Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
July 23, 1997	March 16, 1998	Indiana plan §§ 884.13(c)(2) through (7), (d)(1) through (3), (f)(2), (3); emergency response reclamation program.

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[FR Doc. 98–6687 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5979–1]

Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On January 16, 1998, the EPA published a proposed rule (63 FR 2804) and a direct final rule (63 FR 2726) announcing EPA's decision to identify areas, designated under the national ambient air quality standard (NAAQS) for ozone, where the 1-hour NAAQS is no longer applicable because there has been no current measured violation of the 1-hour standard in such areas. The EPA is withdrawing the final rule due to adverse comments and will summarize and address all relevant public comments received in a subsequent final rule (based upon the proposed rule cited above).

EFFECTIVE DATE: This withdrawal of the direct final rule will be effective March 16, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–97–42, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 11, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–6776 Filed 3–13–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1305

RIN 0970 AB53

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending the requirements on eligibility, recruitment, selection, enrollment and attendance in Head Start in six areas affecting Head Start programs serving specific populations. These amendments address new language in the Head Start Act of 1994 and add a new definition for Indian Tribe; amend the definition of migrant family; add the requirement that migrant programs give priority to children from families that relocate most frequently; expand the definition of a service area for Head Start programs operated by Indian Tribes to include near-reservation designations; expand the family income criteria for Indian grantees meeting certain conditions; and amend the enrollment and reenrollment criteria for children in Head Start and for children enrolled in an Early Head Start program.

EFFECTIVE DATE: This rule is effective April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start, as authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*), is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. In addition, section 645A of the Head Start Act provides authority for programs serving low-income pregnant women and families with infants and toddlers. Programs funded under this section are referred to as Early Head Start programs. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997, Head Start served over 752,000 children through a network of 2,000 grantee and delegate agencies.

While Head Start is designed primarily to serve children whose families have incomes at or below the poverty line or who receive public assistance, the Head Start regulations permit up to ten percent of the children in local programs to be from families who do not meet these low-income criteria. Additionally, as provided in this rule, Indian Tribes meeting certain conditions may enroll additional over-income children above the ten percent limitation. The Act also requires that a minimum of ten percent of the enrollment opportunities in each program be made available to children with disabilities. These children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Purpose of the Final Rule

The purpose of this rule is to implement the new provisions in sections 637, 640, 645 and 645A of the Head Start Act (42 U.S.C. 9801 *et seq.*), as amended by Public Law 103–252, Title I of the Human Services Amendments of 1994.

Section 637 contains a new definition for ''Indian Tribe'' which has been incorporated into this rule. It also contains a new definition for ''migrant Head Start program'' which impacts on the current definition of ''migrant family'' found at 45 CFR 1305.2(l). The definition of ''migrant family'' has been amended in this rule to include families who have changed their residence from one geographical area to another in the preceding two-year period for the purpose of engaging in agricultural work.

Several technical amendments have also been made to this section. The definition of ''Head Start eligible'' at 45 CFR 1305.2(g) has been revised to state that Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are exempted from the limitation that no more than ten percent of the enrolled children may be from families that exceed the low-income guidelines. Finally, the definition of ''Income'' at 45 CFR 1305.2(i) has been revised to refer to the other sources of income contained in the definition of ''income'' in the U.S. Bureau of the Census, Current Population Reports, Series P–60–185, and as provided in the annual Family Income Guidelines issued by the Head Start Bureau.

Section 641(b) expands the definition of a community to include Indians in any area designated as near-reservation. The expanded definition of a service area for Indian Tribal Head Start grantees has been incorporated into 45 CFR 1305.3(a) in this rule to permit Tribes to include in their service areas all or parts of areas designated as near-reservation by the Bureau of Indian Affairs (BIA). In order to provide similar flexibility to Tribes which do not have a BIA designation, but which face the same need to serve Indian children and families living near the reservation, the rule also provides that a Tribe, with the approval of the Tribe's governing council, may propose to define its service area to include near-reservation areas in which Indian people native to its reservation reside. Additionally, a new paragraph (b) has been added to this section to clarify that, except in situations where an expanded service area has been approved for a Tribe, a grantee's service area may not overlap with that of other Head Start grantees.

Section 645(d) expands eligibility for participation in Head Start programs operated by Indian Tribes to permit them to enroll additional children, beyond ten percent, from families that exceed the income-eligibility guidelines, when specific conditions are met. These conditions are that (1) all children from Indian and non-Indian families living in the Tribe's approved service area that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program, including children from income-eligible families living in near-reservation communities if those communities are approved as part of the Tribe's service area; (2) the Tribe does not use funds awarded to expand Head Start services for this purpose; and (3) the program predominantly serves children from families who meet the low-income criterion. ''Predominantly'' has been defined in this rule to mean at least 51 percent of the children enrolled in the Head Start program. Tribal Head Start programs meeting these conditions must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from participation in the Head Start program. Changes have been made in 45 CFR 1305.4(b) in this rule to conform with these new provisions.

Section 645(d) also requires that the Secretary specify, in regulation, the requirements contained in this section after consultation with Indian Tribes. Three meetings with members of the Indian community were held during 1995 to obtain input in developing this section of the rule.

Section 640(k)(1) requires that the Secretary give priority to migrant Head Start programs that serve the children of migrant families whose work requires them to relocate most frequently. Accordingly, paragraph (b) under 45 CFR 1305.6, Selection process, has been expanded in this rule to include the requirement that migrant programs must give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

The regulation at 45 CFR 1305.7(c), Enrollment and re-enrollment, currently states that, once a child has been found to be income-eligible, he or she remains eligible for the current and succeeding enrollment year. This paragraph has been amended to address eligibility for infants and toddlers who are enrolled in an Early Head Start program funded under the authority of section 645A of the Head Start Act. In order to assure continuity of services once income eligibility has been determined, such children remain eligible while they are enrolled in Early Head Start. In addition, this paragraph has been amended to include specific reference to Section 645A(b)(7), which states that an agency which operates both a Head Start program and an Early Head Start program must ensure that children enrolled in Early Head Start and their families receive services through the age of mandatory school attendance of the child.

Minor technical amendments have also been made in 45 CFR 1305.4(a) and 45 CFR 1305.6(c). The amendment to 45 CFR 1305.4(a) substitutes Early Head Start for Parent and Child Center programs as an example of an exception to the requirement that children served by Head Start programs must be at least three years old. The amendment to 45 CFR 1305.6(c) references Early Head Start and Individualized Family Service Plans (IFSP) for infants and toddlers with disabilities. The IFSP is defined in 45 CFR 1304.3 of the revised Head Start Program Performance Standards.

III. Section-by-Section Discussion of the Final Rule

The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (60 FR 54648) on October 25, 1995 with a 30 day comment period. Twenty-seven letters, containing approximately 85 separate comments, were received. While most of the comments were supportive, a number expressed concerns about specific sections of the NPRM. We have carefully reviewed all of the comments received, and have modified some sections of the NPRM based upon these comments. The comments, and, as applicable, the rationale for making a change or keeping the language as used in the NPRM, are discussed below.

Section 1305.2: Definitions

One comment was received, which supported the new definition of ''Indian Tribe'' provided in paragraph (k). No changes were made in the definition.

A few comments were received regarding the amended definition of ''Migrant family'' in paragraph (m). One commenter supported the revision, stating that the change, along with the new requirement that priority be given to children from families whose agricultural work requires them to relocate most frequently, will improve the continuity of services to migrant families and children. Another commenter suggested that the definition of agricultural work be expanded beyond involvement in the production and harvesting of tree and field crops to

include subsistence activities such as fishing and hunting. We did not change the definition to incorporate this suggestion, however, because the language used conforms both with the description of agricultural work contained in the current definition of a migrant family provided at 45 CFR 1305.2(l) and with common usage of the term.

Section 1305.3: Determining Community Strengths and Needs

A few respondents supported the expanded meaning of a service area for Head Start grantees that are Indian Tribes in paragraph (a) to include areas designated as near-reservation, stating that this change was long overdue and would help improve the continuity of education for Indian children, increase access to Tribal Head Start programs, and enable children to attain a greater appreciation of their heritage.

Several commenters from Oklahoma requested clarification about how the term ''near-reservation'' would affect Indian Tribes in the State, as they reside on trust lands, not on reservations. We have not changed the language from the NPRM because we do not believe that such clarification is needed. Both the Senate and the House Reports on the Human Services Amendments of 1994 clearly state that this amendment ''* * * will also make it possible for federally recognized tribes which do not have reservations to provide Indian Head Start services, and to make it possible for consortia of small tribes on small reservations to provide Indian Head Start services to their children'' (Senate Report No. 251, 103rd Congress, 2nd Session, pp. 30–31; House Report No. 483, Part 1, 103rd Congress, 2nd Session, p. 46). Therefore, we believe that latitude can be used in interpreting the term ''reservation'' to include Indian trust lands and other such designations.

Some of these commenters also questioned the effect that expanding Tribal service areas would have on non-Tribal Head Start programs which provide services in the same counties, and suggested that the term ''near-reservation'' be limited to areas where no other Tribal or non-Tribal Head Start program is providing services. Areas of concern included the confusion that exists regarding how Tribal service areas were determined, since they were funded after the non-Tribal programs were operative; the need for processes to resolve potential conflicts that might arise in instances where overlap exists between the Tribal and non-Tribal Head Start service areas; and the need to provide advanced notice and planning time to non-Tribal grantees whose existing service areas would be affected by this provision.

While we appreciate the commenters' concerns, in this regard, we have not made any changes in the final rule. Limiting the definition of ''near-reservation'' to an area not currently served by a Head Start program would clearly go against the intent of the Congress. The reports of both the Senate and the House of Representatives state that the amendment clarifies ''* * * that children living near the reservation should be included in the Indian programs' service area'' (Senate Report No. 251, 103rd Congress, 2nd Session, p. 30; House Report No. 483, Part 1, 103rd Congress, 2nd Session, p. 46). Moreover, when the near-reservation area is located within the service area of a non-Tribal grantee, this provision enables Tribal Head Start grantees to serve only a specific population of children—Tribal children who are native to the reservation and are living within the designated near-reservation area. Finally, we would fully expect, as this provision is exercised, that discussions and negotiations between the Tribal Head Start grantee and the non-Tribal grantee whose service area includes the non-reservation area to be designated would occur as a matter of course.

One respondent expressed concern about the term ''native to the reservation,'' finding it not only vague, but also, if interpreted in its strictest sense, referring only to Indian people born on the reservation. The phrase ''socially, culturally and economically affiliated with the Tribe and its reservation'' was proposed as being more appropriate. While we understand the respondent's concern, we have not changed the language from the NPRM. The term ''native'' is commonly used to refer not only to the place of birth, but also to an association with a particular place or location and, as such, is appropriate within the context used in this regulation.

However, we have made a few clarifying changes in section 1305.3 in order to make it consistent with the changes in section 1305.4(b)(3)(ii).

Section 1305.4: Age of Children and Family Income Eligibility

This section of the NPRM generated the most comments. A number of respondents supported the new provision amending the family income eligibility requirements for Head Start programs operated by Indian Tribes to permit them to enroll additional children, beyond ten percent, from families that exceed the low-income guidelines. Commenters stated that the change would assist Indian programs in maintaining their enrollment and in expanding their programs; that many Native American children are in need of Head Start services which emphasize their native cultures even though their family incomes may not be as low as those of other families; and that meeting income guidelines is an important, but not the only, factor impacting negatively on Indian children and families. Respondents also cited factors, such as fluctuating economies in many Tribal communities, which result in Head Start enrollment patterns varying greatly from year to year, as justifying the need for the change.

Concerns were raised, however, regarding the condition in paragraph (b)(3)(i) that all children, both Indian and non-Indian, who are living on the reservation and whose families meet the low-income guidelines and wish them to be served by Head Start must be enrolled prior to increasing the number of over-income Indian children served above ten percent. Commenters stated that non-Indian families should not be served over Indian families, as Indian Head Start was established to serve Indian children; that the modification was designed to ensure that Tribal families would not be penalized for moving off welfare and going to work; and that income-eligible non-Indian families can be served by a non-Tribal Head Start program, while the only place for over-income Indian families is the Indian Head Start program. One respondent objected to the use of Indian set-aside funds to provide services to non-Indian children when Indian children who might benefit from Head Start are denied services simply because their family income is not considered to be at the poverty level; and pointed out that, on most reservations, Head Start is the only comprehensive early childhood program available.

We did not change this condition for several reasons. First, this requirement is consistent with the language of section 645(d)(1)(B) of the Head Start Act of 1994, which states, as one of the conditions which must be met before enrolling over-income children in Tribal Head Start programs, that the Tribe ''enrolls as participants in the program all children in the community served by the tribe (including a community with a near-reservation designation, as defined by the Bureau of Indian Affairs) from families that meet the low-income criteria specified under subsection (a)(1)(A).'' Moreover, income-eligible non-Indian children living on the reservation would not be eligible for the services provided by a non-Tribal Head

Start program because they reside within the service area of the Tribal Head Start program. Therefore, denying these children the opportunity to enroll in the Tribal program would preclude them from receiving Head Start services.

In order to be consistent, and for the same reasons specified in the paragraph above, we have modified paragraph (b)(3)(ii) to clarify that, prior to serving over-income Indian children, Tribal grantees that include non-Reservation areas in their service area, in addition to serving income eligible Indian children, must serve non-Indian income eligible children, whose families wish to enroll them in Head Start, in those instances in which the non-Reservation area is not served by another, non-Tribal, Head Start program. (At the time that the Tribal grantee proposes to include the non-Reservation area in its service area, ACF will make it clear whether the Tribal grantee will be required to serve non-Indian income eligible children in an unserved non-Reservation area along with Indian children.) This requirement also parallels the language in section 645(d)(1)(B) of the Head Start Act; and, similar to income-eligible non-Indian children living on the reservation, these children would be deprived of the opportunity to participate in Head Start if the Tribal program did not enroll them, since that program would be the only Head Start program in the service area. The changes in wording from the NPRM at §§ 1305.4(b)(3)(ii) and 1305.3(a) and (b) were done to provide greater clarity and consistency between these two sections.

One commenter raised the concern that, due to factors such as the lack of space at Head Start centers located in small communities and the isolated location of family homes, it may not be feasible for a Tribal Head Start grantee to serve all of the income-eligible Indian children, resulting in vacant slots and the Tribe's inability to exceed the ten percent over-income guideline. Another respondent had the diametrically opposed concern that, on large reservations where Tribal lands and communities are not contiguous, and which have a large number of income-eligible non-Indian children who meet the on or near-reservation status, a Tribe could conceivably find itself operating an Indian Head Start program with a majority of non-Indian children. We agree that, especially on ''checkerboard'' reservations, Tribes may not be serving all of the income-eligible children or may be serving a high percentage of non-Indian children. However, because Head Start is a means-based program, with family income and the age of the child being the primary determinants of eligibility, grantees must use the income guidelines established annually by the Office of Management and Budget as a principal basis for enrolling children in the program.

Several respondents questioned what assurances would be in place to document that every income-eligible family was contacted prior to enrolling over-income children. Tribal grantees would be expected to carry out the recruitment procedures required under 45 CFR 1305.5 of this regulation, and recruitment practices would be reviewed and discussed as part of the on-site monitoring process.

One respondent questioned the condition in paragraph (b)(3)(iii) that the Tribe must have the resources to enroll over-income children, and that no funds provided by the Department of Health and Human Services (HHS) to expand Head Start services may be used for this purpose, stating that the position appears to be inconsistent. If, on the one hand, HHS is acknowledging the need for greater participation by Indian children in Head Start, it would seem that the Department would also ensure that the children receive these services. Additionally, the respondent pointed out that Tribes which have developed a sound economic base predicated on gaming revenues would be at a distinct advantage, as they could afford to supplement their Head Start programs, while poorer Tribes would not have the resources to do so. As this condition was established by section 645(d)(3) of the Head Start Act of 1994, it cannot be amended or eliminated in the final rule. A minor edit was made for clarification purposes by adding the phrase ''from families whose incomes exceed the low-income guidelines.''

Another respondent expressed concern about increasing income eligibility for up to 49 percent of the children enrolled in Indian Head Start programs, while non-Indian programs may enroll only ten percent, stating that many of the families on the program's waiting list are over the income guidelines by anywhere from $100 to $1,000. Several other commenters also advocated that the authorization to exceed the ten percent over-income limitation be extended to non-Tribal Head Start grantees, such as grantees which are currently serving all of the income-eligible children in their service areas and grantees located in small rural communities, especially when there are no other comparable services available for children in those communities. While we understand these concerns, this provision is legislatively-based and, therefore, cannot be extended to non-Tribal Head Start grantees.

One respondent stated that Indian Tribes should not be limited to serving a certain percentage of low-income children but, rather, that decisions regarding participation in the local Head Start program should be made by the Tribal Head Start Policy Council and the Tribal Council. Two factors were cited as being relevant: first, this position would be consistent with the concept of Indian Self-Determination and would acknowledge Tribal sovereignty; and, secondly, it would address the primary issue that Head Start is so important for Tribal children, who, because they are raised on somewhat isolated reservation environments, need opportunities to increase their socialization skills regardless of family income.

We have not made any change in the requirement that 51 percent of the children must be from families whose incomes are below the low-income guidelines. Section 645(d)(1)(C) of the Head Start Act states, as one of the conditions that Tribal Head Start programs must meet in order to enroll over-income children beyond ten percent, that ''. . . the program predominantly serves children who meet the low-income criteria.'' We defined the term ''predominantly'' in the NPRM to mean at least 51 percent of the children enrolled in the program in order to give Tribes as much flexibility as possible. As described in the preamble to the NPRM, this position was strongly supported by the Tribal representatives who participated in the consultation sessions that were held in developing this regulation.

Section 1305.6: Selection Process

A few respondents raised concerns about the new requirement in paragraph (b) that migrant programs must give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period. One commenter expressed the concern that the ''revolving door'' that could result is more likely to be detrimental to the overall quality of migrant Head Start programs than it is to benefit the very frequently moving children who would be given priority under the proposed rule; and suggested that grantees be directed to consider whether the overall effectiveness and quality of their programs can be maintained if the centers are filled with children who would be there for only very short periods of time.

Another respondent requested guidance or clarification on the priority change; expressed the concern that children in an upstream migrant program are enrolled on a first come,

first served basis, with the pool of applicants in June being totally different from that in August or September, resulting, by September, in families who truly migrate frequently being left on the waiting list; and stated the assumption that the intent of the change is not to displace enrolled children with those who come along later but, rather, to apply the criterion as openings become available.

In response to the concerns that were raised, we have made a minor change in the wording of 45 CFR 1305.6(b) from that in the NPRM and have added the word ''also'' (''Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period''). This change is designed to more clearly convey that the frequency of a family's move is not the only criterion to be considered when selecting the children and families to be served by a migrant Head Start program. Other factors, such as the family's income and the age of the child, as well as the recruitment priorities established by the program pursuant to the requirements of 1305.3(c)(6), should also be taken into account. We also wish to clarify that it is not the intent of this requirement that children already enrolled in a migrant program be displaced by children whose parents relocated more frequently within the previous two-year period. Rather, this priority, along with the other enrollment priorities, is to be exercised as openings become available in a program.

Section 1305.7 Enrollment and Re-enrollment.

A number of commenters supported the amendment to paragraph (c) of this section in the NPRM, which extended the income eligibility of children enrolled in Early Head Start for the time that the child is enrolled in the Early Head Start program, but required that the family's income be reverified if the parents wished to enroll their child in a Head Start program serving children between the ages of three to compulsory school attendance and it had been two or more years since this had been done. Respondents stated that this amendment would enable families to be provided with an early, continuous, intensive and comprehensive child development program; that if, after a child reaches the age of three years, a family is over income, it would be preferable to provide the opportunity to participate in Head Start to another low-income family; that the continuity of services that is afforded has proven beneficial for a significant number of families and provides a readily available population on which to focus Head Start recruitment and enrollment efforts; and that it would help ensure that children of the lowest income and children at risk would have the opportunity to fill Head Start slots when otherwise they might not have the chance to do so.

One respondent stated that the proposed rule created a fair balance in terms of income eligibility for infant and toddlers, citing, among other reasons, that it would enable Early Head Start programs to track outcomes for participating children and their families, thereby enhancing the value of the findings from these demonstrations; that excluding families who experience some degree of economic success would be a disincentive for them to pursue such achievements; and that the limited alternatives for adequate and affordable day care in Early Head Start communities could affect a parent's ability to retain employment.

Another respondent recommended that the verification of family income be required of all families transitioning from Early Head Start to Head Start, regardless of how many years since this was done, as it would provide a clear break from one program to the next; simplify the tracking of when individual families need to provide income verification information; and ensure that families who did not participate in Early Head Start, but rank high in terms of need, have an equal opportunity to enroll in Head Start.

A number of commenters, however, expressed concerns about the recertification requirement, advocating that, once a child is certified for participation in Early Head Start, the certification should continue through Head Start until the age of enrollment in the public school system. Several of these commenters stated that income is only one criterion for eligibility, and that Early Head Start children and families have a continuing need for the services provided by Head Start. One respondent supportive of this position stated, based upon experience with the Comprehensive Child Development Program, that the level of intervention needed by families often intensifies as the families achieve employment. Similarly, another commenter stated that an array of issues seriously affects the achievement of wellness and self-sufficiency for families; that Head Start should be considered a program serving children from birth to age five; and that, if income is regarded as the only criterion for eligibility at mid-point in the program, a large number of very vulnerable families would immediately lose all of their needed support services. Other commenters expressed concerns that Early Head Start families found ineligible for Head Start, in addition to not receiving the continuity of services they need, would also have to seek day care services, which would be costly and would defeat the purpose of becoming self-sufficient; and that the removal of a child from Head Start for income reasons could have negative consequences on the child's psychological development, as the child could view his or her not being able to attend Head Start as a sign that he or she had failed in some way.

Several respondents proposed alternative procedures for consideration if the income redetermination policy for Early Head Start families could not be waived. One commenter suggested that these families be given priority for the available ten percent over income enrollment in Head Start programs; and another recommended that 150 percent of poverty be used as the criterion in order to acknowledge the vulnerability of families moving from dependency to self-sufficiency.

Other respondents urged that the extended eligibility for infants and toddlers enrolled in Early Head Start should also be applied to infants and toddlers enrolled in migrant Head Start programs, as these children and families also need continuity of services and should not be treated differently.

We have modified this section of the rule, primarily to clarify the eligibility of children enrolled in an Early Head Start program. In addition to the provision that children enrolled in Early Head Start remain eligible while they are in that program, we have added specific reference to Section 645A(b)(7) of the Head Start Act, which requires that an agency which operates both an Early Head Start program and a Head Start program must ensure that children and families receive services until the child reaches the age of mandatory school attendance. Regarding ensuring Head Start services, the phrase ''whenever possible'' has been added to address situations where grantees simply do not have slots, in accordance with 45 CFR 1305.4(b), to accommodate all children leaving its Early Head Start program whose parents wish to enroll them in its Head Start program. The provision on reverification of family income when a child moves from a program serving infants and toddlers to a Head Start program serving children age three and older has been retained with minor edits made for clarity.

IV. Impact Analysis

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 rule is consistent with these priorities and principles. This final rule implements the new statutory requirements established in sections 637, 640, 641, 645 and 645A of the Head Start Act (42 U.S.C. 9801 *et seq.*), as amended by Public Law 103–252, Title I of the Human Service Amendments. It adds a new definition for Indian Tribe and changes the definition of a migrant family to give priority to families that relocate most frequently. It also authorizes Head Start grantees that are Indian Tribes to include near-reservation areas when recruiting children for Head Start services and, under certain circumstances, to enroll additional children from families with incomes that exceed the low-income guidelines above the ten percent limitation. Finally, it clarifies the eligibility of children enrolled in an Early Head Start program receiving funds under the authority of section 645A of the Head Start Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires that the Federal government anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While this regulation would affect small entities, it would not affect a substantial number as we estimate that approximately 413 small businesses will be affected. This number includes Head Start migrant programs, Indian tribal programs Early Head Start programs, and delegate agencies. The approximate number of Head Start programs are 2000. For this reason, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule does not contain any information collection or record keeping requirements.

List of Subjects in 45 CFR Part 1305

Disabilities, Education of disadvantaged, Grant programs—social programs, Head Start enrollment, Preschool education.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: February 23, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR Part 1305 is amended to read as follows:

PART 1305—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. Section 1305.2 is amended by revising paragraphs (g) and (i); redesignating current paragraphs (k) through (r) as paragraphs (l) through (s); adding a new paragraph (k); and revising newly redesignated paragraph (m) to read as follows:

§ 1305.2 Definitions.

* * * * *

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a)(2) of the Head Start Act. Up to ten percent of the children enrolled may be from families that exceed the low-income guidelines. Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are excepted from this limitation.

* * * * *

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of ''income'' which appears in U.S. Bureau of the Census, Current Population Reports, Series P–60–185.

* * * * *

(k) *Indian Tribe* means any Tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

(m) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

* * * * *

3. Section 1305.3 is amended by revising paragraph (a), redesignating current paragraphs (b) through (f) as paragraphs (c) through (g), and adding a new paragraph (b) to read as follows:

§ 1305.3 Determining community strengths and needs.

(a) Each Early Head Start grantee and Head Start grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally-recognized Indian reservation. With regard to Indian Tribes, the service area may include areas designated as near-reservation by the Bureau of Indian Affairs (BIA) or, in the absence of such a designation, a Tribe may propose to define its service area to include nearby areas where Indian children and families native to the reservation reside, provided that the service area is approved by the Tribe's governing council. Where the service area of a Tribe includes a non-reservation area, and that area is also served by another Head Start grantee, the Tribe will be authorized to serve children from families native to the reservation residing in the non-reservation area as well as children from families residing on the reservation.

(b) The grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and, except in situations where a near-reservation designation or other expanded service area has been approved for a Tribe, does not overlap with that of other Head Start grantees.

* * * * *

4. Section 1305.4 is amended by revising the last sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 1305.4 Age of children and family income eligibility.

(a) * * * Examples of such exceptions are programs serving children of migrant families and Early Head Start programs.

(b)(1) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families.

(2) Except as provided in paragraph (b)(3) of this section, up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet the criteria that the program has established for selecting such children and who would benefit from Head Start services.

(3) A Head Start program operated by an Indian Tribe may enroll more than ten percent of its children from families whose incomes exceed the low-income guidelines when the following conditions are met:

(i) All children from Indian and non-Indian families living on the reservation that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program;

(ii) All children from income-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe's service area, who wish to be enrolled in Head Start are served by the program. In those instances in which the non-reservation area is not served by another Head Start program, the Tribe must serve all of the income-eligible Indian and non-Indian children whose families wish to enroll them in Head Start prior to serving over-income children.

(iii) The Tribe has the resources within its Head Start grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines without using additional funds from HHS intended to expand Head Start services; and

(iv) At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines.

(4) Programs which meet the conditions of paragraph (b)(3) of this section must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.

* * * * *

5. Section 1305.6 is amended by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 1305.6 Selection process.

* * * * *

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in § 1305.3(c)(6). Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

(c) * * * An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP) or Individualized Family Service Plans (IFSP), with services provided directly by Head Start or Early Head Start in conjunction with other providers.

* * * * *

6. Section 1305.7 is amended by revising paragraph (c) to read as follows:

§ 1305.7 Enrollment and re-enrollment.

* * * * *

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Children who are enrolled in a program receiving funds under the authority of section 645A of the Head Start Act (programs for families with infants and toddlers, or Early Head Start) remain income eligible while they are participating in the program. When a child moves from a program serving infants and toddlers to a Head Start program serving children age three and older, the family income must be reverified. If one agency operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the agency's Early Head Start program, the agency must ensure, whenever possible, that the child receives Head Start services until enrolled in school.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 24, 26, 27, 90 and 95

[WT Docket No. 97–82, ET Docket No. 94–32; FCC 97–413]

Competitive Bidding Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of the Commission's rules that were published in the **Federal Register** of January 15, 1998 (63 FR 2315).

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Josh Roland or Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document adopting uniform competitive bidding rules for all future auctions in the **Federal Register** of January 15, 1998 (63 FR 2315). This document makes minor corrections to the text of and final rules adopted in the *Third Report and Order, Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660–4685 MHz, as they appeared in the* **Federal Register** of January 15, 1998.

1. On page 2320, in the first column, the next to the last sentence of paragraph 32 is revised to include an omitted word to read as follows:

Once a small business definition is adopted for a particular service, eligible businesses will benefit if they are able to refer to a schedule in our Part 1 rules to determine the level of bidding credit available to them.

2. On Page 2328, in the second column, the text following the example in paragraph 77 is corrected to conform to § 1.2110(f)(4) to read as follows:

As we proposed in the Notice, the late fees we adopt will accrue on the next business day following the payment due date. We emphasize that at the close of non-delinquency or grace period, a licensee must submit the required late fee(s), all interest accrued during the non-delinquency period, and the appropriate scheduled payment with the first payment made following the conclusion of the non-delinquency period or grace period. Payments made at the close of any grace period will first be applied to satisfy any lender advances as required under each licensee's ''Note and Security Agreement.'' Afterwards, payments will be