

of Emission of Volatile Organic Compounds, Subchapter B. Organic Solvents, Section 2123. Organic Solvents, paragraphs C.6. and D.3., effective February 20, 1990.

[FR Doc. 90-20949 Filed 9-5-90; 8:45 am]

BILLING CODE-6560-50-M

40 CFR Part 52

[FRL-3828-4]

Approval and Promulgation of State Implementation Plans; Carbon Monoxide Plan for Great Falls, MT

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is approving various control measures for the Great Falls carbon monoxide (CO) nonattainment area in a revision to the Montana State Implementation Plan (SIP). This action is a result of a January 26, 1987, notice (52 FR 2732) in which EPA proposed to approve a Montana CO SIP revision. This revision was submitted by the Governor of Montana on March 28, 1986, as required under section 110 of the Clean Air Act (Act). The SIP revision stated an attainment date of December 31, 1986, but because of the continuing exceedance of the CO NAAQS, EPA is taking no action on the demonstration of attainment in this notice. Elsewhere today, in a separate action, EPA is proposing to disapprove the Montana CO SIP for Great Falls for failure to demonstrate attainment of the CO standard. Failure to demonstrate attainment of the CO standard resulted in a May 26, 1988, SIP Call, which was based on ambient air quality data that indicated that Great Falls violated the CO NAAQS in 1987. The March 28 submittal also included modifications to the Montana stack height regulations; these regulations were addressed in a separate rulemaking dated June 7, 1989 (54 FR 24334).

DATES: This action will be effective on October 9, 1990.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency,
Region VIII, Air Programs Branch, 999
18th Street, Suite 500, Denver,
Colorado 80202-2405.

Environmental Protection Agency,
Public Information Reference Unit,
Waterside Mall, 401 M Street, SW.,
Washington, DC 20460.

Department of Health and
Environmental Sciences, Air Quality

Bureau, Cogswell Building, Helena,
Montana 59620.

FOR FURTHER INFORMATION CONTACT:

Michael Silverstein, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, FTS 564-1769.

SUPPLEMENTARY INFORMATION:

On December 24, 1979, the State of Montana requested EPA to designate a portion of the City of Great Falls from attainment to nonattainment for CO. The State's request was based on ambient air monitoring at the northeast corner of the intersection of 10th Avenue South and 9th Street in Great Falls where exceedances of the 8-hour National Ambient Air Quality Standards (NAAQS) of 9 parts per million (ppm) were recorded during the winter months of 1977-78 and 1978-79. The one-hour CO NAAQS of 35 ppm was never exceeded. The State assumed these violations were due to high traffic levels along this route. On September 9, 1980 (45 FR 59315), EPA designated the 10th Avenue South Corridor in Great Falls, Montana as a nonattainment area for CO.

Also in the September 9, 1980 notice, EPA identified a study area, the Central Business District (CBD), where the City of Great Falls was to analyze certain street intersections and street segments for violations of the CO standard. The CBD study began with monitoring in the downtown area where the high CO readings were expected (monitor was located on 411 Central Avenue). Monitoring along 10th Avenue South was also occurring at this time. The study included monitoring, meteorological, modeling and statistical analyses from which the State concluded that traffic along 10th Avenue South was not the sole source of CO emissions but that there was, in fact, an area-wide problem.

In 1977, motor vehicles comprised more than 80% of all the CO emissions. The second largest source of CO emissions was a point source, the Montana Refinery Company (MRC) (formerly Phillips Refinery, then Simmons refinery). The source, located one mile north of downtown, contributed 14% of the area-wide CO emissions. The State reviewed its 1977 emission inventory from which it projected a 1985 inventory.

Elements of the Great Falls CO SIP were developed and adopted on March 7, 1984. The plan demonstrated attainment of the CO NAAQS through the implementation of the following control measures: (1) Reductions in automobile CO emissions through

turnover of older model-year vehicles with newer model-year vehicles, (2) reduction of CO emissions from MRC, and (3) traffic improvements along 10th Avenue South which would increase traffic speeds and reduce CO emissions along the corridor. The traffic improvements included widening of the Warden Bridge across the Missouri River from 2 lanes to 4 lanes, improving street lighting and traffic light signalization along 10th Avenue South, and implementing a mass transit system.

The SIP was submitted to EPA by Governor Ted Schwinden in a letter dated March 20, 1984. During EPA's review, two areas of concern surfaced: (1) EPA questioned the location of the monitor on 10th Avenue South and 24th Street and the fact that no violations had been recorded since April, 1980, and (2) the State became aware of an emission reduction problem at MRC.

The State withdrew its March 20, 1984, submittal and immediately proceeded to correct the Plan's deficiencies. Subsequently, the State clarified to EPA that the CO monitor had been relocated one block south and across the street from the original monitoring site, and the State issued a federally enforceable permit (and stipulation) with MRC to lock in the refinery's CO emission level. The State also revised its emission inventory; the 1977 emissions were projected to 1986. The projections were based on the same information earlier used to project the 1985 emissions.

With the updating of the State's emission inventory and the MRC permit, the Governor resubmitted a revision to the Montana CO SIP for Great Falls in a letter dated March 28, 1986. The SIP stated an attainment date of December 1986 and contained the same control measures as identified in the 1984 submittal (see above).

Since the above plan had been implemented and monitoring data from the relocated monitor for 1984 and 1985 had shown no violations of the CO NAAQS, EPA proposed to approve the control measures and demonstration of attainment as a revision to the Montana CO SIP on January 26, 1987 (52 FR 2732). No comments were received by EPA on the January 26 notice.

On May 3, 1988, EPA released ambient air quality data which indicated that Great Falls violated the CO NAAQS on three occasions in 1987; the highest second maximum 8-hour average concentration for CO was 11.0 parts per million. Since the plan's attainment date had passed and violations were recorded, the Governor received a call for a SIP revision on May 26, 1988. The

SIP Call requires Montana to revise the area's CO emission inventory and determine if other measures are needed to attain the CO standard. In addition, EPA may require Montana to include additional control measures, based on EPA's proposed 1987 CO/ozone policy, in responding to the SIP Call.

Because the control measures currently in place are helpful in attaining the NAAQS, EPA will approve these measures as part of the SIP so that the measures will be federally enforceable. In addition, EPA is taking no action on the attainment demonstration at this time due to continuing violations of the CO standards. However, EPA will propose to disapprove the Montana CO SIP for Great Falls (in a separate action today) for failure to demonstrate attainment of the CO standard.

Final Action

EPA is today approving various control measures for the Great Falls CO nonattainment area in a revision to the Montana SIP. However, because the SIP had stated an attainment date of December 31, 1986, and because of continued exceedances of the CO NAAQS, EPA is taking no action on the demonstration of attainment in this notice. Elsewhere today, in a separate notice, EPA is proposing to disapprove the Montana CO SIP for Great Falls for failure to demonstrate attainment of the CO standard.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1990. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 30, 1990.

William K. Reilly,
Administrator.

Part 52 of chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—(AMENDED)

Subpart BB—Montana

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1370 is amended by adding subparagraph (c)(22) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(22) Revisions to the Montana CO SIP for Great Falls were submitted by the Governor on March 28, 1986.

(i) *Incorporation by reference.* (A) Montana Refining Company permit dated October 20, 1985.

(B) Stipulation in the matter of the Montana Refining Company dated December 2, 1985.

(ii) *Additional material.* (A) Montana SIP, chapter 5(3)D. Great Falls (Date: March 14, 1986).

(B) Pre-filed testimony by the Department of Health and Environmental Services dated February 28, 1986.

[FR Doc. 90-21090 Filed 9-6-90; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436 and 440

[BPD-440-F]

RIN 0938-AD 15

Medicaid Program; Eligibility of Aliens for Medicaid

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

ACTION: Final rule.

SUMMARY: This regulation revises current Medicaid rules applicable to aliens who meet eligibility requirements as categorically needy or medically needy. It establishes that aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law may be eligible for all Medicaid services. It clarifies and identifies certain categories of persons permanently residing in the United States under color of law. It also identifies those aliens who may be eligible only for limited services as a result of recent legislation.

These revisions conform our regulations to changes made by the Omnibus Budget Reconciliation Act of

1986 (Pub. L. 99-509), and the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), and the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360).

EFFECTIVE DATE: These regulations are effective October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 966-4451.

I. Supplementary Information

The Medicaid program provides health care coverage to individuals who are receiving cash assistance (or who meet the income and resources requirements) under the Aid to Families with Dependent Children (AFDC) program, the Supplemental Security Income (SSI) program or certain other State assistance programs, as categorically needy or optional categorically needy. At State option, certain other persons who meet the categorical qualifications except for income and resource levels (the medically needy) are also eligible. The Medicaid law, title XIX of the Social Security Act (the Act), before the passage of recent legislation, did not explicitly include a citizenship requirement as a basis of entitlement to benefits. However, the AFDC program, in section 402(a)(33) of the Act, and the SSI program, in section 1614(a)(1)(B) of the Act, both limit eligibility to citizens, permanent residents or to those permanently residing in the United States under color of law (PRUCOL). Our existing regulations at 42 CFR 435.402 and 436.402 require a State or Territory to provide Medicaid to otherwise eligible residents who are citizens or aliens lawfully admitted for permanent residence or PRUCOL, including any alien who is lawfully present in the United States under section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.).

These regulations clarify the definition of what is meant by PRUCOL for the purpose of determining the eligibility for Medicaid of aliens claiming such a status. This clarification is based on two court decisions and provisions included in the Omnibus Budget Reconciliation Act of 1986 (OBRA 86).

In *Berger v. Secretary*, No. 76c 1420 (E.D.N.Y. June 13, 1978), the Secretary consented to define aliens who were residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS), and whose departure the INS did not contemplate enforcing, as permanently residing in the United

States under color of law, and, thus, potentially eligible for SSI benefits. A later District Court order, *Berger v. Schweiker*, CV-76-1420 (E.D.N.Y. July 26, 1984), set out specific criteria for determining if an alien is permanently residing in the United States under color of law. The court order provided that aliens residing in the United States with the knowledge and permission of the INS and whose departure the INS does not contemplate enforcing are aliens permanently residing in the United States under color of law for SSI purposes.

Under the terms of the 1984 district court order, the INS will not be considered as contemplating enforcing an alien's departure if it is the INS policy or practice not to enforce the departure of aliens in the same category or if, from all the facts and circumstances in a particular case, it appears that the INS is permitting the alien to reside in the United States indefinitely. The court order also listed certain categories of aliens as examples of categories which meet the PRUCOL definition. The court order required that regulations and operating instructions contain its criteria for color of law determinations and the specified categories of aliens who are considered PRUCOL. On appeal, the United States Court of Appeals for the Second Circuit, in *Berger v. Heckler*, 771 F.2d 1556 (1985), affirmed the District Court order, except that it did not require the Secretary to use the exact language specified by the District Court. Although the suit involved SSI, we decided that for Medicaid eligibles we would adopt the court's decision. We have also decided to adopt much of the language provided by the District Court, as it gives the most specific guidance on how the court's holding is to be interpreted. Because under the court's order, more aliens will meet the definition of PRUCOL than under current regulations, more aliens may now be eligible for benefits if they meet all other requirements for eligibility.

A New York District Court, in *Lewis v. Cross*, No. CV-79-1740 (E.D.N.Y., July 14, 1986), has held that our citizenship and alienage requirements go beyond the Secretary's scope of authority delegated under the Medicaid statute. The court reasoned that Congress "knew how to impose alienage requirements on social welfare programs when it intended, and its refusal to impose such a requirement on Medicaid should be respected" (slip op. at 54). Because the AFDC and SSI statutes do include explicit exclusions of certain classes of aliens, the result of this decision is that,

in this court's jurisdiction, otherwise qualified aliens who, except for citizenship, would be eligible for Medicaid as non-cash beneficiaries—i.e., medically needy or optional categorically needy individuals—must be found entitled to Medicaid coverage.

In response to the *Lewis* opinion, Congress added a new section 1903(v) of the Act which provides that individuals who are permanently residing in the United States under color of law (PRUCOL) may receive Medicaid. Section 1903(v) of the Act also provides emergency services to individuals unable to meet the PRUCOL definition if they otherwise meet the Medicaid eligibility requirements. To comply with Congressional direction concerning PRUCOL, we have adopted for all Medicaid applicants the *Berger* description of PRUCOL, including the immigration categories found in that decision. The description of PRUCOL is the same one used by SSA in administering the SSI program. This interpretation does not include, except where specifically provided in regulations, applicants for any immigration status. This has the advantage of using a consistent interpretation of what is meant by "permanently residing in the United States under color of law" in administering both SSI and Medicaid. (OBRA 86 also added a provision to permit certain additional aliens to receive emergency services.)

II. Notice of Proposed Rulemaking

On September 29, 1988 we published a proposed rule with a 60 day comment period (53 FR 38032) that would revise sections 435, 436 and 440 in subchapter C of title 42. Briefly, these proposed changes to the regulations would—

- Restate current requirements that an agency must provide Medicaid to eligible residents of the United States who meet the citizenship and alienage requirements.
- Incorporate the provision in Public Law 99-509 (OBRA 86) which requires that States provide Medicaid to eligible individuals who are permanently residing in the United States under color of law (PRUCOL).
- Incorporate the provision in OBRA 86 which requires States, effective January 1, 1987, to furnish emergency services (including emergency labor and delivery) to otherwise eligible illegal and legal non-immigrant aliens.
- Provide that individuals granted lawful temporary resident or lawful permanent resident status under section 245A, 210 or 210A of the INA, as added to or amended by IRCA, can establish immediate eligibility for full Medicaid

benefits during the five-year period beginning on the date the individual was granted lawful temporary resident status, if the individual is aged, blind, or disabled as defined in section 1614(a)(1) of the Act, under 18 years of age or a Cuban/Haitian entrant.

- Incorporate the provisions of Public Law 99-603 (IRCA) which require that States, for five years after an alien is granted lawful temporary resident status under sections 245A, 210 or 210A of the INA, as added to or amended by IRCA, may provide only emergency and/or pregnancy related services to an otherwise eligible alien who is not aged, blind, or disabled as defined in section 1614(a)(1) of the Act, under 18 years of age or a Cuban/Haitian entrant.

- Define those services available to illegal aliens and legal non-immigrants as provided by section 1903(v) of the Act, and those services available to legalized aliens, including services for pregnant women, as provided under IRCA.

- Set forth and clarify the specific categories of aliens who are PRUCOL, and the documentation that a State agency may accept and must review to establish that the INS has placed the alien in a category that qualifies the individual for Medicaid consideration.

III. Analysis of and Responses to Public Comments

In response to the September 29, 1988 proposed rule, we received 14 timely items of correspondence. The comments were from individuals, State and county social service agencies, and advocacy groups. The comments raised thoughtful questions which have resulted in some instances in changes in the final regulations to reflect the comments. A summary of these comments and our responses to them are discussed below:

Comment: Several commenters questioned whether States were prohibited from providing additional medical assistance with State-only funds to groups of aliens beyond those services set forth in the proposed regulations.

Response: Federal financial participation (FFP) is only available for individuals eligible for Medicaid as specified in a State's approved Medicaid plan (see § 435.1002). There is nothing in the Act which prohibits a State from using State-only funds to provide additional services beyond those furnished under the Medicaid program to aliens or non-aliens. We have clarified §§ 435.139 and 436.126 to specify that the State must provide services (for which FFP is available) necessary for the treatment of an

emergency medical condition of certain aliens as specified in § 435.406(c).

Comment: Several commenters pointed out the absence in the regulation of the changes in the statute made by the Medicare Catastrophic Coverage Act of 1988 (MCCA).

Response: Section 411(k)(15) of the MCCA amended section 1137(a) of the Act to delete the requirement that applicants obtain and present a social security number as a condition of eligibility if the applicant is a person described in section 1903(v)(2) of the Act. (Even though MCCA was repealed the sections containing OBRA 86 technical changes were not affected by the repeal.) Such persons are individuals who are not: citizens, aliens lawfully admitted for permanent residence, or aliens permanently residing in the United States under color of law (including persons legalized under the terms of IRCA). Rather, such applicants are aliens not eligible for legalization or PRUCOL but who otherwise meet the eligibility requirements of a State's Medicaid plan. We are revising §§ 435.406(c) and 436.406(c) to remove the requirement for a social security number as a condition of eligibility with respect to persons covered under section 1903(v)(2) of the Act. Section 411(k)(15) of the MCCA also removed the requirement that the persons described in section 1903(v)(2) of the Act sign the declaration of satisfactory immigration status and have their immigration status verified with INS. The necessary regulatory changes to implement this provision of the Act are being made in another regulation.

Comment: Several commenters stated that aliens covered by the emergency medical condition provisions must be provided services to treat the medical condition rather than "may be provided" such treatment.

Response: It was never the intent of the proposed regulations that States would have an option to provide or not provide services to treat an emergency medical condition. Rather, our intent was to limit the services for which FFP would be available to those described in section 1903(v)(3). This is consistent with the legislative history and the statutory language. Section 1903(v) states that payment shall be made under this section for services necessary to treat an emergency medical condition. The last sentence of section 1902(a) of the act reinforces this interpretation by saying that " * * * a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in

accordance with section 1903(v)". Therefore, we agree with the commenters and are revising §§ 435.406(c) and 436.406(c) by replacing "may provide" with "must provide payment" for emergency services.

Comment: Several commenters questioned our interpretation of section 210(f) of the Immigration and Nationality Act that only Special Agriculture Workers (SAWS) who are members of the groups described in section 245 (h)(2) and (h)(3)(B)(ii) are exempt from the 5-year restriction on services.

Response: We agree that only those Medicaid-eligible SAWS who, but for the 5-year ban, would be eligible for AFDC will be subject to the restriction on services contained in section 245A of the INA. Therefore, SAWS who would not be AFDC eligible may receive full Medicaid coverage without having to fall into one of the exception categories. We are revising §§ 435.406(d) and 436.406(d) to specify that the 5-year restriction in the case of SAWS applies only to those eligible individuals who would be eligible for AFDC, but for the prohibition of receipt of AFDC payment in the INA.

Comment: A number of commenters questioned the absence of a general statement of HCFA policy stating what is required to establish that an applicant is PRUCOL. Such a statement of general policy prefaces the Social Security Administration's (SSA) regulations.

Response: We have compared the SSA regulations at 20 CFR 416.1618 with our proposed regulations at §§ 435.408 and 463.408 and have made the necessary corrections to make our regulations correspond with the SSA regulations.

Comment: Some commenters questioned whether the listed documents in §§ 435.408 and 436.408 were the only acceptable documents to establish that the alien is PRUCOL.

Response: The listed documents are the ones most commonly used to establish a particular status. They are also the preferred documents, because all aliens claiming a satisfactory immigration status must have their status verified through the Systematic Alien Verification for Entitlements (SAVE) program. They are not however the only documents which could be used to establish a particular status. We have clarified the regulations at §§ 435.408 and 436.408 to state that the listed documents are the ones most commonly used. In addition, we specified that any documents acceptable to the State that establish the required period or residence for individuals claiming PRUCOL status under section 249 of the INA, may be accepted.

Comment: A number of commenters pointed out several places where the proposed regulations differed from the SSA regulations at 20 CFR 416.1618.

Response: Our intent has always been to have our regulations mirror the SSA regulations because legislation on alien status has affected both the SSI and Medicaid programs in a similar manner and because both agencies have been subject to litigation which adopted the same definitions of what INS statuses constitute PRUCOL for program purposes. Therefore, where these regulations have inadvertently differed from the SSA regulations we have made the necessary changes in the final regulations to make HCFA policy consistent with SSA policy. We are revising §§ 435.408 and 436.408 concerning extended voluntary departure, and the extent to which an application by itself gives a person a PRUCOL status. (We note that an application may be a factor in determining whether an individual is in a particular PRUCOL status but generally an individual must have been granted the particular status before PRUCOL is established.)

Comment: Several commenters questioned our interpretation of section 1903(v) of the Act with respect to whether aliens covered by the emergency medical condition provision were ineligible for Medicaid. The commenters suggested that these aliens are eligible for Medicaid for limited services.

Response: We have reexamined this issue. At the time the proposed regulations were developed we believed that an alien for whom payment for treatment of an emergency medical condition could be made was not an eligible individual within the meaning of the law. Our position was based on the language of section 1903(v) which provides that no payment may be made to a State for medical assistance to an alien who is not a lawful permanent resident or PRUCOL. Section 1903(v) continues by stating that payment shall be made for an alien who is neither a lawful permanent resident nor PRUCOL but only to the extent that the services are for the treatment of an emergency medical condition and the alien otherwise meets the eligibility requirements of the approved State plan. Upon further review, we believe that the language found in the last sentence of section 1902(a) of the Act which was added as part of section 9406 of OBRA 86 clarifies the eligibility status of aliens who are neither lawful permanent residents nor PRUCOL. That sentence states: "Notwithstanding paragraph

(10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v). We believe that Congress in section 1903(v) created a special eligibility group consisting of persons who meet the Medicaid program's eligibility criteria but are neither citizens nor lawful permanent resident aliens nor permanently residing in the United States under color of law. Thus, while the persons described in section 1903(v) for whom treatment of an emergency medical condition is made available are eligible for Medicaid, the services these individuals may receive under Medicaid are limited to those specified in section 1903(v). Therefore, a pregnant woman who meets the eligibility requirements under 1903(v) can receive only emergency labor and delivery services. Section 1903(v) does not authorize coverage for the non-emergency 60 days of postpartum services.

Comment: Several commenters believe that pregnant women in the population covered by section 1903(v)(2) of the Act should receive the prenatal and postpartum services provided to eligible pregnant women under other sections of title XIX. The commenters expressed the belief that the services necessary to treat an emergency medical condition of an alien who is not a lawful permanent resident, PRUCOL, or legalized under IRCA includes all of the prenatal and postpartum services provided to eligible pregnant women.

Response: As discussed above, Congress specifically limited the services available to a pregnant woman to emergency labor and delivery (including emergency postpartum care). In doing so, Congress exempted these services from the amount, duration, and scope provisions of the Act by amending section 1902. Section 1903(v)(2) of the Act authorizes FFP only for services provided to an alien with an emergency medical condition. The commenter's reliance on section 1905(n)(1) is misplaced. The language of that section says that a qualified pregnant woman is one who would be eligible for AFDC if her child were born and living with her. The individuals covered by section 1903(v)(2) of the Act are not eligible for and cannot receive AFDC because they are neither lawful permanent residents nor PRUCOL. Further, we interpret title XIX to provide medical services which benefit an unborn child exclusively through the pregnant woman. We

previously permitted States to provide Medicaid eligibility to unborn children as children under 21 pursuant to section 1905(a)(i) of the Act. In 1965, this ceased to be a State plan option, based on our interpretation of provisions of several Congressional enactments, including the Omnibus Budget Reconciliation Act of 1981 (OBRA 81), the Tax Equity and Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Budget and Reconciliation Act of 1985. These enactments created and expanded Medicaid coverage for pregnant women and OBRA 81 precluded AFDC cash benefits for the unborn. We rely on these provisions, as well as the explicit provision for labor and delivery room services as emergency services available to non-PRUCOL pregnant women in OBRA 86, for our interpretation that an unborn child does not have a separate status as an individual eligible for medical assistance. Therefore, we are not adopting this comment.

Comment: Several commenters suggested that the definition of emergency medical condition should be expanded and more precisely defined.

Response: We agree in part that the definition should be clarified. Therefore, we have revised the definition of emergency services to say that "after the sudden onset of a medical condition * * *". This change will make the definition of emergency services consistent with the definition already in use in the Medicaid program at 42 CFR 447.53(b)(4) and with the definition contained in section 1867(e)(1) of the Act, relating to hospital emergency departments inappropriate failure to treat certain patients (the anti-dumping provision). However, we believe the broad definition allows States to interpret and further define the services available to aliens covered by section 1903(v)(2) which are any services necessary to treat an emergency medical condition in a consistent and proper manner supported by professional medical judgement. Further, the significant variety of potential emergencies and the unique combination of physical conditions and the patient's response to treatment are so varied that it is neither practical nor possible to define with more precision all those conditions which will be considered emergency medical conditions.

Comment: Several commenters questioned the structure of the regulations at § 435.139, and, in particular, suggested that PRUCOL aliens should be included as a

mandatory coverage group. One commenter noted that alien coverage groups were proposed for the mandatory categorically needy and the optional medically needy but not for the optionally categorically needy.

Response: We agree that all lawful permanent and PRUCOL aliens who meet the other eligibility requirements are eligible for Medicaid but in some cases are limited in the services they may receive. For example, some aliens legalized under IRCA are subject to a statutory 5 year limit on the services eligible individuals may receive. To eliminate the confusion and duplication of effort, we are moving material in § 435.139 of subpart B and § 435.350 of subpart D to §§ 435.406 and 435.408 of subpart E respectively, which relates to general eligibility requirements. We believe this change indicates that immigration status is one condition of Medicaid eligibility that must be met. Aliens who are not lawful permanent residents, PRUCOL, or legalized aliens under IRCA but otherwise meet the eligibility requirements of the State's Medicaid plan shall be afforded the services necessary to treat an emergency medical condition. These aliens are identified in §§ 435.139 and 435.350.

Comment: One commenter suggested the decision in *INS v. Chadha*, (462 U.S. 919, 103 S.Ct 2764 (1983)) applies to the suspension of deportation category, and recommended that the language in § 435.406(n) be revised to reflect the view that suspension of deportation under section 244 of the Immigration & Naturalization Act establishes "per se" PRUCOL status.

Response: We have not accepted this comment. The Supreme Court decision in *Chadha* is concerned only incidentally with the status of aliens granted a suspension of deportation by an immigration judge. This decision is almost exclusively concerned with the Constitutional issue of separation of powers and the validity of a veto of an executive action by one House of Congress. It is not the policy or practice of INS to deport an individual who has been granted a suspension of deportation pursuant to section 244 of the INA which is not lifted for two years. However, such individuals, like all applicants for Medicaid, must have their immigration status verified with the INS through the SAVE system. In verifying the status of an alien, INS will be asked, as appropriate, whether the INS contemplates enforcing the departure of the alien. If INS replies that they do not deport aliens in this category, HCFA will consider such an

individual to be PRUCOL. Further, the language used to describe this PRUCOL category is identical to the language of the *Berger v. Heckler* decision. However, we have changed the language in proposed §§ 435.408(n) and 436.408(n) (now appears as §§ 435.409(b)(14) and 436.409(b)(14)) to conform to the description used by SSA. In our view consistency in the use of regulatory language with SSA will produce consistent application of PRUCOL policy in determining eligibility under both agencies' programs and it is consistent with the language of the *Berger* consent decree which HCFA has adopted as its policy. Therefore, an applicant who claims PRUCOL status because he has been granted a suspension of deportation under section 244 of the INA will need to have that status verified by INS. If INS verifies that the applicant is in a granted suspension category, then the individual is PRUCOL for program purposes.

Comment: Several commenters suggested that the regulations are unclear concerning the pregnancy related services eligible legalized aliens may receive.

Response: We have clarified the regulations at § 440.250 to make it clear that the statutory provisions of section 1916(a)(2)(B) of the Act govern the services available to eligible pregnant alien women who have been granted lawful status under sections 245A, 210, and 210A of the INA and who are not members of the exempt groups specified in those sections.

Comment: Several commenters questioned whether the State residence rules at 42 CFR 435.403 apply to persons seeking coverage of services needed to treat an emergency medical condition as defined in section 1903(v) of the Act. The commenters were especially concerned that applying the State residence requirement to persons who have the status of legal non-immigrant would improperly deny such people coverage of services they require for treatment of emergency medical conditions.

Response: Section 1903(v)(2) of the Act provides that payment shall be made for services necessary to treat an emergency medical condition of an alien if that alien is: not a lawful permanent resident or permanently residing in the United States under color of law, and "such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this title * * * (emphasis added). One of the eligibility requirements of State plans for medical assistance is that applicants and recipients meet the State residence

requirements at 42 CFR 435.403. These regulations provide specific rules for determining State residence depending on whether the applicant is capable of expressing intent, whether the applicant is in an institution, and whether the applicant is 21 years of age or over. Thus, with respect to an applicant who is capable, over 21, and not in an institution such a person is a resident of the State if that person is physically present in the State with the intention of remaining in the State indefinitely. The regulations at 42 CFR 435.402 do not require that the applicant have a permanent address in order to establish State residence. By requiring that aliens described in section 1903(v)(2) of the Act, who seek coverage of services to treat an emergency medical condition, meet the same State residence rules that homeless citizen applicants must meet, such aliens will be treated the same as all other applicants in determining whether they meet eligibility requirements of the State plan.

IV. Provisions of the Final Regulations

After consideration of the comments received and our further analysis, we are publishing as final the September 29, 1988 proposed regulations with a number of revisions.

In § 435.1, Introduction, which provides a brief explanation of the effect of certain laws on Medicaid eligibility, we are making minor additional changes to paragraphs (f) and (g) to improve readability.

Sections 435.139 under Subpart B, Mandatory Coverage of the Categorically Needy; § 435.350 under Subpart D, Optional Coverage of the Medically Needy; § 436.128 under Subpart B, Mandatory Coverage of the Categorically Needy (in territories); § 436.330 under Subpart D, Optional Coverage of the Medically Needy (in the territories), are revised. Each section is entitled, Coverage for certain aliens. To eliminate confusion and duplication, we are deleting material in these sections relating to general eligibility requirements and moving it to §§ 435.406 and 436.406. We are revising § 435.139 to specify that the State must provide services (for which FFP is available) necessary for the treatment of an emergency medical condition of certain aliens as specified in § 435.406(c).

Sections 435.406(a) and 436.406(a) specify current requirements that an agency must provide Medicaid to eligible residents of the United States who meet the citizenship and alienage requirements. We are adding a new paragraph (a)(4) which specifies that the agency must provide Medicaid to aliens

granted lawful temporary resident status under section 210 of the Immigration and Nationality Act unless the alien would be eligible for AFDC. We are making this change as a result of comments concerning our interpretation of section 210(f) of the INA. In paragraph (c) of these sections, we are removing the eligibility requirement with respect to persons covered under section 1903(v)(2) of the Act. We are making this change because section 411(k)(15) of the MCCA amended section 1137(a) of the Act to delete the requirement that applicants obtain and present a social security number as a condition of eligibility if the applicant is a person described in section 1903(v)(2) of the Act. We are adding a paragraph (d) to §§ 435.406 and 436.406 to specify that the 5-year restriction contained in sections 245(h) and 210A of the INA applies to those eligible individuals not described in paragraph (a) of §§ 435.406 and 436.406. We are making this change to clearly implement the statutory provisions of sections 245A, 210 and 210A of the INA.

We are making several revisions to §§ 435.408 and 436.408 to make our regulations correspond with SSA regulations at 20 CFR 416.1618. The regulations include a general statement pertaining to the establishment of PRUCOL by applicants, and clarifying that the listed documents are the most common ones used to establish particular status. We are specifying that any documents that are acceptable to the State as establishing the required period of residence for individuals claiming PRUCOL status under section 249 of the INA may be accepted. We are also revising the sections covering extended voluntary departure, and the extent to which an application by itself gives a person a PRUCOL status. Except where specifically stated in the regulations an application for a status does not by itself permit an applicant to be found to be PRUCOL. An application for a status, however, is a factor which will be considered in determining the status of an applicant. In cases that are not exempt by law, however, the applicant's claimed status will be verified with the INS through the SAVE system.

In subpart B, § 440.200(a) specifies the statutory requirements and limits applicable to all services. We are making a change to paragraph (a) to include a provision of section 1903(v)(2) of the Act which provides that FFP will be available for services necessary to treat an emergency medical condition of an alien not described in paragraph (a)(3) of this section, if that alien meets the eligibility requirements of the State

plan. We are revising § 440.250, Limits on comparability of services, and § 440.255, Limited services available to certain aliens, to reorganize the material contained in these sections to better reflect the statutory provisions of section 1903(v) of the Act and sections 245A, 210, and 210A of the INA.

In § 440.250, we are clarifying the regulations to make the statutory provisions of section 1916(a)(2)(B) of the Act govern the services available to eligible pregnant alien women who have been granted lawful status under section 245A, 210, and 210A of the INA and who are not members of the exempt groups specified in those sections. We are revising § 440.255, to specify that FFP is available for services and conditions which are provided to those aliens specified in this section.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any regulation 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.

In addition, we generally prepare a 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 regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers as small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if the rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 604 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This rule reflects statutory changes and codifies in regulations practices which have already been implemented. The statutory changes expanding eligibility groups and coverage of services will increase Medicaid program

expenditures; however, the threshold criteria of E.O. 12291 will not be met.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities, and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

VI. Information Collection Requirements

Sections 435.1(g), 435.408 and 436.408 of this final rule contain information collection requirements that are subject to review by the Office of Management under the Paperwork Reduction Act of 1980. A notice will be published in the Federal Register after approval is obtained.

VII. List of Subjects

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 Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Chapter IV is amended as set forth below:

A. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

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

2. The table of contents to part 435 is amended by adding a new undesignated center heading and new § 435.139 immediately after existing § 435.136 under subpart B, new § 435.350 is added immediately after existing § 435.340 under subpart D, § 435.402 is removed and reserved and new §§ 435.406 and 435.408 are added under subpart E to read as follows:

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

* * * * *

Subpart B—Mandatory Coverage of the Categorically Needy

* * * * *

Mandatory Coverage of Certain Aliens

Sec.

435.139 Coverage for certain aliens.

* * * * *

Subpart D—Optional Coverage of the Medically Needy

* * * * *

435.350 Coverage for certain aliens.

Subpart E—General Eligibility Requirements

* * * * *

435.402 [Reserved]

* * * * *

435.406 Citizenship and alienage.

435.408 Categories of aliens who are permanently residing in the United States under color of law.

* * * * *

3. In subpart A, § 435.1 paragraph (a) is revised; new paragraphs (f) and (g) are added as follows:

§ 435.1 Introduction.

(a) This section provides a brief explanation of Medicaid eligibility as affected by changes in the cash assistance programs under the Social Security Act, and by other public laws.

* * * * *

(f) *Changes in Medicaid eligibility for aliens as a result of Public Law 99-509.* Section 9406 of Public Law 99-509 added a provision (section 1903(v) of the Act) that requires States, effective January 1, 1987, to furnish services necessary to treat an emergency medical condition (including emergency labor or delivery) of aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law and who otherwise meet the eligibility requirements for Medicaid. Previously, States were not required to furnish services to such aliens.

(g) *Changes in Medicaid eligibility for aliens as a result of Public Law 99-603.* In general, Medicaid eligibility is available to aliens granted lawful temporary resident status under sections 254A, 210 or 210A of the Immigration and Nationality Act who meet the eligibility requirements under the approved State Medicaid plan. Aliens must provide the State agency with documentation that they have been granted lawful temporary or permanent resident status to obtain eligibility under this provision. Some aliens granted lawful status under Public Law 99-603 are only eligible for limited services for 5 years from the date they are granted lawful temporary resident status, even though they are otherwise eligible under the Medicaid State plan.

4. Section 435.3 is amended by revising paragraph (a) introductory text

and adding in chronological order additional law citations to read as follows:

§ 435.3 Basis.

(a) This part implements the following sections of the Act and other public laws which state eligibility requirements and standards:

* * * * *

1903(v) Payment for emergency services under Medicaid provided to aliens.

* * * * *

Public Law 99-509, section 9406 Payment for emergency medical services provided to aliens.

Public Law 99-603, section 201 Aliens granted legalized status under section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) may under certain circumstances be eligible for Medicaid.

Public Law 99-603, section 302 Aliens granted legalized status under section 210 of the Immigration and Nationality Act may under certain circumstances be eligible for Medicaid (8 U.S.C. 1160).

Public Law 99-603 section 303 Aliens granted legal status under section 210A of the Immigration and Nationality Act may under certain circumstances be eligible for Medicaid (8 U.S.C. 1161).

* * * * *

5. In subpart B, a new undesignated center heading and new § 435.139 are added immediately after § 435.136 to read as follows:

Mandatory Coverage of Certain Aliens

§ 435.139 Coverage for certain aliens.

The agency must provide services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter, to those aliens described in § 435.406(c) of this subpart.

6. In subpart D, a new § 435.350 is added to read as follows:

§ 435.350 Coverage for certain aliens.

If an agency provides Medicaid to the medically needy, it must provide the services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter, to those aliens described in § 435.406(c) of this subpart.

§ 435.402 [Removed and Reserved]

7. In subpart E, § 435.402 is removed and reserved.

8. A new § 435.406 is added to read as follows:

§ 435.406 Citizenship and alienage.

(a) The agency must provide Medicaid to otherwise eligible residents of the United States who are—

- (1) Citizens; or
- (2) Aliens lawfully admitted for permanent residence or permanently

residing in the United States under color of law as defined in § 435.406 of this part;

(3) Aliens granted lawful temporary resident status under sections 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind, or disabled as defined in section 1614(a)(1) of the Act, under 18 years of age, or a Cuban/Haitian entrant as defined in section 501(e)(1) and (2)(A) of Public Law 96-422; or

(4) Aliens granted lawful temporary resident status under section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

(b) The agency must only provide emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and services for pregnant women as defined in section 1916(a)(2)(B) of the Social Security Act to otherwise eligible

residents of the United States not described in paragraph (a)(3) and (a)(4) of this section who have been granted lawful temporary or lawful permanent resident status under sections 245A, 210 or 210A of the Immigration and Nationality Act for five years from the date lawful temporary resident status was granted.

(c) The agency must provide payment for the services described in § 440.255(c) of this chapter to residents of the State who otherwise meet the eligibility requirements of the State plan (except for receipt of AFDC, SSI, or State Supplementary payments and the presentation of a social security number) but who do not meet the requirements of paragraphs (a) and (b) of this section.

(d) The limitations on eligibility set forth in paragraph (b) of this section do not apply after 5 years from the date an alien was granted lawful temporary resident status under sections 245A, 210 and 210A of the INA.

9. A new § 435.408 is added to read as follows:

§ 435.408 Categories of aliens who are permanently residing in the United States under color of law.

This section describes aliens that the agency must accept as permanently residing in the United States under color of law and who may be eligible for Medicaid.

(a) An individual may be eligible for Medicaid if the individual is an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and the INS does not contemplate

enforcing the alien's departure. The INS does not contemplate enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the alien's status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization Service status other than those applicants listed in paragraph (b)(6) of this section or those covered under paragraph (b)(16) of this section. None of the categories allows Medicaid eligibility for nonimmigrants: for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories.

(1) Aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7), (section 203(a)(7) of the Immigration and Nationality Act). Ask for a copy of INS Form I-94 endorsed "Refugee-Conditional Entry";

(2) Aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5) (section 212(d)(5) of the Immigration and Nationality Act). Ask for a copy of INS Form I-94 with notation that the alien was paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian entrants, ask for a copy of INS Form I-94 stamped Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981. (Although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(3) Aliens residing in the United States pursuant to an indefinite stay of deportation. Ask for an Immigration and Naturalization Service letter with this information or INS Form I-94 with such a notation;

(4) Aliens residing in the United States pursuant to an indefinite voluntary departure. Ask for an Immigration and Naturalization Service letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(5) Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the Immigration and Naturalization Service

does not contemplate enforcing. Ask for a copy of INS Form I-94 or Form I-210 or a letter showing that status;

(6) Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Service has accepted as "properly filed" (within the meaning of 8 CFR 245.2(a) (1) or (2)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(7) Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of the Immigration and Naturalization Service pursuant to section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) or relevant Immigration and Naturalization Service instructions, whose departure that agency does not contemplate enforcing. Ask for a copy of INS Form I-94 or a letter from the Immigration and Naturalization Service, or a copy of a court order establishing the alien's status;

(8) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). Ask for a copy of INS Form I-94 and a letter establishing this status;

(9) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)). Ask for a copy of INS Form I-94 properly endorsed;

(10) Aliens granted voluntary departure pursuant to section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Nationality Service does not contemplate enforcing. Ask for a Form I-94 or Form I-210 bearing a departure date;

(11) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or § 242.1(a)(22) issued June 15, 1984 and later. Ask for a copy of INS Form I-210 or a letter showing that departure has been deferred;

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)). Ask for a copy of Form I-220 B;

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of

the Immigration and Nationality Act, 8 U.S.C. 1259);

(14) Aliens granted suspension of deportation pursuant to section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for an order from an immigration judge showing that deportation has been withheld;

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). Ask for an order from an immigration judge showing that deportation has been withheld; or

(16) Any other aliens living in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure that agency does not contemplate enforcing. (Including permanent non-immigrants as established by Public Law 99-239, and persons granted Extended Voluntary Departure due to conditions in the alien's home country based on a determination by the Secretary of State).

B. 42 CFR part 436 is amended as set forth below:

1. The authority citation for part 436 continues to read as follows:

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

2. The table of contents to part 436 is amended by removing and reserving § 436.402, adding a new § 436.128 under Subpart B, § 436.330 under subpart D, and new §§ 436.406 and 436.408 under subpart E to read as follows:

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

* * * * *

Subpart B—Mandatory Coverage, of the Categorically Needy

436.128 Coverage for certain aliens.

* * * * *

Subpart D—Optional Coverage of the Medically Needy

* * * * *

436.330 Coverage for certain aliens.

Subpart E—General Eligibility Requirements

* * * * *

436.402 [Reserved]

* * * * *

436.406 Citizenship and alienage.

436.408 Categories of aliens who are permanently residing in the United States under color of law.

* * * * *

3. In subpart A, § 436.2 is amended by revising the introductory text and adding in chronological order additional law citations to read as follows:

§ 436.2 Basis.

This part implements the following sections of the Act and other public laws which state requirements and standards for eligibility:

* * * * *

1903(v) Payment for emergency services under Medicaid provided to aliens.

* * * * *

Public Law 99-509, section 9406 Payment for emergency medical services provided to aliens.

Public Law 99-603, section 201 Aliens granted legalized status under section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) may under certain circumstances be eligible for Medicaid.

Public Law 99-603, section 302 Aliens granted legalized status under section 210 of the Immigration and Nationality Act may under certain circumstances be eligible for Medicaid (8 U.S.C. 1160).

Public Law 99-603, section 303 Aliens granted legal status under section 210A of the Immigration and Nationality Act may under certain circumstances be eligible for Medicaid (8 U.S.C. 1161).

4. A new § 436.128 is added to subpart B to read as follows:

§ 436.128 Coverage for certain qualified aliens.

The agency must provide the services necessary for the treatment of an emergency medical condition as defined in § 440.255(c) of this chapter to those aliens described in § 436.406(c) of this subpart.

5. A new § 436.330 is added to subpart D to read as follows:

§ 436.330 Coverage for certain aliens.

If an agency provides Medicaid to the medically needy, it must provide the services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter to those aliens described in § 436.406(c) of this subpart.

§ 436.402 [Removed and Reserved]

6. In subpart E, § 436.402 is removed and reserved.

7. A new § 436.406 is added to read as follows:

§ 436.406 Citizenship and alienage.

(a) The agency must provide Medicaid to otherwise eligible residents of the United States who are—

(1) Citizens; or
(2) Aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law, as defined in § 436.408 of this part;

(3) Aliens granted lawful temporary resident status under sections 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind, or disabled as defined in section 1614(a)(1) of the Act, under 18 years of age, or a Cuban/Haitian entrant as defined in section 501 (e)(1) and (2)(A) of Pub. L. 96-422; or

(4) Aliens granted lawful temporary resident status under section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

(b) The agency must only provide emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and services for pregnant women as defined in section 1916(a)(2)(B) of the Social Security Act to otherwise eligible residents of the United States not described in paragraphs (a)(3) and (a)(4) of this section who have been granted lawful temporary or lawful permanent resident status under section 245A, 210 or 210A of the Immigration and Nationality Act for five years from the date lawful temporary resident status was granted.

(c) The agency must provide payment for the services described in § 440.255 to residents of the State who otherwise meet the eligibility requirements of the State plan (except for receipt of AFDC, SSI, or State Supplementary payments and the presentation of a social security number) but who do not meet the requirements of paragraph (a) of this section.

(d) The limitations on eligibility set forth in paragraph (b) of this section do not apply after 5 years from the date this alien was granted lawful temporary resident status.

8. A new § 436.408 is added to read as follows:

§ 436.408 Categories of aliens who are permanently residing in the United States under color of law.

This section describes aliens that the agency must accept as permanently residing in the United States under color of law and who may be eligible for Medicaid.

(a) An individual may be eligible for Medicaid if the individual is an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and the INS does not contemplate enforcing the alien's departure. The INS

does not contemplate enforcing the alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in the case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the alien's status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization Service status other than those applicants listed in paragraph (b)(6) of this section, or those covered under paragraph (b)(16) of this section. None of the categories allows Medicaid eligibility for nonimmigrants: for example, students or visitors. Also listed are the most common documents that the INS provides to aliens in these categories.

(1) Aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7), (section 203(a)(7) of the Immigration and Nationality Act). Ask for a copy of INS Form I-94 endorsed "Refugee-conditional Entry";

(2) Aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5) section 212(d)(5) of the Immigration and Nationality Act). Ask for a copy of INS Form I-94 with notation that the alien was paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian entrants ask for a copy of INS Form I-94 stamped Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981. (Although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act.);

(3) Aliens residing in the United States pursuant to an indefinite stay of deportation. Ask for an Immigration and Naturalization Service letter with this information or INS Form I-94 with such a notation;

(4) Aliens residing in the United States pursuant to an indefinite voluntary departure. Ask for an Immigration and Naturalization Service letter or INS Form I-94 showing that a voluntary departure has been granted for an indefinite time period;

(5) Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for

a copy of INS Form I-94 or INS Form I-210 or a letter showing this status;

(6) Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Service has accepted as "properly filed" (within the meaning of 8 CFR 245.2(a)(1) or (2)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for a copy of INS Form I-94 or I-181 or a passport properly endorsed;

(7) Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of the Immigration and Naturalization Service pursuant to section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) or relevant Immigration and Naturalization Service instructions, whose departure that agency does not contemplate enforcing. Ask for a copy of INS Form I-94 or a letter from the Immigration and Naturalization Service, or a copy of a court order establishing the alien's status;

(8) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). Ask for a copy of INS Form I-94 and a letter establishing this status;

(9) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)). Ask for a copy of INS Form I-94 properly endorsed;

(10) Aliens granted voluntary departure pursuant to section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for a copy of INS Form I-94 or I-210 bearing a departure date;

(11) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or § 242.1(a)(22) issued June 15, 1984 and later. Ask for a copy of INS Form I-210 or a letter showing that departure has been deferred;

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1152(d)). Ask for a copy of Form I-220 B;

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of

the Immigration and Nationality Act, 8 U.S.C. 1259);

(14) Aliens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. Ask for an order from the Immigration judge;

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). Ask for an order from an immigration judge showing that deportation has been withheld; or

(16) Any other aliens living in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure that agency does not contemplate enforcing, including permanent non-immigrants as established by Public Law 99-239, and persons granted Extended Voluntary Departure due to conditions in the alien's home country based on a determination by the Secretary of State.

C. 42 CFR part 440, subpart B would be amended as set forth below;

1. The authority citation for part 440 continues to read as follows:

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

2. The table of contents to part 440 is amended by adding an entry for § 440.255 to read as follows:

PART 440—SERVICE GENERAL PROVISIONS

* * *

Subpart B—Requirements and Limits Applicable to All Services

* * *
440.255 Limited services available to certain aliens.
* * *

3. Section 440.200 is revised to read as follows:

Subpart B—Requirements and Limits Applicable to All Services

§ 440.200 Basis, purpose, and scope.

(a) This subpart implements the following statutory requirements—

(1) Section 1902(a)(10), regarding comparability of services for groups of recipients, and the amount, duration, and scope of services described in section 1905(a) of the Act that the State plan must provide for recipients;

(2) Section 1902(a)(22)(D), which provides for standards and methods to assure quality of services;

(3) Section 1903(v)(1), which provides that no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully

admitted for permanent residence or otherwise permanently residing in the United States under color of law;

(4) Section 1903(v)(2) which provides that FFP will be available for services necessary to treat an emergency medical condition of an alien not described in paragraph (a)(3) of this section if that alien otherwise meets the eligibility requirements of the State plan;

(5) Section 1907 on observance of religious beliefs;

(6) Section 1915 on exceptions to section 1902(a)(10) and waivers of other requirements of section 1902 of the Act; and

(7) Sections 245A(h), 210 and 210A of the Immigration and Nationality Act which provide that certain aliens who are legalized may be eligible for Medicaid.

(b) The requirements and limits of this subpart apply for all services defined in Subpart A of this part.

4. Section 440.210 is revised to read as follows:

§ 440.210 Required services for the categorically needy.

(a) A State plan must specify that, as a minimum, categorically needy recipients are provided the services as specified in §§ 440.10 through 440.50, 440.70 and (to the extent nurse-midwives are authorized to practice under State law or regulation), § 440.165.

(b) A State plan must specify that eligible aliens as defined in §§ 435.406(a) and 436.406(a) of this subpart will receive at least the services provided in paragraph (a) of this section.

(c) A State plan must specify that aliens not defined in §§ 435.406(a) and 436.406(a) of this subpart will only be provided the limited services specified in § 440.255.

5. Section 440.220 is revised to read as follows:

§ 440.220 Required services for the medically needy.

(a) A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services.

(1) Prenatal care and delivery services for pregnant women.

(2) Ambulatory services, as defined in the State plan, for—

(i) Individuals under age 18; and
(ii) Individuals entitled to institutional services.

(3) Home health services (§ 440.70) to any individual entitled to skilled nursing facility services.

(4) If the State plan includes services in an institution for mental diseases (§ 440.140 or § 440.160) or in an intermediate care facility for the

mentally retarded (§ 440.150(c)) for any group of medically needy, either of the following sets of services to each of the medically needy groups:

(i) The services contained in §§ 440.10 through 440.50 and (to the extent nurse-midwives are authorized to practice under State law or regulation) 440.165; or

(ii) The services contained in any seven of the sections in §§ 440.10 through 440.165.

(b) A State plan must specify that eligible aliens as defined in §§ 435.406(a) and 436.406(a) of this subpart will receive at least the services provided in paragraphs (a)(4) (i) and (ii) of this section.

(c) A State plan must specify that aliens defined in §§ 435.406(b), 435.406(c), 436.406(b) and 436.406(c) of this subpart will only be provided the limited services specified in § 440.255.

6. In § 440.250, paragraph (h) is revised, new paragraphs (m) and (n) are added to read as follows:

§ 440.250 Limits on comparability of services.

* * *

(h) Ambulatory services for the medically needy (§ 440.220(a)(2)) may be limited to—

(1) Individuals under age 18; and
(2) Individuals entitled to institutional services.
* * *

(m) Eligible legalized aliens who are not in the exempt groups described in §§ 435.406(a) and 436.406(a), and considered categorically needy or medically needy must be furnished only emergency services (as defined in § 440.255), and services for pregnant women as defined in section 1916(a)(2)(B) of the Social Security Act for 5 years from the date the alien is granted lawful temporary resident status.

(n) Aliens who are not lawful permanent residents, permanently residing in the United States under color of law, or granted lawful status under section 245A, 210 or 210A of the Immigration and Nationality Act, who, otherwise meet the eligibility requirements of the State plan (except for receipt of AFDC, SSI or a State Supplementary payment) must be furnished only those services necessary to treat an emergency medical condition of the alien as defined in § 440.255(c).

7. A new § 440.255 is added to read as follows:

§ 440.255 Limited services available to certain aliens.

(a) *FFP for services.* FFP is available for services provided to aliens described in this section which are necessary to treat an emergency medical condition as defined in paragraph (b)(1) or services for pregnant women described in paragraph (b)(2).

(b) *Legalized aliens eligible only for emergency services and services for pregnant women.* Aliens granted lawful temporary resident status, or lawful permanent resident status under sections 245A, 210 or 210A of the Immigration and Nationality Act, who are not in one of the exempt groups described in §§ 435.406(a)(3) and 436.406(a)(3) and who meet all other requirements for Medicaid will be eligible for the following services—

(1) Emergency services required because of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the patient's health in serious jeopardy;
- (ii) Serious impairment to bodily functions, or
- (iii) Serious dysfunction of any bodily organ or part.

(2) Services for pregnant women which are included in the approved State plan. These services include routine prenatal care, labor and delivery, and routine post-partum care. States, at their option, may provide additional plan services for the treatment of conditions which may complicate the pregnancy or delivery.

(c) Effective January 1, 1987, aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under the color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section if—

(1) The alien has a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the patient's health in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part, and

(2) The alien otherwise meets the requirements in §§ 435.406(c) and 436.406(c) of this subpart.

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

Dated: February 28, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-21055 Filed 9-6-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 89-136; RM-6997]

Radio Broadcasting Services; Destin, Florida and Fairhope, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, issued on the Commission's own motion, substitutes Channel 221C3 for Channel 221A at Destin, Florida, and modifies the license of Gulfcoast Broadcasting, Inc. for Station WMMK(FM) to specify operation on the higher powered channel. See 54 FR 28077, July 5, 1989. In addition, Channel 221C3 is substituted for Channel 221A at Fairhope, Alabama, in response to a counterproposal filed by WZEW, Inc., permittee of Station WZEW(FM), Fairhope, Alabama. Channel 221C3 can be allotted to Destin in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) east of the community. The coordinates for Channel 221C3 at Destin are North Latitude 30-23-08 and West Longitude 86-24-52. Channel 221C3 can be allotted to Fairhope in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.1 kilometers (11.3 miles) west of the community. The coordinates for Channel 221C3 at Fairhope are North Latitude 30-32-00 and West Longitude 88-05-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-136, adopted August 17, 1990, and released September 4, 1990. 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.

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, is amended under Destin, Florida, by adding Channel 221C3 and removing 221A; and is amended under Fairhope, Alabama, by adding Channel 221C3 and removing Channel 221A.

Kathleen B. Levitz,

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

[FR Doc. 90-21047 Filed 9-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-16; RM-7119]

Radio Broadcasting Services; Ogden, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 278C2 for Channel 278A at Ogden, Kansas, and modifies the license for Station KQLA, to specify operation on Channel 278C2, in response to a petition filed by Kaw Valley Broadcasting Company. The coordinates for Channel 278C2 are 39-20-20 and 96-38-32. See 55 FR 3751, February 5, 1990.

EFFECTIVE DATE: October 19, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-16, adopted August 21, 1990, and released September 4, 1990. 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.