c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This regulation does not have a significant or unique effect on State, local or tribal governments or the private sector because this regulation only regulates how and when CSB employees may testify in certain situations. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this regulation does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

The CSB has determined this regulation conforms to the Federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and Tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's Supremacy Clause and Federal statute. This regulation is, however, restricted to the minimum level necessary to achieve the objectives of 5 U.S.C. 301 pursuant to which this regulation is promulgated.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the CSB has determined that this regulation does not unduly burden the judicial system, and does meet the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

National Environmental Policy Act (NEPA)

This regulation does not constitute a major Federal action significantly affecting the quality of the human environment under NEPA, 42 U.S.C. 4321 *et seq.* A detailed statement under the NEPA is not required.

List of Subjects

Administrative practice and procedure, Freedom of information, Government employees, Investigations, Testimony of employees.

For the reasons stated in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1611 as follows:

PART 1611—TESTIMONY BY EMPLOYEES IN LEGAL PROCEEDINGS

1. The authority citation for part 1611 continues to read as follows:

Authority: 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

2. Amend § 1611.2 to add a new definition paragraph as follows:

§ 1611.2 Definitions.

* * * * *

Employee, for the purpose of this part and part 1612 of this chapter, refers to current or former CSB Board Members or employees, including student interns, and contractors, contract employees, or consultants (and their employees). This definition does not include persons who are no longer employed by or under contract to the CSB, and who are retained or hired as expert witnesses or agree to testify about matters that do not involve their work for the CSB.

3. Amend § 1611.6 to redesignate the existing text as paragraph (a) and to add a new paragraph (b) as follows:

§ 1611.6 Testimony of former CSB employees.

(a) * * *

(b) Any former employee who is served with a subpoena to appear and testify in connection with civil litigation that relates to his or her work with the CSB, shall immediately notify the CSB General Counsel and provide all information requested by the General Counsel.

Dated: May 1, 2001.

Christopher W. Warner,

General Counsel.

[FR Doc. 01–11791 Filed 5–9–01; 8:45 am]

BILLING CODE 6350–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 270

RIN 0970–AC06

High Performance Bonus Awards Under the TANF Program

AGENCY: Administration for Children and Families, HHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The final rule covering the Temporary Assistance for Needy Families (TANF) high performance bonuses to States in FY 2002 and beyond was published August 30, 2000 (65 FR 52814). This interim final regulation further implements the child care measure, one of the measures on which we will award bonuses to States in FY 2002 and FY 2003.

Specifically, we explain how we will compute scores and rank States on the affordability component using four income ranges and a comparison of the number of children eligible under the State's income limits compared to the federal eligibility limits. We also specify how we will compute scores and rank States for the child care quality component based on new reporting requirements for market rate surveys for child care.

DATES: Effective date: This interim final rule is effective on May 10, 2001, except for § 270.4(e)(2)(ii) which requires an information collection that is not yet approved by the Office of Management and Budget (OMB). We will publish a document in the **Federal Register** announcing the effecitve date of § 270.4(e)(2)(ii) when the additional data collection requirement is approved by OMB.

Comment period: You may submit comments through July 9, 2001. We will not consider comments received after this date.

ADDRESSES: You may mail comments to the Administration for Children and Families, Child Care Bureau, 330 C Street SW., Room 2046, Washington, DC 20447. Attention: Gail Collins.

Commenters may also provide comments on the ACF website. Electronic comments must include the full name, address and organizational affiliation (if any) of the commenter. This interim rule is accessible electronically via the Internet from the ACF Welfare Reform Home Page at http:www.acf.dhhs.gov/news/welfare.

FOR FURTHER INFORMATION CONTACT: Gail Collins, Acting Deputy Commissioner, Administration for Children, Youth and Families at (202) 205–8347. Ms. Collins's e-mail address is: gcollins@acf.dhhs.gov.

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I. Background

A. The Temporary Assistance for Needy Families Program

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, established the Temporary Assistance for Needy Families (TANF) program under title IV–A of the Social Security Act (the Act), 42 U.S.C. 401 *et seq.* TANF is a block grant program designed to make dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families. Other key features of TANF include provisions that emphasize program accountability through financial penalties and rewards for high performance.

B. Summary of the Statutory Provisions Related to the High Performance Bonus

Section 403(a)(4) of the Act requires the Secretary to award bonuses to ''high performing States.'' (Indian tribes are not eligible for these bonuses.) The term ''high performing State'' is defined in section 403(a)(4) of the Act to mean a State that is most successful in achieving the purposes of the TANF program as specified in section 401(a) of the Act. These purposes are to—

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) Encourage the formation and maintenance of two-parent families.

Section 403(a)(4)(B) of the Act specifies that the bonus award for a fiscal year will be based on a State's performance in the previous fiscal year and may not exceed five percent of the State's family assistance grant.

Section 403(a)(4)(C) of the Act requires the Department to develop a formula for measuring State performance in consultation with the National Governors' Association and the American Public Welfare Association, now known as the American Public Human Services Association.

Section 403(a)(4)(D) of the Act requires the Secretary to use the formula developed to assign a score to each eligible State for the fiscal year preceding the bonus year and prescribe a performance threshold as the basis for awarding the bonus. Section 403(a)(4)(D) of the Act also specifies that $1 billion (or an average total of $200 million each year) will be awarded over five years, beginning in FY 1999.

C. High Performance Bonus Regulations

On December 6, 1999, we published a Notice of Proposed Rulemaking (NPRM) covering the bonus awards in FY 2002 and beyond. The NPRM proposed the measures, the formula for allocating funds, and the data sources, methodologies, and specifications for each measure. The final rule, published on August 30, 2000 (65 FR 52814), provided that we would base the bonuses in FY 2002 and beyond on four work measures; a measure on family formation and stability; and three measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program, participation in the Medicaid and State Children's Health Insurance Program (SCHIP), and a child care measure. The methodologies and specification for all of the measures, except for the child care measure, were completely specified in the final rule.

Although it had not been proposed in the NPRM, we added the child care measure in the final rule since we strongly agreed with commenters that child care subsidies or assistance represent an essential support for low-income families and are a critical part of a successful welfare reform program. We stated in the preamble to the final rule that we planned to engage States and others, particularly data experts, in discussions regarding the technicalities of implementing key elements of the child care measure. While there were many comments in support of a child care measure, there was no opportunity for detailed consultation or public comment on the technical aspects of the new measure, as it had not been included in the NPRM.

We particularly wanted to obtain the States' views on, and information about, issues for which we lacked specific knowledge, such as State data systems. We stated that we planned to hold these consultations and issue details regarding the components of this measure by the end of the calendar year.

II. The Child Care Measure

A. Summary of the Child Care Measure in the Final Rule

The final rule provided that $10 million would be allocated annually for bonus awards under the child care measure. The specific provisions of the measure appear at § 270.4(e) of the final rule. *See* regulatory text at the end of this document.

Briefly, the measure includes three components:

- Child care accessibility, as measured by the percent of children, eligible under the Child Care and Development Fund (CCDF) requirements, who are receiving services, including eligible children served with additional funds;
- Child care affordability, based on a comparison of reported assessed family co-payment to reported family income; and
- Child care quality, as indicated by a comparison of the actual amounts paid for children receiving CCDF subsidies to local market rates in the State.

We will base the bonus awards for FY 2002 on a composite ranking of State scores on accessibility and affordability. We will base the bonus awards for FY 2003 on a composite ranking of accessibility, affordability, and quality. The weights of the various components in computing the composite score are specified in § 270.4(e).

No new data collection is required in order to compete on the two components of the child care measure in FY 2002. We will use existing CCDF data and Census Bureau data as the data source for family incomes at 85 percent of the State's median income, i.e., the Federal eligibility limit in the CCDF program. We will also calculate the

percentage of potentially-eligible children served by dividing the number of children served with ''pooled'' funds, that is, CCDF funds (including transfers from TANF) and any other funds States use to serve eligible children, by the number of children eligible under the Federal criteria.

For bonus awards FY 2003 and beyond, we will base the quality component on the actual rates States pay for children receiving CCDF subsidies, as reported on the ACF–801, as compared to State data on actual market rates.

B. Consultations With States and Other Organizations

In determining the specifications for the affordability component, we were aware that States have tremendous flexibility in setting sliding fee scales under the regulations governing the CCDF program which they use to balance different needs and make child care affordable for families at a range of incomes. How to fairly score and rank States in light of the diversity in State practice was one of the major issues on which we sought further advice.

The market rate survey and the data collected as a part of the survey were also issues on which we sought advice. The CCDF statute requires States to conduct a market rate survey periodically as a way of monitoring their program, but there is no consistency in how States conduct these surveys, and we have not required States to submit their surveys or the survey results to ACF. In the preamble to the final rule, we stated that we would consult with States and other experts on the market rate data States would need to submit in order to compete on this measure, the process for submitting the data, and the methodology we would use for ranking States on this component.

Beginning in October, 2000, we contacted all States and approximately 30 advocacy organizations, including agencies and organizations that had commented on this issue in the NPRM, inviting them to consult with us on issues related to the child care measure.

At the first consultation meeting, we asked for individuals to participate in intensive discussions over the next two months.

We established two child care workgroups—one for State agency staff and the other for representatives of advocacy and other agencies and organizations.

The State workgroups, made up of approximately 20 State representatives, met on five occasions by conference call. We faxed information to the workgroup members for review prior to each conference call and had extensive follow-up discussions. The advocate workgroup, made up of representatives of approximately 10 organizations, met twice in two months by similar conference calls. In addition, the Child Care Bureau in ACF requested input from all States through the regional offices of ACF and in public presentations to State representatives.

The consultations focused on the following major issues:

Accessibility

- Were the data readily available?
- What did States need to know to ''pool'' data properly?

Affordability

- What was the effect of using the State's Median Income as a standard for this component?
- Did it matter how States define ''income''?
- What income levels, if any, should be used in this component?
- How should we address family size in the calculations?

Quality

- How reliable are the data collected by the States in their market rate surveys?
- What types of child care should be compared?
- How could this component account for States with large rural populations as compared to States with large urban centers?

C. Changes Made in this Interim Final Rule

As a result of our consultations, we are amending the child care measure to add the following clarifications and specifications.

The Accessibility Component

In the final rule, we referenced the ACF–696 financial reporting form as the source of the information on the counting of children served by ''pooled'' funds. We are taking this opportunity to update § 270.4(e)(1)(i) to delete the reference to the ACF–696 and replace it with a reference to the recently revised ACF–800 and ACF–801. These two reporting forms are now better sources of the data on the number of children served with all sources of funds used by the State. We believe this change is not only an update for accuracy, but also will avoid confusion in the future. We are deleting the phrase ''including any such eligible children served with additional funds reported on the ACF–696 financial reporting form'' and replacing it with the words ''and who are included in the data reported on the ACF–800 and the ACF–801.''

No additional guidance or specifications are needed to implement this component. We will use data from the ACF–800 and ACF–801 to compute scores and rank States.

The Affordability Component

There is considerable variation among States in the amount of co-payments, expressed as a percent of income, that parents are asked to pay at different income levels, particularly above the poverty level. In our consultations with both States and advocate groups, we were encouraged to look at affordability for families at several different increments of income.

Therefore, we specify in § 270.4(e)(3) that we will compare family income to the assessed State co-payment for child care, based on four income ranges. These income ranges refer to percentages of the Federal Poverty Guidelines for a family of three persons. The income ranges are as follows:

- Income below the poverty level;
- Income at least 100 percent and below 125 percent of poverty;
- Income at least 125 percent and below 150 percent of poverty; and
- Income at least 150 percent and below 175 percent of poverty.

For a family of three in FY 2001,
100 percent of the Federal Poverty Guidelines is $14,150;
125 percent of the Federal Poverty Guidelines is $17,687;
150 percent of the Federal Poverty Guidelines is $21,225; and
175 percent of the Federal Poverty Guidelines is $24,762.

Although the maximum allowable income eligibility limit for child care is based on State Median Income (e.g., 85 percent of the SMI), we were encouraged in our consultations to use percent of the poverty level for this comparison between family income and assessed family co-payments. The poverty level remains constant across States, while the SMI varies from State to State.

We were also encouraged to consider family size in the measure of affordability. However, family size is not currently included in the data reported by States on the ACF 800 or 801. Therefore, we have chosen not to require this information at this time because it would result in additional data collection and reporting burden.

We have selected these income ranges that refer to percentages of poverty for a family of three for comparison of assessed co-payments across States because existing State data indicate that the majority of families are receiving

care for only one or two children. While some States establish their income eligibility limits below 175 percent of the Federal Poverty Guidelines, all States are serving some larger households with incomes up to $25,000, which equals approximately 175 percent of the Federal Poverty Guidelines for a family of three. However, we are limited in our ability to measure and compare co-payments across States for families with income levels beyond $25,000 because some States are serving few families beyond this point.

Limiting our measure of average co-payments to families earning up to $25,000 could potentially disadvantage States that choose to serve families with higher incomes. We know that some States make use of modest co-payments across a broad range of income in order to extend eligibility higher up the income scale. Families above the State's income guidelines would not be eligible to be served at all and would, therefore, pay 100 percent of the cost of care.

States serving households above $25,000 could have lower than average co-payments across the range of incomes that they serve, but this would not be captured in the measure that examines co-payments only up to $25,000. For example, State A has established an income eligibility limit of $24,000 for a family of three. State B has established an income limit of $28,000 for a family of the same size, and a co-payment rate of 11 percent of family income. Although a family with an annual income below $24,000 might face higher co-payments in State B than in State A, a family with income above $24,000 would be ineligible in State A. A family in State A with an annual income of $26,000 would pay 100 percent of the cost of care, which would likely be 20 percent or more of annual income. A family with the same income in State B would have an assessed co-payment rate of only 11 percent.

In order to address this diversity, our methodology also addresses State effort to provide access to affordable co-payments to a broader range of families. As a part of the affordability component, we will also rank States based on the ratio of the number of children eligible under the State-defined income limits, as specified in the State CCDF Plan, compared to the number of children eligible under the Federal eligibility limit for the CCDF (85% of State's median income (SMI)).

In § 270.4(e)(4), we clarify how we will compute the scores and rank the States on this component. We specify that, for each State competing on this measure, we will calculate, for each of the four income ranges, the average of the ratios of family co-payment to family income for each individual family. Next, we will calculate a fifth ratio of the number of children eligible under the State's defined income limits compared to the number of children eligible under the Federal eligibility limits in the CCDF, i.e., 85 percent of the State's median income. Finally, we will rank each State based on each of the five ratios and will combine the five rankings for each State to obtain the State's score on this component.

The Quality Component

We specify in § 270.4(e)(5) that we will compare the actual rates paid by the State as reported on the ACF–801 (not the published maximum rates) to the market rates applicable to the performance year. In order to have the data to make this comparison, we are requiring that, if a State wishes to compete on this measure, it must submit two specific items of information from its market rate survey. The two items are:

- Age-specific rates for children 0–13 years of age as reported by the child care centers and family day care homes responding to the State's market rate survey; and
- the provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

We have selected the parameters of age of child, type of provider, and location of provider, because the rates charged by providers (that is market rates) vary substantially based on these factors. States must take these factors into account when setting payment rates that assure equal access to the full range of provider types for children from 0–13 years of age.

In § 270.4(e)(6), we specify how we will compute the scores and rank States on this component. We will compute the percentile of the market represented by the amount paid for each child as reported on the ACF–801 by comparing the actual payment for each child to the array of reported market rates for children of the same age in the relevant county or administrative region. (Payments for children in center-based care will be compared to reported center care rates; payments for children in non-center-based care, i.e., family day care and unlicensed child care, will be compared to reported family child care provider rates.)

Finally, we will take the percentile that results from the per-child comparison of the actual payment to the reported market rates and compute separate State-wide averages for center-based and non-center-based care. Each State will be ranked on each of the two averages. The two rankings will be combined to obtain the State's final score on this component.

III. Justification for This Interim Final Rule

The time frames for implementing and operationalizing the high performance bonus award system are extremely short. It became clear, even as we published the final high performance bonus rule in August, 2000, that States would need immediate and additional guidance, clarification, and specificity about our expectations in order to make program decisions, collect data, and prepare themselves to compete successfully for child care bonuses in FY 2002 and FY 2003. However, it was equally clear that in order to arrive at a reliable and workable measurement system, it was necessary to consult extensively with the National Governors' Association (NGA), the American Public Human Services Association (APHSA), States, and others, which we did through early December. The provisions of this interim final rule reflect the information and recommendations we received in these consultations.

We have determined that publication of an NPRM is unnecessary, impractical, and not in the public interest. We believe it is in the public interest to have the maximum possible number of States compete for bonuses under the TANF program and that they be able to structure their programs to successfully compete on each of the bonus measures. Without the additional information contained in this interim final rule, States will not know how they will be ranked on the child care affordability measure in FY 2002. The performance year for FY 2002 is FY 2001, the current fiscal year. Unless States are given this information in a timely way, they will be unable to have an opportunity to make program changes or take other actions in this fiscal year to prepare themselves to compete on this measure. There is insufficient time to issue both an NPRM and a final rule and still provide States with enough advance notice to be able to make changes in time to have them be operational during the performance year.

Moreover, unless this information is issued as a final rule, States will not know what information they must collect as a part of their child care market rate surveys in order to compete successfully in FY 2003. States are only required to conduct these surveys every two years. Since some States are conducting their market rate surveys in

FY 2001, it is crucial to advise them quickly about what types of data they would need to collect in order that they can design and conduct their FY 2001 surveys in a way that will enable them to compete for the child care bonus in FY 2003.

Finally, we believe issuance of an NPRM is unnecessary because we have consulted with the States and others who commented on the earlier NPRM about the issues covered by this interim final rule and received their input. We have incorporated their concerns in this interim final rule.

In spite of the need to advise States immediately, we are sensitive to the issue of public notice and comment. For that reason we invite comment on these proposals for the next 60 days.

IV. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier, ACF consulted with States, their representative organizations, and a broad range of advocacy groups, researchers, and others to obtain their views. This rule reflects the discussions with, and the concerns of, the groups with whom we consulted.

This interim final rule will not have an effect on the economy of $100 million or more in any one year, according to section 3(F)(1) of the Executive Order. We believe the cost of competing for a high performance bonus award in FY 2002 should be minimal since competition for these awards will be based, to the extent possible, on existing data sources. This interim final rule was determined to be significant and has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain Territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Appropriations Act of 1999. The high performance bonus awards are a statutory part of the TANF program and are designed to reward State efforts in strengthening the economic and social stability of families and carrying out other purposes in the statute. This interim final rule does not limit State flexibility to design programs to serve these purposes.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the PRA, we will submit the data collection requirements to OMB for review and approval.

In FY 2002, no additional reporting burden will be required of the States in competing on the child care measure since we will rank States based on data they currently report under the CCDF program (ACF Forms 800 and 801).

However, there will be a reporting burden for the information States must submit if they wish to compete on the child care measure in FY 2003. States must provide the following information based on the child care market rate surveys that they currently conduct every two years:

- All age-specific rates for children 0–13 years of age reported by the child day care centers and family day care homes responding to the State's market rate survey; and
- The provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

We estimate the reporting burden for reporting these data once every two years to be 40 hours per respondent times 54 respondents, or 2,160 hours. Annualized, this equals a total burden of 1,080 hours as shown below:

Instrument or requirement	Number of respondents	Annual number of responses per respondent	Average burden hours per response	Total annual burden hours
Abstract of Market Rate Survey	54	0.5	40	1,080
Estimated Total Annual Burden Hours	.....	.....	.....	1,080

We will submit this information to OMB for approval. These requirements will not become effective until approved by OMB.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governmental entity that may be significantly or uniquely impacted by the proposed rule.

We have determined that this interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Competition for a high performance bonus is entirely at State option. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted State or small government.

F. Congressional Review

This interim final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

G. Executive Order 13132

On August 4, 1999, the President issued Executive Order 13132, ''federalism.'' The purposes of the Order are: ''to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act.* * *''

We certify that this final rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not pre-empt State law and does not impose unfunded mandates.

This rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials. The statute, however, requires consultations with the National Governors' Association and the American Public Human Services Association in the development of a high performance bonus system. Prior to the development of the NPRM and this interim final rule, we consulted with representatives of these organizations, State representatives and a broad range of nonprofit, advocacy, and community organizations; foundations; and others.

List of Subjects in 45 CFR Part 270

Grant programs—social programs; Poverty; Public assistance programs; Reporting and recordkeeping requirements.

Catalogue of Federal Domestic Assistance Programs: No. 93.558 Temporary Assistance for Needy Families (TANF) Program; State Family Assistance Grants; Tribal Family Assistance Grants; Assistance Grants to Territories; Matching Grants to Territories; Supplemental Grants for Population Increases; Contingency Fund; High Performance Bonus; Decrease in Illegitimacy Bonus)

Dated: March 14, 2001.

Diann Dawson,

Acting Principal Deputy Assistant Secretary, Administration for Children and Families.

Approved: April 10, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR Chapter II as follows:

PART 270—HIGH PERFORMANCE BONUS AWARDS

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 603(a)(4).

2. In § 270.4, paragraph (e) is revised to read as follows:

§ 270.4 On what measures will we base the bonus awards?

* * * * *

(e) *Child care subsidy measure.* (1) Beginning in FY 2002, we will measure State performance based upon a composite ranking of:

(i) The accessibility of services based on the percentage of children in the State who meet the maximum allowable Federal eligibility requirements for the Child Care and Development Fund (CCDF) who are served by the State during the performance year, and who are included in the data reported on the ACF–800 and ACF–801 for the same fiscal year; and

(ii) The affordability of CCDF services based on a comparison of the reported assessed family co-payment to reported family income and a comparison of the number of eligible children under the State's defined income limits to the number of eligible children under the federal eligibility limits.

(2) Beginning in FY 2003, we will measure State performance based upon a composite ranking of:

(i) The two components described in paragraph (e)(1) of this section; and

(ii) The quality of CCDF services based on a comparison of reimbursement rates during the performance year to the market rates, determined in accordance with 45 CFR 98.43(b)(2), applicable to that year.

(3) For the affordability component in paragraph (e)(1)(ii) of this section, we will compare family income to the assessed State family co-payment as reported on the ACF–801 across four income ranges. These income ranges refer to percentages of the Federal Poverty Guidelines for a family of three persons. The income ranges are as follows:

(i) Income below the poverty level;

(ii) Income at least 100 percent and below 125 percent of poverty;

(iii) Income at least 125 percent and below 150 percent of poverty; and

(iv) Income at least 150 percent and below 175 percent of poverty.

(4)(i) For the affordability component, we will calculate, for each income range, the average of the ratios of family co-payment to family income for each family served; and

(ii) We will calculate a ratio of the number of children eligible under the State's defined income limits compared to the number of children eligible under the Federal eligibility limits in the CCDF, i.e., 85 percent of the State's median income.

(iii) We will rank each State based on each of the four averages calculated in paragraph (e)(4)(i) of this section and the ratio calculated in paragraph (e)(4)(ii) of this section and combine the ranks to obtain the State's score on this component.

(5) For the quality component specified in paragraph (e)(2)(ii) of this section, in FY 2003 and beyond, we will compare the actual rates paid by the State as reported on the ACF–801 (not the published maximum rates) to the market rates applicable to the performance year, i.e., FY 2002. Each State competing on this measure must submit the following data as a part of its market rate survey:

(i) Age-specific rates for children 0–13 years of age reported by the child care centers and family day care homes responding to the State's market rate survey; and

(ii) The provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

(6) For the quality component, we will compute the percentile of the market represented by the amount paid for each child as reported on the ACF–801 by comparing the actual payment for each child to the array of reported market rates for children of the same age in the relevant county or administrative region. (We will compare payments for children in center-based care to reported center care provider rates. We will compare payments for children in non-center-based care, i.e., family day care and unlicensed child care, to reported family child care provider rates.)

(i) We will take the percentile that results from the per-child comparison of the actual payment to the reported market rates and compute separate State-wide averages for center-based and non-center-based care; and

(ii) We will rank the State according to the two State-wide averages and

combine the ranks to obtain the State's score on this component.

(7) For any given year, we will rank the States that choose to compete on the child care measure on each component of the overall measure and award bonuses to the ten States with the highest composite rankings.

(8) We will calculate each component score for this measure to two decimal points. If two or more States have the same score for a component, we will calculate the scores for these States to as many decimal points as necessary to eliminate the tie.

(9)(i) The rank of the measure for the FY 2002 bonus year will be a composite weighted score of the two components at paragraph (e)(1) of this section, with the component at paragraph (e)(1)(i) of this section having a weight of 6 and the component at paragraph (e)(1)(ii) of this section having a weight of 4.

(ii) The rank of the measure for the bonus beginning in FY 2003 will be a composite weighted score of the three components at paragraph (e)(2) of this section, with the component at paragraph (e)(1)(i) of this section having a weight of 5, the component at paragraph (e)(1)(ii) of this section having a weight of 3, and the component at paragraph (e)(2)(ii) of this section having a weight of 2.

(10) We will award bonuses only to the top ten qualifying States that have fully obligated their CCDF Matching Funds for the fiscal year corresponding to the performance year and fully expended their CCDF Matching Funds for the fiscal year preceding the performance year.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 205

[Docket No. MARAD–2000–8284]

RIN 2133–AB42

Audit Appeals; Policy and Procedure

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is updating our regulations on Audit Appeals; Policy and Procedure. The regulations establish audit appeal procedures for parties who contract with the Maritime Subsidy Board or MARAD. This final rule uses plain language to update the audit procedures to reflect our current practices. The intended effect of this rulemaking is to improve our audit appeals process by updating and clarifying the regulations.

DATES: The effective date of this final rule is June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Lennis G. Fludd, Office of Financial and Rate Approvals, (202) 366–2324. You may send mail to Mr. Fludd at Maritime Administration, Office of Financial and Rate Approvals, Room 8117, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Part 205 establishes the policy and procedure for parties to use when seeking redress and appeals of audit decisions involving contracts with the Maritime Subsidy Board or MARAD. Part 205 applies to contracts of the Maritime Subsidy Board and MARAD which have included, for example, the Operating-Differential Subsidy, Construction-Differential Subsidy, Capital Construction Fund, Construction Reserve Fund, and Maritime Security Program.

We published a notice of proposed rulemaking (NPRM) on November 16, 2000 at 65 FR 69279. The NPRM proposed revisions to part 205 to reflect our current practices of making audit appeals decisions. This final rule essentially mirrors the NPRM to which we received no public comments. Accordingly, parties no longer appeal to the appropriate Coast Director's office. In the past, auditors were assigned to regional offices. However, we no longer have these auditors. MARAD headquarters is responsible for overseeing audits as deemed appropriate. Such audits may be performed by the Office of Inspector General. Also, as proposed, we are eliminating the discretionary hearing afforded appellants (under § 205.2 (b)) when appealing to the Maritime Administrator. This final rule includes provisions that give the appellant 90 days from the date of receipt of the initial audit findings to file an appeal with the appropriate Associate Administrator and 30 days following the Associate Administrator's final audit appeals decision to submit an appeal in writing to the Administrator. However, the Administrator may, at his or her discretion, extend the 30 days in the case of extenuating circumstances.

Plain Language

Executive Order 12866 and a Presidential memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we revised part 205 using plain language to provide easier understanding. Our goal is to improve the clarity of our regulations.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this final rule is to update MARAD's audit appeals procedures to reflect current MARAD practices and to rewrite the regulations in plain language.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities. This final rule only updates procedures for appealing audit findings and decisions to the Maritime Administrator. Although a number of small entities may appeal audit findings, the cost of filing an audit appeal with MARAD is minimal, if any. Therefore, MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with