that adequate State enforcement is being taken.

Effective Date

Today's program approval is effective March 2, 1989. The State of Mississippi desires to begin issuing Class II UIC permits as soon as possible. EPA has received no comments opposing today's action. EPA does not believe any potential permittees will be prejudiced. Therefore, EPA believes good cause exists to making this rule effective upon publication. 5 U.S.C. 553.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1425 of the SDWA of the application by the Board will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

List of Subjects in 40 CFR Part 147

Indian lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

Dated: December 30, 1988.

John Moore,

Acting Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

The authority for Part 147 continues to read as follows:

Authority: 42 U.S.C. 300h *et seq.* and 42 U.S.C. 6901 *et seq.*

Supart Z—Mississippi

1. Section 147.1251 is revised to read as follows:

§ 147.1251 State—Administered Program—Class II Wells.

The UIC program for Class II wells in the State of Mississippi, other than those on Indian lands, is the program administered by the State Oil and Gas Board of Mississippi approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on March 2, 1989; the effective date of this program is March 2, 1989. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Incorporation by reference. The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Mississippi. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

(1) Mississippi Code Annotated, section 5–9–9 (Supp. 1988).

(2) Mississippi Code Annotated, sections 53–1–1 through 53–1–47, inclusive and sections 53–1–71 through 53–1–77, inclusive (1972 and Supp. 1988).

(3) Mississippi Code Annotated, sections 53–3–1 through 53–3–165, inclusive (1972 and Supp. 1988).

(4) State Oil and Gas Board Statewide Rules and Regulations, Rules 1 through 65, inclusive (Aug. 1, 1987, as amended, Sept. 17, 1987).

(b) The Memorandum of Agreement between EPA Region IV and the State Oil and Gas Board of Mississippi signed by the Regional Administrator on October 31, 1988.

(c) Statement of legal authority. Statement from the Attorney General signed on October 1, 1987 with amendments to the Statement signed August 5, 1988 and September 15, 1988 by the Special Assistant Attorney General.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

2. Section 147.1252 is amended by revising the section heading and adding text to read as follows:

§ 147.1252 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Mississippi is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program on Indian lands is November 25, 1988.

§§ 147.1253 and 147.1254 [Removed]

3. Sections 147.1253 and 147.1254 are removed.

[FR Doc. 89–424 Filed 3–1–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 5

Criteria for Designation of Health Manpower Shortage Areas

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations revise the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas, required by section 332 of the Public Health Service Act (the Act). This amendment revises the definition for the term "internees" used in the criteria for designating those Federal and State institutions which have a shortage of primary medical care, dental care, or psychiatric manpower.

EFFECTIVE DATE: These regulations are effective March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Chief, Shortage Analysis Staff, Bureau of Health Care Delivery and Assistance, Parklawn Building Room 8–57, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301 443–6932.

SUPPLEMENTARY INFORMATION: On October 29, 1987, a Notice of Proposed Rulemaking (NPRM) to amend the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas was published in the **Federal Register** (52 FR 41594) by the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary. The NPRM revises the definition for the term "internees" used in the criteria for designating medium to maxium security Federal and State correctional institutions and youth detention facilities that have a shortage of primary medical care, dental care, or psychiatric manpower.

The public comment period on the proposed regulations closed on December 28, 1987. The Department received nine letters. Seven of these were from State departments of correction; one was from the provider of medical services to correctional facilities of a major metropolitan area; and one was from a contractor that provides medical services in certain State correctional facilities. The

comments and the Department's responses to them are discussed below. For clarity, the comments and responses are arranged according to the issues to which they pertain.

Physician Visits Per Unit Time

One comment objected to the figure of 100 inmate visits per week as establishing unrealistically high expectation for physicians workload, i.e. underestimating staff needs. Another comment asserted that the proposed standards would generate unrealistically high medical staff requirements, which States would be unable to fund given the growth of prison populations. Other respondents stated that the new criteria are more realistic and equitable than the old.

The Department has retained these figures as proposed. The Secretary notes that the HMSA criteria in general and the correctional facility criteria in particular are not intended to take into account availability of funding; rather, their purpose is to accurately identify and quantify needs and shortages in order that Federal and State programs can target those resources that are available on the neediest areas, population groups and correctional facilities.

Time Devoted to Take Exams

One comment questioned the implied assumption that the time required to perform a complete intake examination is equivalent to that for a regular physician visit, stating that, "generally, thorough intake examinations require more time that other patient visits."

The Department does not disagree that the intake examination would require more time than a typical patient visit. However, as discussed in the preamble to the NPRM and acknowledged in some of the other comments received, much of the intake exam is typically performed by non-physician health professionals. The proposed criteria is based on the assumption that the physician's portion of the intake exam requires no more time than a patient visit, thus the Department has made final this criterion as proposed.

Reexaminations

One comment noted that "many facilities which house long-term inmates repeat complete examinations at annual or bi-annual intervals," and suggested that this be considered in the formula. The Secretary believes that the proposed criterion of five visits per year on the part of long-term inmates would adequately cover any reexaminations, and, therefore, has not accepted this comment.

Follow-up Care

One respondent asserted that the proposed criteria seem to assume higher requirements for health care providers at intake then subsequently, and that this conflicts with the respondent's experience, which indicates higher requirements for follow-up care due to chronic conditions identified in some inmates.

The Department notes that, in the case of primary care, the factors proposed assume that one follow-up visit occurs for every two new inmates. Thus, 100 new inmates will generate 50 follow-up visits. (This could mean that 50 of the new inmates have one follow-up visit each as a result of the intake exam, or that 25 have two follow-up visits each, or that 5 have 10 visits each.) The factors proposed also assume an additional 5 visits per year for long term inmates; clearly, inmates with chronic conditions would have more than 5 visits per year, but other inmates would have less. The factor of 5 visits per year is meant to be an average and has been made final as proposed.

Ratio for Primary Care Shortage

One comment specifically supported the use of the ratio 1000:1 for primary medical care, saying that this "has normally worked out in a real situation where 'pre-screening' is performed by another health professional." Another comment generally supported this and the other factors selected for primary medical care, but added "we do have institutions with health service missions where utilization of physicians may run higher," involving inmates with chronic health problems, and recommended a ratio closer to 750:1 for such institutions.

The Department has not developed a revised formula which would take into account the number of patients with chronic conditions, primarily because data were not available upon which to base such a revision but also because it is questionable whether these data would be uniformly available for all correctional institutions.

Use of Average Length-of-stay (ALOS) Factor

One comment pointed out that, in the equation defining internees for facilities with average length-of-stay (ALOS) specified as less than one year, ALOS should not be included as a factor modifying the average number of inmates in the equation's first term, since even when one inmate leaves during the year and is replaced by another, one averge inmate's full number of visits per year will still be generated (5 visits in the case of primary care). The Department agrees and will make this correction, deleting the factor ALOS in the first term.

The same respondent also recommended that the factor ALOS not be included in the equation's third term, which estimates the follow-up visits generated by intake exams, because such follow-up visits would occur soon after admission. The Department regards the use of the ALOS factor as appropriate in this third term since some facilities have such rapid turnover that time would not permit all the otherwise-expected follow-up visits to occur. Therefore, the factor ALOS has been retained in the equation's third term.

Use of Psychologists as Well as Psychiatrists

One commenter pointed out that psychologists as well as psychiartrists are used to provide mental health services. The Department recognizes this fact and will consider it when making future criteria revisions.

Dental Care Factors

One comment stated that the proposed correctional facility dental HMSA criteria understate typical needs, since most new inmates are in need of dental treatment, many having been to a dentist seldom if ever. This commenter proposed revising the factors used for defining internees in the dental care part of the criteria accordingly.

In the process of analyzing and responding to this comment, the Department found that the Proposed Rule had indicated an assumption that a dentist can handle 30 inmate visits or intake exams per week (or 1500 per year), but had used $k = \frac{1}{2}$ to represent this assumption in the formula. In fact, $k = 1$ is the correct factor to represent this assumption. Therefore, k for dental is being changed from ½ to 1 in the final version. This results in increasing the calculated dental needs, as the comments suggested. However, in order to avoid overestimating these needs, a partially compensating reduction in the factors b (intake exams) and c (follow-up exams) is also being made, setting $b = \frac{1}{3}$ and $c = \frac{2}{3}$.

Intake Psychiatric Exams/Psychological Testing

One respondent stated that, in his State's correctional facilities, new inmates are given a battery of psychological tests at intake but only those whose test results suggest a problem are seen by a psychiatrist. This might indicate that the factor b could be

set to equal to zero in the correctional facility HMSA criteria for psychiatry (i.e., no psychiatrists needed for intake exams), leaving the factor c (follow-up exams) to represent follow-up psychiatric visits based on the results of the testing.

While the Department had decided not to set b=0 in the final regulations, it has reduced b to ⅓ and c to ⅔ in the psychiatric internee formula. In addition, the Department has revised the normalization factor k for psychiatry from k=2 to k=1 to avoid overestimating needs.

Geographic Location of Prisons

One comment stated that the proposed criteria "fail to account for geographical location of institutions; their inaccessibility to health care professionals; and the hardship posed by physician coverage at one or more remotely-situated prison facilities providing in- and out-patient health care."

It is true that the correctional facility HMSA criteria do not take into account (and never have) whether the prison is located within a county or city which has an adequate physician supply. This consideration was not included because the HMSA criteria are for medium-to-maximum security prisons, which are thought of as self-contained, not interacting with the rest of the area where they are located. However, clearly prisons located in a well-served area rather than an isolated, remote one should find it easier to recruit physicians on contract. This fact is taken into consideration in making decisions about which HMSA-designated prisons will actually receive the limited number of National Health Service Corps (NHSC) physicians available for service in a given year.

Other Variables

One comment noted that the proposed criteria failed to consider specifically a number of different variables which relate to the provision of medical services in correctional facilities, e.g. the percentage of inmates over age 40; the percentage of inmates requiring chronic inpatient or outpatient care; and the percentage of inmates suffering from AIDS or other catastrophic illness. The high percentage of inmates with a history of intravenous drug abuse, leading both to the necessity for drug treatment and to increasing levels of AIDS infection in prisons, was also cited by another commenter. The Department recognizes that these are important variables, but did not have data on which to base their use in any formula, nor a model for relating these factors to the number of physicians or other health professionals required.

Litigation on Prison Health Care

One comment stated that "the proposed criteria ignore the frequency of litigation and stipulated settlement agreements at the Federal and State levels," and referred to physician-patient ratios and quality of care required by court rulings in such cases. The Department recognizes that court rulings may mandate a different level of care than that called for by the HMSA criteria. In such cases, the States involved (or the Federal government, if such a case were to involve a Federal prison) clearly will need to obtain the court-ordered number of health professionals. In those cases where the prison involved also meets the HMSA criteria, the Public Health Service may be able to assist in recruiting to the extent of the number needed under the HMSA criteria. However, the Department must continue to base its HMSA designation criteria exclusively upon objective data measuring the supply of health personnel, and will not revise the HMSA designation process based on legal settlements or judgments relating to particular prison health needs.

Restriction to Federal and State Correctional Facilities Only

One comment objected to the restriction of these criteria to Federal and State correctional facilities only, given that some such facilities serving major metropolitan areas in fact operate in lieu of State (and perhaps Federal) facilities. The Department recognizes this problem and will consider case-by-case exceptions for large correctional facilities in major metropolitan areas.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this amendment to the regulations does not have a significant economic impact on a substantial number of small entities; it primarily affects the way correctional institution populations are counted to allow more accurate calculation of the need for health care practitioners under the existing HMSA designation process. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required. Further, this rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that the rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements in this regulation.

List of Subjects in 42 CFR Part 5

Dental health, Health, Health professions, Mental health, Physicians, Public health, Rural areas.

Accordingly, 42 CFR Part 5 is amended as follows.

Dated: November 29, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: December 30, 1988.

Otis R. Bowen,

Secretary.

PART 5—DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 332 of the Public Health Service Act, 90 Stat. 2770–72 (42 U.S.C. 254e).

Appendix A to Part 5—[Amended]

2. Appendix A (Criteria for Designation of Primary Care HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. *Federal and State Correctional Institutions.*

1. *Criteria.*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of primary medical care manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE primary care physicians serving the institution is at least 1,000:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake medical examinations are routinely performed upon entry, then—Number of internees=average number of inmates.

(ii) If the average length-of-stay is specified as one year or more, and intake medical examinations are routinely performed upon entry, then—Number of internees=average number of inmates+(0.3)×number of new inmates per year.

(iii) If the average length-of-stay is specified as less than one year, and intake examinations are routinely performed upon entry, then—Number of internees=average number of inmates+(0.2)×(1+ALOS/2)×number of new inmates per year where ALOS=average length-of-stay (in fraction of year). (The number of FTE primary care

physicians is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups based on the number of inmates and/or the ratio (R) of internees to primary care physicians, as follows:

Group 1—Institutions with 500 or more inmates and no physicians.

Group 2—Other institutions with no physicians and institutions with R greater than (or equal to) 2,000:1.

Group 3—Institutions with R greater than (or equal to) 1,000:1 but less than 2,000:1.

Appendix B to Part 5—[Amended]

3. Appendix B (Criteria for Designation of Dental Care HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. *Federal and State Correctional Institutions.*

1. *Criteria*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of dental manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE dentists serving the institution is at least 1,500:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake dental examinations are routinely performed by dentists upon entry, then—Number of internees = average number of inmates.

(ii) If the average length-of-stay is specified as one year or more, and intake dental examinations are routinely performed upon entry, then—Number of internees = average number of inmates + number of new inmates per year.

(iii) If the average length-of-stay is specified as less than one year, and intake dental examinations are routinely performed upon entry, then—Number of internees = average number of inmates + $\frac{1}{3} \times [1 + (2 \times \text{ALOS})] \times$ number of new inmates per year where ALOS = average length-of-stay (in fraction of year).

(The number of FTE dentists is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups based on the number of inmates and/or the ratio (R) of internees to dentists, as follows:

Group 1—Institutions with 500 or more inmates and no dentists.

Group 2—Other institutions with no dentists and institutions with R greater than (or equal to) 3,000:1.

Group 3—Institutions with R greater than (or equal to) 1,500:1 but less than 3,000:1.

Appendix C to Part 5—[Amended]

4. Appendix C (Criteria for Designation of Psychiatric HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. Federal and State Correctional Institutions

1. Criteria.

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of psychiatric manpower if both of the following criteria are met:

(a) The institution has more than 250 inmates, and

(b) The ratio of the number of internees per year to the number of FTE psychiatrists serving the institution is at least 1,000:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates

(ii) If the average length-of-stay is specified as one year or more, and intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates + number of new inmates per year

(iii) If the average length-of-stay is specified as less than one year, and intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates + $\frac{1}{3} \times [1 + (2 \times \text{ALOS})] \times$ number of new inmates per year

where ALOS = average length-of-stay (in fraction of year) (The number of FTE psychiatrists is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups, based on the number of inmates and/or the ratio (R) of internees to FTE psychiatrists, as follows:

Group 1—Institutions with 500 or more inmates and no psychiatrist.

Group 2—Other institutions with no psychiatrists and institutions with R greater than (or equal to) 3,000:1.

Group 3—Institutions with R greater than (or equal to) 2,000:1 but less than 3,000:1.

[FR Doc. 89-4922 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-15-M

Health Care Financing Administration

42 CFR Parts 433 and 435

[BQC-071-IFC]

Medicaid Program; Targeting Information for Income and Eligibility Verification Systems

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

ACTION: Interim final rule with comment period.

SUMMARY: This rule revises regulations text that is now obsolete because of section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509); this section allows State Medicaid Agencies flexibility to use selectively (target) certain information about a Medicaid recipient's income obtained through their income and eligibility verification systems (IEVS). In addition, this rule implements a congressional directive to revise the timeliness standards for use of IEVS information to grant States more time to obtain and use the data.

EFFECTIVE DATE: These regulations are effective April 3, 1989. They are being issued in final for the reasons explained in Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider any comments received by May 1, 1989 and revise the regulations as necessary. In order for comments to be considered, we must receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 1, 1989. Sections 435.945 and 435.953, however, contain information collection requirements subject to Office of Management and Budget clearance. We will publish a notice in the **Federal Register** after we receive that Office's clearance.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BQC-71-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BQC-71-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-254-7890).

FOR FURTHER INFORMATION CONTACT: Elliot Naide, (301) 966-5920.

SUPPLEMENTARY INFORMATION:

A. Background

On April 1, 1985, section 1137 of the Social Security Act (the Act) was

established with provisions aimed at ensuring that various Federally-funded welfare agencies, including the Aid to Families with Dependent Children, the Food Stamp and Medicaid programs, furnish benefits to only those individuals who are eligible for them. (Section 2651 of Pub. L. 98–369). Section 1137 requires the agencies administering these programs to have an income and eligibility verification system (IEVS) for exchanging with each other information that may be of use in establishing or verifying eligibility or benefit amounts. The provision mandated that the agencies target the use of the information to the uses most likely to be productive in identifying and preventing ineligibility and incorrect payments.

On February 28, 1986, HCFA, the Food and Nutrition Service and the Family Support Administration published jointly a final rule (51 FR 7178) to implement the IEVS for the Medicaid, Food Stamp and AFDC programs. The rule required agencies that administer these programs to review and compare all information received against the case file to determine whether it affects the applicant's or recipient's eligibility or benefits. The regulations also require the agency to initiate a case action, or make an entry in the case record that no action is necessary, within 30 days of receipt of the infomation for 80 percent of the determinations.

The reasoning behind requiring use of all information was twofold:

(1) The agencies are responsible for ensuring that all determinations are correct and we believed that by requiring the use of the largest number of data items available we might reduce errors; and

(2) We anticipated that under any circumstances an agency would exclude an item of information that was obviously erroneous or useless in the eligibility determination.

HCFA's regulations on IEVS in general are found at 42 CFR Part 435, Subpart J; § 435.952 specifically concerns the use of data.

B. Legislation

After the three agencies jointly published the final rules, the Budget Committee of the House of Representatives in its report accompanying H.R. 5300 (which was the basis for the Omnibus Reconciliation Act of 1986) noted that the agencies' current rules do not permit targeting in the manner it said it intended to allow in the original statute (H.R. Rep. No. 727, 99th Cong., 2d. Sess. 424–425 (1986)). According to this 1986 report, it was the original intent of the House Budget Committee to have States utilize a variety of information sources to verify the eligibility of applicants and recipients of benefit programs, as an effective and efficient tool in preventing benefit payments from being made to individuals who are not eligible. The report states that the Committee believed that for the use of such information to be productive, States must be afforded the discretion to target their efforts in ways they determine most cost-effective. To require a follow up in all cases where any income is indicated "was not what was intended by Congress and would result in an unnecessary and costly administrative burden on the States". (H.R. Rep. No. 727, 99th Cong., 2d Sess. 424 (1986)).

To ensure that the required matches are cost-effective verification processes, the Committee indicated that the States should be allowed to arrange the follow up of case records based on match findings in order of importance. For example, following up on individuals whose unearned income exceeds certain tolerance levels is more efficient than verifying every case with unearned income.

In addition, the Committee stated its belief that requiring States to act upon the information they receive within 30 days, as prescribed in the final rule, is unrealistic. "States have a finite amount of administrative resources, and are dependent upon the actions of others outside the agency as well as the mail system to carry out their duties. For this reason, the Committee believes a 45-day requirement is more reasonable than the 30 days set forth in the final rule. The allowance that action can be delayed further on up to 20 percent of the information items when collateral verification sources are required—as provided in the final rules—should be retained." (H.R. Rep. No. 727, 99th Cong., 2d Sess. 425 (1986)).

In section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), Congress amended section 1137 (a)(4) of the Act to prohibit the Secretary from requiring States to use the information they receive because of the IEVS to verify the eligibility of all recipients. The House Budget Committee's directive to allow the public assistance agencies 45 days to act upon information received was not included as a legislative amendment, however.

C. Revisions to the Regulations

In order to bring the regulations into conformity with the amendment to section 1137 of the Act made by Pub. L. 99–509, and to follow clearly expressed congressional intent on the time period for acting upon information received, we are amending our regulations at 42 CFR Part 435, Subpart J.

1. Targeting the Use of Information

We are adding a new § 435.953 to reflect existing law (section 1137(a)(4) of the Act) to provide that all information received through the IEVS on recipients need not be used but that its use may be targeted.

The revised regulations reflect amendments to section 1137(a)(4) of the Act, which permit each State agency to review and compare against the case file (follow up) all information items or to target, for each data source, those information items that are likely to be productive in identifying and preventing ineligibility and incorrect payments.

Any agency that intends to exclude items from follow-up must submit a follow-up plan that specifies the categories to be excluded and provides a description of the criteria defining each category. For each category, the agency must provide a reasonable justification explaining why the follow-up would not be cost-effective. A formal cost-benefit analysis is not required. An agency may find it preferable to base its justifications on the general experience of its program in following up on specific categories of information.

Restriction to recipients

Under our current rules at 42 CFR § 435.948, State agencies were required to use all information concerning both applicants and recipients.

In providing that State agencies are allowed to target information, the amendment to section 1137(a)(4) of the Act refers to "recipients" only. Our current regulations requiring the use of information on all applicants and recipients have thus been superseded with respect to recipients only. Therefore, we are revising the regulations to permit targeting to be used only for recipients. When the agency receives information on applicants whom it has not yet determined eligible, the match data continues to be, as under existing regulations, not subject to targeting.

We carefully considered proposing to revise our existing regulations to permit targeting of applicants, but we have decided at this time simply to revise the regulations to bring the text into conformity with the new statutory language that already legally governs targeting in the case of recipients. We believe it is not in the best interest of the program to revise the existing requirement that information on all applicants be used. The application period is particularly important in that

the State agency conducts an intensive review of all of the factors of the applicant's eligibility, including the economic circumstances of the household. Following an initial eligibility determination, periodic redeterminations of recipients tend to be somewhat less intensive with questions concentrating on whether a change in circumstances has occurred in the past few months or is expected to occur in the next few months. Moreover, redeterminations may be conducted by telephone or mail or in group interviews. The application process is therefore more crucial to the integrity of the program and all information items must be pursued and resolved to the extent possible before authorization of assistance. However, as currently required by § 435.911, State agencies may not delay a pending application solely to await IEVS information if other evidence establishes the individual's eligibility for assistance. Information the agency requests on an applicant that it receives after it authorizes assistance is considered to be information received on a recipient and may therefore be targeted under section 1137(a)(4) of the Act and under these regulations.

These regulation revisions do not affect the requirement that State agencies request information on all recipients from the required sources but merely concern targeting the use of data received in response to the request.

These changes, as do the current regulations, apply only in those situations for which the Medicaid agency makes the eligibility determination. For Medicaid recipients eligible because they receive AFDC assistance, the AFDC IEVS requirements already apply. For aged, blind or disabled Medicaid recipients receiving SSI payments, the Medicaid IEVS requirements apply only if such recipients' Medicaid eligibility is not determined by the Social Security Administration (SSA) pursuant to section 1634 of the Social Security Act (see § 435.909).

2. Timeframe for Action on Match Results

These regulations also provide in § 435.952 a 45-day period for following up on information items, instead of the current 30 days; this policy would implement the directive contained in the report of the House Budget Committee. This is a maximum time period and does not preclude a State agency from setting shorter timeframes for acting on information items from a particular data base. For example, information items showing unreported UIB might be given priority over other information and be looked at immediately.

The provision that allows a 20 percent allowance for action on information items in which third party information is late remains the same as stated in § 435.952(e) and applies also to targeted data since targeting will not have any effect on the responsiveness of third parties.

3. Quality Control Requirements

The current rule at § 435.952 clearly states that the requirements of this section do not relieve the agency of its responsibility for determinations of erroneous payments or the agency's liability for those erroneous payments. In order to clarify that the agency is liable even for items not followed up, we are amending § 435.945. General requirements, by adding paragraph (h) to require the State agencies to retain records of all the information items received, including those not followed up. The agency will, as now, have to retain information in a manner that assures that it does not compromise information safeguards; the agency must make this information available to quality control reviewers upon request.

4. Third Party Liability

Targeting does not apply to activities for establishing third party liability benefit amounts. Section 1902(a)(25) of the Act requires that State agencies or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services provided to Medicaid recipients. Every employment lead, no matter how small, could potentially be a lead for health insurance.

5. Technical Changes

We are making three technical changes to § 435.952. In paragraph (a), by cross reference, we incorporate the change that permits State agencies to limit review and comparison of information to targeted information. In paragraph (c) we reflect the correct order the State agency must follow when processing a recipient's case file under IEVS. Finally, in paragraph (e), we extend to 45 days the timeframe that a State agency may delay action for up to 20 percent of items and limit the items to those on which it requested verification timely, instead of all items of information received.

We are also changing § 433.138(g)(1)(i). We are revising the timeframe for followup for TPL purposes from 30 to 45 days to make it consistent with the timeframe for IEVS followup. We are retaining the provision for delayed action beyond 45 days in 20 percent of the information items when the agency does not receive requested verification.

D. Impact Analysis

1. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the net effect of the targeting requirement reflected in these regulations will be to reduce State agency costs since they will not have to follow up on all data. State agencies will be able to target their follow up activities on matched data that, for example, exceed certain tolerance levels because it would not be cost-effective to follow up on matched data below those levels. The extension from 30 to 45 days of the time permitted for follow up also will reduce the pressure placed on State administrative resources. For these reasons, we have determined that no threshold criteria under E.O. 12291 are met. Therefore, a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, State agencies are not small entities. We have determined, and the Secretary certifies, that this final rule does not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

E. Paperwork Reduction Act

Sections 435.945 and 435.953 of this rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. State agencies

must be able to document that they received information for data matches from all sources for quality control purposes and, if they do not intend to follow up on a category or categories of information, they must submit a plan to the Secretary justifying the exclusion as cost-effective. The reporting burden for the information collections in § 435.945 is estimated to be 432 hours annually for a maximum of 54 States and jurisdictions. The reporting burden for the information collections in § 435.953 is estimated to be 40 hours per response for a maximum of 54 States and jurisdictions for a one-time total estimated burden of 2,160 hours. (We are assuming a one-time response from all States and jurisdictions for this estimate with no revised follow-up plans. However, some States and jurisdictions may submit no plan; others may revise theirs frequently.)

A notice will be published in the **Federal Register** when the OMB approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the address section within 30 days after publication of this rule.

Section 435.952 of this rule also contains information collection requirements that are subject to the OMB review. These requirements were approved by that Office on April 11, 1986 in accordance with the Paperwork Reduction Act. The approval number is 0938–0467 and the approval expires April 30, 1989. HCFA is requesting an extension of this approval for an additional 3 years.

F. Waiver of Proposed Rulemaking

Generally, we publish a notice of proposed rulemaking in the **Federal Register** and afford public comment before issuing a final rule. However, if adherence, to these procedures would be impracticable, unnecessary or contrary to the public interest, we may waive the procedures.

This interim final rule with comment period simply revises the text of existing regulations to bring them into conformity with statutory requirements and clearly expressed congressional intent without interpretation. With respect to the provisions permitting targeting of information on recipients, the revisions in these regulations have no substantive effect, as section 1137(a)(4) already requires that such targeting be permitted, even though the text of the existing regulations provides otherwise.

Therefore, the Secretary finds good cause that issuing a notice of proposed rulemaking before these final rules is unnecessary and contrary to the public interest.

G. Response to Comments

Because of the large number of items of correspondence we normally receive on rules requesting public comment, we are not able to acknowledge or respond to them individually.

However, we will consider all comments that we receive by the date and time specified in the **"DATE"** section of this preamble, and, if we revise this final rule, we will respond to the comments in the preamble of that revised rule.

H. List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Chapter IV, Subchapter C is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

* * * * *

A. Part 433 is amended as set forth below:

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

§ 433.138 [Amended]

2. In paragraph (g)(1)(i) of § 433.138, "30 days" is revised to read "45 days".

B. Part 435 is amended as follows:

1. The authority citation continues to read as follows:

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

2. The table of contents is amended by adding a new § 435.953 to read as follows:

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

* * * * *

Subpart J—Eligibility in the States and District of Columbia

* * * * *

§ 435.953 Identifying items of information to use.

* * * * *

3. In § 435.945, paragraph (a) is revised and paragraph (h) is added as follows:

§ 435.945 General requirements.

(a) The agency must request and use information timely in accordance with §§ 435.948, 435.952, and 435.953 of this subpart for verifying Medicaid eligibility and the amount of medical assistance payments.

* * * * *

(h) The agency must retain a record of all information items received, including those not followed up, and make the records available for quality control review purposes.

4. Section 435.952, paragraphs (a) and (c) through (e) are revised to read as follows:

§ 435.952 Use of information.

(a) Except as provided under § 435.953 of this subpart, the agency must review and compare against the casefile all information received under §§ 435.940 through 435.960 to determine whether it affects the applicant's or recipient's eligibility or amount of medical assistance payment. The agency must also verify the infomation if determined appropriate by agency experience or if required by § 435.955.

* * * * *

(c) Except as specified in § 435.953 of this subpart and paragraph (d) of this section, for recipients, the agency must, within 45 days of receipt of an item of information, request verification (if appropriate), determine whether the information affects eligibility or the amount of medical assistance payment, and either initiate a notice of case action to advise the recipient of any adverse action the agency intends to take or make an entry in the casefile that no further action is necessary.

(d) Subject to paragraph (e) of this section, if the agency does not receive requested third party verification within the 45-day period after receipt of information, the agency may determine whether the information affects eligibility or correct amount of medical

assistance payment after the 45-day period. However, the agency must make any delayed determinations permitted under this paragraph—

(1) Promptly, as required by § 435.916, if the verification is received before the next redetermination; or

(2) In conjunction with the next redetermination if no verification is received before that redetermination.

(e) The number of determinations delayed beyond 45 days from receipt of an item of information (as permitted by paragraph (d) of this section) must not exceed twenty percent of the number of items of information for which verification was requested.

* * * * *

5. A new § 435.953 is added to read as follows:

§ 435.953 Identifying items of information to use.

(a) With respect to information received on recipients under §§ 435.940 through 435.960, the agency may either review and compare against the case file all items of information received or it may identify (target) separately for each data source the information items that are most likely to be most productive in identifying and preventing ineligibility and incorrect payments.

(b) An agency that wishes to exclude categories of information items must submit for the Secretary's approval a follow-up plan describing the categories that it proposes to exclude. For each category, the agency must provide a reasonable justification that follow-up is not cost-effective; a formal cost/benefit analysis is not required.

(c) If an agency receives an item of unemployment compensation information from the Internal Revenue Service or earnings information from SSA that duplicates an item of information previously received from another source and followed up, the agency may exclude that information item without justification.

(d) An agency may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary approves or disapproves categories of items to be excluded under the plan within 60 days of its submission. The categories approved by the Secretary constitute an approved agency follow-up plan for IEVS.

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

Dated: October 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 21, 1988.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

Note: This regulation is being submitted to the Office of the Federal Register today February 27, 1989 for publication.

[FR Doc. 89-4894 Filed 3-1-89; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-146; RM-6048]

Radio Broadcasting Services; Osceola, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C for Channel 251C2 at Osceola, Arkansas, and modifies the Class C2 license of The Dittman Group, Inc. for Station KMPZ(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 251C at Osceola are 35-28-02 and 90-11-27. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-146, adopted February 3, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Osceola by deleting Channel 251C2 and adding Channel 251C.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-4880 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-155; RM-6149]

Radio Broadcasting Services; Pentwater, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 231A to Pentwater, Michigan, in response to a petition filed by James J. McCluskey. Channel 231A can be allotted to Pentwater consistent with the Commission's spacing requirements. The coordinates for Channel 231A are 43-46-30 and 86-26-24. With this action, this proceeding is terminated.

DATES: Effective April 10, 1989; The window period for filing applications will open on April 11, 1989, and close on May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-155, adopted January 31, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows: