrary) concerning your expected use of Medicaid as the verification we need to establish that you need these services in order to work.

(Reporting requirements contained in § 416.268 have been approved by OMB under OMB #0960.0267.)

§ 416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

We must determine whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings (see § 416.265(d)). In determining whether you meet this requirement, we compare your anticipated gross earnings, or a combination of anticipated and actual earnings (as appropriate) for the 12-month period beginning with the calendar quarter for which your special eligibility status is being determined to a threshold amount for your State of residence. This threshold amount consists of the sum for a 12-month period of two items, as follows:

(a) The amount of gross earnings after the exclusions in § 416.1112(c) (3) and (4) which reduces to zero the Federal SSI benefit and State supplementary payment for an individual with no other income living in his or her own household in the State where you reside. This amount will vary from State to State depending on the amount of the State supplementary payment; and

(b) The average expenditures for Medicaid benefits for disabled SSI cash recipients in your State of residence.

You meet the requirements in § 416.265(d) if the comparison shows that your gross earnings are equal to or less than the applicable threshold amount for your State.

If our comparison shows that your gross earnings exceed the applicable threshold amount for your State we will establish (and use in a second comparison) the amount of the actual expenditures for Medicaid services which you received during the appropriate 12-month period. If you have already completed the 12-month period for which we are determining your eligibility we will consider only the expenditures which apply to that period. In establishing the actual expenditures, we use both the information you provide in the signed statement required in § 416.268 and that which we obtain from the appropriate agencies and providers.

3. Sections 416.1332, 416.1402, 416.2001, and 416.2112, as published on January 22, 1981 at 46 FR 6903, are being reprinted below for reader convenience.

§ 416.1332 Termination of benefit for disabled individual: Exception.

Special SSI cash benefits (see § 416.261) will be payable in the period January 1, 1981 through December 31, 1983 if you meet eligibility requirements in § 416.262. These requirements apply if you, as a disabled recipient, are no longer eligible for regular SSI benefits because you demonstrate that you are able to engage in SGA.

* * * * *

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(f) Imposing penalties for failing to report important information;

(g) Your drug addiction or alcoholism;

(h) Whether you are eligible for special SSI cash benefits under § 416.262; and

(i) Whether you are eligible for special SSI eligibility status under § 416.265.

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§ 416.2001 State supplementary payments; general.

* * * * *

(d) *Supplementary payments for recipients of special SSI cash benefits.* A State which makes supplementary payments (regardless of whether they are mandatory or optional and whether the payments are federally administered), has the option of making those payments to individuals who receive cash benefits under section 1619(a) of the Act (see § 416.261), or who would be eligible to receive cash benefits except for their income.

* * * * *

§ 416.2112 Limitations as to individuals covered by agreement to determine eligibility for medical assistance.

Determinations of Medicaid eligibility under an agreement are limited to individuals (a) who have been determined to be eligible individuals under title XVI of the Act; or (b) who are receiving a State supplementary payment which is federally administered, or both (see § 416.2003 and § 416.2052 in connection with federally administered State supplementary payments); or (c) who are eligible to receive benefits under section 1619(a) of the Act or who we consider to be blind or disabled individuals receiving supplemental security income benefits as provided in section 1619(b) of the Act (see § 416.260).

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Food and Drug Administration

21 CFR Part 452

[Docket No. 82N-0047]

Antibiotic Drugs; Erythromycin Enteric-Coated Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the certification of a new strength of erythromycin enteric-coated tablet. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective April 9, 1982; comments, notice of participation, and request for hearing by May 10, 1982; data, information, and analyses to justify a hearing by June 8, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new strength (500 milligrams) of erythromycin enteric-coated tablet. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 452

Antibiotics, macrolide.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701(f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 452 is amended in § 452.110b by revising the second sentence in paragraph (a)(1) to read as follows:

§ 452.110b Erythromycin enteric-coated tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* * * * Each tablet contains 100, 250, 333, or 500 milligrams of erythromycin. * * *

* * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending this regulation's effective date. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective April 9, 1982. However, interested persons may, on or before May 10, 1982, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before May 10, 1982, a written notice of participation and request for hearing, and (2) on or before June 8, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall