statute, may commence separate actions for penalties.

* * * * *

[FR Doc. 83-23750 Filed 8-31-83; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 271

[SW-6-FRL 2427-2]

Hazardous Waste Management Programs, Texas; Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The State of Texas has applied for Interim Authorization, Phase II, Component C, permitting program for land disposal facilities. EPA has reviewed Texas' application for Phase II, Interim Authorization, Component C, and has determined that Texas' hazardous waste program is substantially equivalent to the Federal program covered in Component C. The State of Texas is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program covered by Component C in lieu of the Federal program in the State of Texas.

EFFECTIVE DATE: Interim Authorization for Phase II, Component C, for Texas shall become effective September 1, 1983.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Air and Waste Management Division, Environmental Protection Agency, 1201 Elm St., Dallas, Texas 75270, Telephone (214) 767-2645.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. RCRA includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the July 26, 1982, **Federal Register** (47 FR 32373), the Environmental Protection Agency announced that States could apply for Component C of Phase II, Interim Authorization. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting facilities that dispose hazardous waste in waste piles, surface impoundments, land treatment, and landfills.

The State of Texas received Interim Authorization for Phase I on December 24, 1980, and Interim Authorization for Phase II, Components A & B, on March 23, 1982.

Draft Application

The State of Texas submitted its draft application for Phase II, Component C, Interim Authorization, on January 4, 1983. After detailed review, EPA transmitted comments to the State on February 2, 1983.

Three major issues were identified which the State was required to correct before being authorized. These issues involved the substantial equivalence of the State's requirements with EPA's program requirements in the following areas: (1) The construction of a new facility prior to the issuance of a permit; (2) TDWR's requirements for groundwater monitoring; and (3) necessary additions to the Memorandum of Agreement.

Each of these issues was resolved at the time of submittal of the complete application. Specifically, the Texas Legislature amended the statute so that the state could require permits for construction related elements of all hazardous waste management facilities; TDWR amended its groundwater monitoring requirements to align with those of EPA; and a Memorandum of Agreement was submitted.

On May 16, 1983, Texas submitted to EPA an official application for Phase II, Component C. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Texas' hazardous waste management program.

EPA comments were forwarded to the State on June 30, 1983. No major questions were raised in the comments; however, some minor clarifications were requested. By letter dated July 13, 1983, the State responded to all the issues raised by EPA.

I conclude that the Texas application for Interim Authorization to operate the RCRA Phase II, Component C program meets all of the statutory and regulatory requirements and as such I approve this authorization.

Public Hearing and Comment Period

As noticed in the **Federal Register** on May 27, 1983, EPA gave the public until July 7, 1983, to comment on the State's application. EPA also issued a public notice for a hearing to be held in Austin, Texas on July 14, 1983, if significant public interest was expressed. EPA received requests to hold the hearing from seven (7) public interest groups and one (1) individual.

EPA found that there was significant public interest in holding a hearing on the Texas application for Phase II, Component C, Interim Authorization. Consequently on the evening of July 14, 1983, in Austin, Texas, EPA held such a public hearing and four presentations were made at that time. In addition, Region VI received eleven (11) written comments on the Texas application. Because of the interest exhibited, the comment period was extended by the hearing officer until July 21, 1983.

All comments whether presented at the hearing or in writing, were considered before reaching a decision on the Texas application for Phase II Interim Authorization for Component C.

None of the commenters opposed granting the state of Texas authorization. Eight (8) commenters specifically supported the authorization and urged EPA to expeditiously grant the authorization. Six (6) commenters made comments which were not specific to the authorization decision and one commenter supported the concept of authorization both in general and for

Texas, but suggested some conditions to be placed on this action.

A complete summary of the comments made on the Texas application, and EPA's response to the comments, may be obtained free of charge by calling or writing the contact listed above.

Decision

EPA has reviewed Texas' complete application for Interim Authorization Phase II, Component C, and has determined that the State program is substantially equivalent to Phase II, Component C, of the Federal program as defined in 40 CFR Part 271, Subpart B, as amended at 47 FR 32373 (July 26, 1982). In accordance with Section 3006(c) of RCRA and implementing regulations, Texas is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program for permitting construction and operation of facilities that dispose of hazardous waste in lieu of the Federal program.

Regulatory Flexibility Act

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

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 9, 1983.

Dick Whittington,

Regional Administrator.

[FR Doc. 83-24013 Filed 8-31-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 410

[WH-FRL-2427-4]

Textile Mills Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors of omission that appeared in the final regulation for the textile mills point source category. This regulation was published on September 2, 1982 (47 FR 38810). The purpose of this action is to ensure that the final regulation is properly applied in issuing permits applicable to wastewater discharges from the textile industry.

FOR FURTHER INFORMATION CONTACT: Richard E. Williams, Effluent Guidelines Division, (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 382-7186.

In 40 CFR Part 410, as published on September 2, 1982 (47 FR 38810), the following corrections are made:

1. On page 38824, column 2, § 410.42, paragraph (e): change: "paragraph (a) of this section * * *" to "paragraphs (a), (b), (c) and (d) of this section * * *".

2. On page 38825, column 1, § 410.43, paragraph (e): change: "paragraph (a) of this section * * *" to "paragraphs (a), (b), (c) and (d) of this section * * *".

3. On page 38826, column 1, § 410.52, paragraph (d): change: "paragraph (a) of this section * * *" to "paragraphs (a), (b), and (c) of this section * * *".

4. On page 38826, column 2, § 410.53, paragraph (d): change: "paragraph (a) of this section" to "paragraphs (a), (b), and (c) of this section * * *".

Dated: August 24, 1983.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 83-24002 Filed 8-31-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; Deeming of Income Between Spouses; Categorically Needy

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

ACTION: Final rule with comment period.

SUMMARY: These final regulations revise Medicaid rules for determining the financial eligibility and the level of Medicaid payments for the institutional care of aged, blind, and disabled categorically needy individuals when one spouse is institutionalized and the other spouse is not. In accordance with a United States Supreme Court ruling, we are reinstating the rules that were in effect prior to imposition of lower court orders (now reversed) that required HCFA to change its regulations.

The regulations affect those States that, as permitted by statute, use more restrictive eligibility criteria than those applied nationally under the Supplemental Security Income (SSI) requirements. They also apply in Puerto Rico, Guam, and the Virgin Islands. These reinstated rules permit these jurisdictions, in situations when one spouse is institutionalized, to consider a portion of the income of one spouse as available for the care of his or her institutionalized spouse, whether or not the income is actually contributed to the spouse. This practice is known as "deeming of income."

We are also clarifying a regulation that applies in States that use the SSI eligibility criteria and may apply in States that use more restrictive eligibility criteria. This clarification reflects current SSI policy. It provides that the mutual consideration of income between two spouses who are both eligible for Medicaid as aged, blind, or disabled individuals will cease with the month after the month of separation when this separation is due to the institutionalization of one spouse.

DATES:

Effective date: These regulations are effective on October 3, 1983. However, because of the time required by some of the States and Territories to effect changes to implement the requirements, HCFA will not hold a State or Territory out of compliance with the requirements if it makes the necessary changes by November 30, 1983.

Comment period: Although these regulations are final, we will consider comments on the conforming change that we made to § 435.723(c). This regulation clarifies that, in accordance with SSI policy, the mutual consideration of income of two spouses who are both eligible for Medicaid as aged, blind, or disabled individuals ceases with the month after the month of separation when this separation is caused by the institutionalization of one spouse. To assure consideration,

comments must be received by October 3, 1983.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERG–214–FC, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BERG–214–FC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, Office of Eligibility Policy, (301) 594–9050.

SUPPLEMENTARY INFORMATION:

I. Background

In 1972, when Congress replaced three of the four categorical assistance programs with the Supplemental Security Income program (SSI), the number of individuals who met eligibility requirements for SSI assistance in some States was significantly larger than the number determined eligible under the earlier, State-run programs. In order not to impose a substantial fiscal burden on these States, nor to discourage these States from participating in Medicaid, Congress enacted section 1902(f) of the Social Security Act. This section allows States to provide Medicaid only to those individuals who would have been eligible under the State Medicaid plan in effect on January 1, 1972. (For a more complete discussion, see S. Rep. No. 553, 93rd Cong. 1st Sess. 56 (1973).) States selecting this option are commonly referred to as section 1902(f) States.

Section 1902(a)(17)(B) of the Act requires that, in determining an individual's eligibility for medical assistance and the amount of financial assistance provided under the plan, States must take into account only such income as is determined (under standards prescribed by the Secretary) to be "available" to the Medicaid applicant or beneficiary. Under Medicaid plans in effect on January 1, 1972, some States "deemed" a certain amount of the income of a financially responsible relative (spouse or parent) as available to an individual, without regard to the actual monetary contribution by the relative. In the case of institutionalized applicants or beneficiaries, this was often done by subtracting, from the income of the noninstitutionalized relative, a specific "protected" amount that was considered necessary for his or her own living expenses, and considering the remaining amount available to the institutionalized individual. The State then reduced its payment to the institution based on the amount considered available to the institutionalized individual.

Under the SSI program, the statute generally requires that, if an individual and his or her spouse who apply or are eligible for SSI cease to live together, their income and resources must be considered to be mutually available, for purposes of determining eligibility, for the first six months after the month they cease to live together (see sections 1602, 1611(a) and 1614(b) of the Act). However, under section 1611(e)(1)(B)(ii) of the Act, the determination of eligibility for and the amount of the SSI benefit when one member of the couple is institutionalized is based on the application of the income of each member of the couple to separate SSI income standards. The income of the noninstitutionalized spouse is not used to compute the benefit of the institutionalized spouse except during the month that they ceased to live together.

For couples where only one spouse applies for or is eligible for SSI, a specified amount of income (determined in accordance with a set formula) is deemed from the ineligible spouse to the eligible spouse, in determining the eligibility of the eligible spouse, until the end of the month the couple ceases to live together in the same household (section 1614(f)(1) of the Act). (The SSI program does not deem income or resources from an ineligible spouse when both members of the couple are living in an institution, even if they share a room.)

II. Court Orders

These final regulations represent a return to policy that was in effect until May 30, 1979, when we revised our deeming of income rules in compliance with an order of the United States District Court for the District of Columbia (*Gray Panthers v. Secretary, Department of Health, Education, and Welfare, et al.*, 461 F. Supp 319). That order prohibited any deeming of income between spouses in section 1902(f) States when one spouse is institutionalized, and required HCFA to propose and publish new regulations implementing this prohibition. No change was required in the regulations affecting non-1902(f) States, in situations when neither spouse or both are institutionalized, or regulations concerning deeming of resources.

The District Court order was subsequently amended by the U.S. Court of Appeals, which ordered the Secretary to issue new regulations after considering certain "relevant factors". Final regulations to comply with the decision of the Court of Appeals were issued December 15, 1980. Under those rules, section 1902(f) States were permitted to use SSI deeming of income criteria or any deeming criteria more liberal than SSI, when one spouse was institutionalized. In the preamble to those regulations, we stressed that the new regulations were based on a Court of Appeals decision that rejected the Department's legal analysis of the statute and required the Department to issue new regulations. We added that the Department was seeking Supreme Court review of the *Gray Panthers* decision and, if our earlier regulations were upheld, we would consider revising the December 1980 regulations (45 FR 82254).

On June 25, 1981, the United States Supreme Court ruled that the Court of Appeals was not justified in invalidating our earlier deeming regulations because the Secretary had properly exercised the authority delegated by Congress.

Because the United States Supreme Court upheld our earlier deeming regulations, we are reissuing those deeming rules for the categorically needy (aged, blind or disabled individuals who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for SSI or an optional State supplement or are considered under section 1619(b) of the Act to be SSI recipients, or whose categorical eligibility is protected by statute) that we believe are compelled by the requirements of section 1902(f) of the Act.

Therefore, this final rule reflects our longstanding interpretation of the statute, that section 1902(f) States can apply more restrictive deeming of income rules than applied nationally under the SSI program.

III. Provisions of the Regulations

On July 23, 1982, we published a notice of proposed rulemaking in the **Federal Register** (47 FR 31899) in order to reissue our earlier deeming rules for categorically needy individuals in the

section 1902(f) States [1] and Guam, Puerto Rico and the Virgin Islands. Under the proposal, such States would be required to use at least SSI deeming practices or any deeming criteria more extensive than SSI practices, but not more restrictive than under the State's January 1, 1972 Medicaid plan.

This would mean that both the amount and duration of deeming could be more extensive than SSI practice, if authorized under the 1972 plan. For example, some States could continue to deem for indefinite periods of time. Under the proposed rules, section 1902(f) States would no longer be permitted to use any deeming criteria less extensive than SSI practices. Puerto Rico, Guam and the Virgin Islands are permitted to return to requirements in the State plan for OAA, AB, APTD or AABD.

After evaluating the comments, we are adopting the regulations as proposed. Also, we are revising one other regulation (§ 435.723) because several commentors brought to our attention the need to clarify the policy to conform it to current SSI deeming policy.

IV. Medically Needy Deeming Rules

These rules do not apply to "medically needy" aged, blind or disabled individuals. The medically needy are individuals whose incomes and resources are within limits set under each State Medicaid plan but who are otherwise not eligible for Medicaid as categorically needy. Deeming rules for the medically needy in section 1902(f) States were included in regulations implementing the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. 97-35. Changes were made to 42 CFR 435.330, 435.823 and 436.821. (See 46 FR 47976, September 30, 1981.) However, section 137(b)(8) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, made changes in the provisions of OBRA that had formed the basis for the September 30, 1981 regulations. Therefore, to the extent that those regulations conflict with statutory changes, the regulations have no further force or effect. Since the July 23, 1982 notice of proposed rule making preceded TEFRA, it dealt exclusively with deeming for the categorically needy. Accordingly, this final rule does not apply to the medically needy. We will be issuing separate rules reflecting changes regarding financial eligibility of the medically needy that were made by TEFRA.

[1] At present, these States are—Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Utah, and Virginia.

V. Analysis and Response to Public Comments

We received 10 comments on the proposed regulations. The commentors consisted of seven State agencies, one State legislative committee, a social service agency and a legal assistance group. The commentors generally supported the change, but raised some questions about specific aspect of it.

Detrimental Effect on Recipients and Spouses

1. *Comment:* Three commentors objected to the proposed rule because they felt that it could have a detrimental effect on both spouses.

Response: Section 1902(f) of the Social Security Act provides States with the option to refuse to provide Medicaid to any aged, blind, or disabled individual otherwise eligible for SSI unless that individual would be or would have been eligible for Medicaid under the State's Medicaid plan that was in effect on January 1, 1972. Therefore, if we were to require these States to use deeming rules which are more generous to beneficiaries than those which these States used on January 1, 1972, we would be exceeding our statutory authority. Accordingly, it is not appropriate to consider the relative impact of this rule on spouses, since the rule simply restores to the States the option which was provided to them by Congress in 1972 and which we have no legal basis for restricting unless "deeming" were contrary to the provisions of the Medicaid law. Since the validity of deeming under the Medicaid statute was upheld by the United States Supreme Court in its *Gray Panthers* decision, we have no basis for restricting 1902(f) States in the manner suggested by the commentor.

No Six Months Deeming Requirement Under Medicaid

2. *Comment:* Three commentors expressed concern that SSI requires that the income of eligible couples be considered mutually available during the first six months of separation caused by institutionalization of an individual.

Response: We believe that the commentors have called attention to a problem that merits a change in the Medicaid regulations governing the mutual consideration of the income of an eligible couple in SSI States.

As discussed above, the rules governing mutual consideration of income in section 1902(f) States can be no less rigorous than those which are used under the SSI program. Therefore, the mutual consideration of income rules for SSI States prescribe the least restrictive rule that section 1902(f) States may use. The concept of mutual consideration of income for six months where eligible spouses are separated derives from section 1614(b) of the Act. That section defines an "eligible spouse" under the SSI program as the aged, blind, or disabled husband or wife of another aged, blind, or disabled individual who has not been living apart from the eligible individual for more than six months. Section 1611(a)(2) of the Act defines an eligible individual (who has an eligible spouse) in terms of joint consideration of the income and resources of the individual and spouse. Since the definition of eligible spouse contains the six month period, the Medicaid rule at 42 CFR 453.723(c) specified a six month period for the joint consideration of the income and resources of these couples. Section 1611(e)(1)(B)(ii) of the Act was amended in 1976 to specify that where either member of this couple is institutionalized throughout any month, the maximum monthly SSI benefit for the institutionalized spouse is $25 per month and for the noninstitutionalized spouse is the benefit amount established for a single noninstitutionalized individual.

Because the 1976 amendment specifically addressed SSI benefit amounts rather than SSI eligibility, the Medicaid regulations governing mutual consideration of income in SSI States maintained the six months period for eligible couples separated by institutionalization. However, in view of the comments and the SSI practice of treating the eligibility of these couples as a matter that affects both the SSI benefit amount *and* Medicaid eligibility of each individual, we have reconsidered the advisability of maintaining the current Medicaid regulation and have decided that it requires alteration.

Another factor influencing this decision is the recently enacted Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). Section 137(b)(8) of that Act enacted section 1902(a)(10)(C)(i)(II) of the Social Security Act, which requires States that provide Medicaid to all SSI recipients to use the methodology used by the SSI program in considering income and resources of aged, blind, and disabled medically needy. The reinforced connection between Medicaid and the cash assistance programs dictates the need for greater consistency between Medicaid and SSI eligibility policy.

Therefore, we are clarifying § 435.723(c) to reflect current SSI rules which specify that the mutual

consideration of income between two spouses who are both eligible as aged, blind, or disabled individuals, ceases the month after the month of separation when this separation is caused by the institutionalization of one spouse.

Additionally, the regulation reflects SSI rules which provide that if two spouses who separate both apply for Medicaid and are not eligible as a couple, the State agency must then determine if a spouse is eligible using his or her applicable income standard.

Because this change affects SSI States in addition to the section 1902(f) States, we are soliciting public comments with respect to this change. In order not to delay the adoption of the section 1902(f) State deeming rule, we are making this change in SSI State rules effective at the same time as the section 1902(f) State deeming rule.

3. *Comment:* Three commentors recommended that all deeming of income under Medicaid cease as soon as the couple is no longer living together.

Response: Because the SSI program does not cease deeming in these circumstances until the first full month in which the couple ceases to live together, we reject the commentors' suggestion that deeming cease immediately at separation instead of ceasing at the beginning of the month following the separation.

SSI generally requires the mutual consideration of income during the first 6 months of separation of an eligible couple. The income is used to determine whether both spouses are eligible for SSI benefits and the amount of those benefits. If an SSI benefit is paid, the individual is eligible for Medicaid in States that cover all SSI recipients.

However, in the case of the eligible couple where one spouse is institutionalized, the proper application of SSI policy for purposes of determining Medicaid eligibility is to apply the income of each spouse to seperate standards. The test of the couple's combined income to a couple standard does not present a barrier to attaining Medicaid eligibility because income in excess of the standard is offset by incurred medical expenses in section 1902(f) States. Additionally, a State must consider the income of the spouse at home to be available for the medical expenses of the institutionalized spouse only through the month before the first full month of separation. This is the least restrictive policy States exercising their option under section 1902(f) can apply. To allow section 1902(f) States to apply less restrictive policies is inconsistent with the intent of section 1902(f), which is only to allow States to impose more restrictive requirements than SSI.

The basis of these SSI requirements is section 1611(e)(1)(B)(ii) of the Act.

Minimum Protection Income Level

Three commenters raised issues regarding the protected income level used for recognizing the living expenses of an ineligible spouse if a State chooses to continue deeming beyond the first full month of living apart.

4. *Comment:* One commentor suggested that a minimum protected income level should be established by the regulations with an exception for hardship situations.

Response: In the final rule, we have not set a specific minimum dollar protected income level because we believe that doing so would be inconsistent with the statute. The statute allows a section 1902(f) State to apply financial eligibility criteria as restrictive as the State used under the State plan in effect on January 1, 1972 and no less restrictive than that of the SSI program.

5. *Comment:* One commentor wanted to know if a section 1902(f) State could use the State supplement level as the protected income level for an ineligible spouse.

Response: States have a great deal of flexibility in setting the amount of the protected income level, beginning with the first full month of living apart. There is no maximum protected income level. The minimum for the protected income level is the level in the Medicaid State plan in effect on Janaury 1, 1972. Therefore, there is nothing to prohibit a State from using a State supplement level if it is no more restrictive than the level on January 1, 1972.

6. *Comment:* Another commentor stated that the protected income level is not an equitable or politically viable deeming standard. This commentor felt a fee schedule is preferable to a protected income level. A fee schedule would base the amount to be deemed on an adjusted household income.

Response: This final rule does not set a minimum for the protected level (except the statutory minimum in a section 1902(f) State; that is, the January 1, 1972 level). There is only a minimum standard recognized in the final rule. Again, we believe there is sufficient flexibility to allow a fee schedule as a method of determining the amount of deemed income beginning with the first full month of living apart.

7. *Comment:* One commentor claimed that the United States Supreme Court in *Schweiker* v. *Gray Panthers* required that the amount of income protected for the spouse at home be related to living expenses and that the regulations did not include this provision.

Response: The United States Supreme Court did not rule that the protected amount must be related to living expenses. In upholding the validity of the regulations that we are reissuing here, the Court rejected the notion that "individual determinations of need" are required as part of the "deeming" process. (See 101 S.Ct. 2633 at 2642.) Implicit in the comment that the amount of income protected for the spouse at home must be related to living expenses is the concept of individual determinations which was rejected by the Court. The Court noted that the Medicaid statute's requirement of "availability refers to resources left to a couple after the spouse has deducted a sum on which to live" (*id.* at 2642). However, the issue of whether particular States set aside more income than can reasonably be considered available addresses "a problem not presently before the Court" (*Id.* at 2643, note 21). Moreover, the regulations which we are adopting require section 1902(f) States (when determining the amount of income of the spouse at home which is considered available to the institutionalized spouse) first to deduct an amount for the living expenses of the spouse at home.

Least Restrictive Alternative

8. *Comment:* One commentor argued that the statute allows a State to choose a less restrictive treatment of income and resources of spouses separated by institutionalization than used by SSI, particularly if such a requirement was part of the State's 1972 Medicaid plan.

Response: The Department has consistently interpreted section 1902(f) of the Act to require States electing this option to be no more liberal with respect to eligibility criteria for the categorically needy than the criteria used in the SSI program. This interpretation is based upon reading section 1902(f) in conjunction with section 1902(a)(10)(A) of the Act. Thus, we believe that the pertinent portion of section 1902(f) should be paraphased as follows:

> Notwithstanding any other provision of this title which requires States to provide Medicaid eligibility to all SSI recipients, *i.e.*, section 1902(a)(10)(A), no State * * * shall be required to provide medical assistance to any aged, blind, or disabled individual, unless the State would have been required to provide Medicaid to such individuals under its Medicaid plan in effect on January 1, 1972 * * *

In our view, the obligation to provide Medicaid to aged, blind, and disabled individuals who would have been

eligible for Medicaid under the January 1, 1972 plan is limited to those individuals whom the State otherwise is currently required to make Medicaid eligible by virtue of some other provision of the law; for example, SSI recipients under section 1902(a)(10)(A) of the Act. This reading of section 1902(f) is consistent with the legislative history of section 1902(f) as reported in S. Rep. No. 92–1230, 92d Cong. 2d Sess. (1972) at 222, which characterized it as follows:

> No State would be required to furnish medical assistance *to any individual receiving aid as a needy aged, blind, or disabled adult* unless the State would be [or would have been] required to furnish such assistance to such individual under its Medicaid plan that was in effect on January 1, 1972 [italics added].

As summarized by the Senate Report, it is clear that the section 1902(f) provision applies only with respect to individuals who are both receiving cash assistance *and* with respect to whom the State would be required to furnish Medicaid if the rules of its January 1, 1972 Medicaid plan currently were in effect. Accordingly, the Department has read this portion of section 1902(f) to authorize States to restrict their Medicaid eligibility of aged, blind, and disabled individuals receiving SSI. However, we do not view section 1902(f) as providing Medicaid eligibility for aged, blind, or disabled individuals who do not meet the requirements for SSI eligibility. Therefore, we reject the commentor's suggestion that we amend the regulations to authorize section 1902(f) States to use less restrictive criteria than SSI's (which would have the effect of expanding Medicaid eligibility beyond the SSI recipient population which is the focus of this portion of section 1902(f)).

Cost Associated With Effecting a Change in Policy

8. *Comment:* One commentor agreed that the proposed change would mean a cost savings to the State, but the savings would be small, since only a small portion of the population would be affected. The commentor felt that the cost savings would be offset by the administrative cost associated with implementing the change.

Response: We recognize that changes in policy may create administrative problems. However, we believe that the statute requires this interpretation. We want to emphasize that a section 1902(f) State may choose to apply the SSI deeming rules or more restrictive rules as long as those rules are not more restrictive than allowed under the State plan in effect on January 1, 1972. If a State applies the SSI rules, the State will stop considering the income of the spouse at home to be available for the institutionalized spouse beginning with the month after the month of separation when this separation is due to institutionalization.

VI. Request for Additional Public Comments

We invite comments on one issue that was not addressed in the NPRM published July 23, 1982. In particular, we request comments on the clarification that the mutual consideration of income between two spouses who are both eligible for SSI will cease beginning with the first full month of living apart when this separation is caused by the institutionalization of one spouse. Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. Since we have addressed the issues raised in comments on the July 23, 1982, proposed rule in the context of "section 1902(f) States" in the preamble to these final regulations, we will not respond a second time to any comments already addressed. If appropriate, we will respond to public comments received on this new issue in a future **Federal Register** publication.

VII. Impact Analyses

Executive Order 12291

The HCFA actuary estimates that the fiscal year 1984 savings resulting from removal of the provision that permitted use of eligibility criteria more liberal than SSI requirements in section 1902(f) States will be approximately $1.5 million in Federal funds and $1.4 million in State funds. Savings will be realized to the extent that section 1902(f) States change their deeming practices and that other States choose to become section 1902(f) States because of the flexibility the regulation now affords. The final rule only reiterates the provisions of the proposed regulations and responds to public comments concerning the proposed rule.

The amendments to the regulations to clarify the use of SSI deeming policy (in States that use SSI eligibility criteria) on consideration of income and resources of eligible spouses when they cease to live together because of the institutionalization of one spouse are estimated to result in negligible savings in Federal funds for fiscal year 1984. Savings will be realized as those States that are not currently using separate criteria for deeming income and resources of spouses when one spouse is institutionalized conform their standards to reflect the consideration of income of the noninstitutionalized spouse as available only through the month of separation, and resources as available during the month of separation and during the 6 months after the month of separation.

We have determined that this rule does not meet the threshold criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this rule will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires that Federal agencies prepare a regulatory flexibility analysis when regulations will have a significant economic impact on a substantial number of small businesses or small governmental jurisdictions.

These regulations affect individuals who, because a section 1902(f) State may change its deeming practices, may be determined ineligible for Medicaid. Individuals are not considered "small entities" under Pub. L. 96–354. Therefore, the Secretary certifies, under section 605(b) of Title 5, United States Code, that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting and recordkeeping requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Aliens, Contracts (Agreements), Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

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

A. 42 CFR Part 435 is amended as set forth below:

1. Section 435.121 is amended by revising paragraph (b)(1) to read as follows:

§ 435.121 Individuals in States using more restrictive requirements for Medicaid than the SSI requirements.

* * * * *

(b) If an agency uses more restrictive requirements under this section—

(1) Each requirement may be no more restrictive than that in effect under the State's Medicaid plan on January 1, 1972, and no more liberal than that applied under SSI or an optional State supplement program that meets the conditions of § 435.230: and

* * * * *

2. Section 435.723 is amended by revising paragraphs (c) and (d) to read as follows:

§ 453.723 Financial responsibility of spouses.

* * * * *

(c) If both spouses apply or are eligible as aged, blind, or disabled and cease to live together, the agency must consider their income and resources as available to each other for the time periods specified below. After the appropriate time period, the agency must consider only the income and resources that are actually contributed by one spouse to the other.

(1) If spouses cease to live together because of the institutionalization of one spouse—

(i) The agency must consider their income as available to each other through the month in which they cease to live together. Mutual consideration of income ceases with the month after the month in which separation occurs.

(ii) The agency must consider their resources as available to each other for the month during which they cease to live together and the six months following that month.

(2) If spouses cease to live together for any reason other than institutionalization, the agency must consider their income and resources as available to each other for the month during which they cease to live together and the six months following that month. If the mutual consideration of income and resources causes the individuals to lose eligibility as a couple, the agency will determine if an individual is eligible in accordance with paragraph (d) of this section.

(d) If only one spouse in a couple applies or is eligible, or both spouses apply and are not eligible as a couple, and they cease to live together, the agency must consider only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month in which they cease to live together.

4. Section 435.734(a) is revised and paragraph (b) is removed and reserved as follows:

§ 435.734 Financial responsibility of spouses and parents.

(a) In determining Medicaid eligibility of an aged, blind, or disabled individual under requirements more restrictive than those used under SSI, the agency must consider the income and resources of spouses and parents as available to the individual in the manner specified in §§ 435.723 and 435.724 or in a more extensive manner, but not more extensive than the requirements in effect under the Medicaid plan on January 1, 1972.

(b) [Reserved]

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

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

B. 42 CFR Part 436, § 436.711 is revised to read as follows:

§ 436.711 Determination of financial eligibility.

In determining eligibility of individuals specified in subparts B and C of this part who are not recipients of cash assistance, the agency must apply the financial eligibility requirements of the State plan for OAA, AFDC, AB, APTD, or AABD that would be used if the individual were applying for cash assistance. This includes requirements on financial responsibility of spouses and parents, except that in determining eligibility of families and children, the agency must consider parental income and resources as available to a child who is living with the parents until he becomes 21, even if State law confers adult status below age 21.

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

Dated: April 19, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 5, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-23992 Filed 8-31-83; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 153 and 154

[CGD 82-063b]

Revision of Staff Codes and Addresses

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects inadvertent errors made to the final rule document issued on February 3, 1983 (48 FR 4780). That rule revised or updated the addresses and staff codes of the component divisions of the Office of Merchant Marine Safety, U.S. Coast Guard Headquarters, to reflect recent organizational changes.

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, Office of Merchant Marine Safety (G-MTH-3/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1577.

SUPPLEMENTARY INFORMATION:

List of Subjects in 46 CFR Parts 153 and 154

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

The following corrections are made to CGD 82-063b appearing at 48 FR 4780 on February 3, 1983:

1. On page 4782, column one, change 27, §§ 153.436 and 153.808 are removed.

2. On page 4782, column one, change 27, paragraph (d) is added to § 153.809.

3. On page 4782, column one, change 28, § 153.530(a) is changed to § 153.530(o).

4. On page 4782, column two, change 28, § 154.912 is added to the series.

5. On page 4782, column two, change 32 is removed.

6. On page 4782, column two, change 34 is removed.

7. On page 4782, column two, change 35, reference to the change of zip code is removed.

(14 U.S.C. 632, 49 U.S.C. 1655(b); 49 CFR 1.46(b))

Dated: August 29, 1983.

C. M. Holland,

Captain, USCG, Executive Secretary, Marine Safety Council.

[FR Doc. 83-24063 Filed 8-31-83; 8:45 am]

BILLING CODE 4910-14-M