(5) An individual being monitored to assess the response to or efficacy of an FDA-approved osteoporosis drug therapy.

(e) *Denial as not reasonable and necessary*. If HCFA determines that a bone mass measurement does not meet the conditions for coverage in paragraphs (b) or (d) of this section, or the standards on frequency of coverage in paragraph (c) of this section, it is excluded from Medicare coverage as not ''reasonable'' and ''necessary'' under section 1862(a)(1)(A) of the Act and § 411.15(k) of this chapter.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

B. Part 414 is amended to read as follows:

1. The authority citation for part 414 continues to read as follows:

Authority: Sections 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. In § 414.2, in the definition of ''Physician services'', a new paragraph (7) is added to read as follows:

§ 414.2 Definitions.

* * * * *

Physician services * * *

(7) Bone mass measurement.

* * * * *

§ 414.50 [Amended]

3. In § 414.50(a), in the first sentence, revise ''If a'' to read ''For services covered under section 1861(s)(3) of the Act and paid for under this part 414 subpart A, if a''.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 9, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16783 Filed 6–19–98; 3:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AB52

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to amend its procedures regarding replacement of Indian tribal grantees. The change would add provisions to implement a new statutory provision that allows Indian tribes which are Head Start grantees to identify an agency, and request that the agency be designated by the Department as an alternative grantee, when the grantee is terminated or denied refunding.

EFFECTIVE DATES: The effective date of this final rule is July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It 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 to fund programs for families with infants and toddlers, known 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 793,809 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, the Head Start Act and implementing regulations permit up to 10 percent (and more for Indian tribes under certain circumstances) of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such 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. Summary of the Final Rule

This final rule was published as a Notice of Proposed Rulemaking on December 16, 1997, in the **Federal Register** (62 FR 65778). We received no comments on the rule and therefore are issuing it as final with no changes.

The authority for this final rule is section 646 of the Head Start Act (42 U.S.C. 9841), as amended by Public Law 103–252, Title I of the Human Service Amendments of 1994. Section 646(e) directs the Secretary to specify a process by which an Indian tribe may identify an agency, and request that the agency identified be designated as the Head Start agency providing services to the tribe, if (a) financial assistance to the tribal grantee is terminated, and (b) the tribe would otherwise be precluded from providing Head Start services to its members because of the termination. The Act specifies that the regulation must prohibit the designation as Head Start grantee of an agency that includes an employee who served on the administrative or program staff of the terminated agency when that employee was responsible for a deficiency that was the basis for the termination.

The final rule:

- Adds a new definition for Indian tribe;
- Provides that an Indian tribe may identify an agency to serve as the alternative grantee at the time that it receives a notice of termination or a notice of denial of refunding;
- Allows the tribe to participate in the selection of the replacement grantee; and
- Allows the tribe a second opportunity to identify an alternative agency if the Department finds the first agency identified by the tribe is not an eligible agency capable of operating a Head Start program. If the second agency identified by the tribe is not selected as a Head Start grantee, a

replacement grantee will be designated under 45 CFR Part 1302.

III. 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 final rule is consistent with these priorities and principles. This final rule sets forth a process whereby an Indian tribe that is being terminated as a Head Start grantee may identify an alternative agency and request that the alternative agency be designated as the Head Start agency providing services to the tribe. The costs of implementing this rule are not significant.

Regulatory Flexibility Act of 1980

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. 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 these regulations would affect small entities, they would not affect a substantial number. Also, the rule will not have a significant economic impact because the only action called for is to nominate a successor grantee, which should not require more than a nominal expenditure of grant funds. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit collections of information contained in proposed and final rules published in the **Federal Register** to the Office of Management and Budget for review and approval. This final rule does not contain collection of information as defined in the Paperwork Reduction Act and implementing regulations.

List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs—social programs, Selection of grantees.

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

Dated: June 2, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons set forth in the Preamble, 45 CFR Part 1302 is amended as follows:

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The Authority citation for part 1302 continues to read as follows:

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

2. Section 1302.2 is amended by adding a definition for ''Indian Tribe'' to read as follows:

§ 1302.2 Definitions.

* * * * *

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.

* * * * *

3. A new Subpart D, containing new sections 1302.30, 1302.31, and 1302.32, is added to read as follows:

Subpart D—Replacement of Indian Tribal Grantees

§ 1302.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, or which has been denied refunding as a Head Start grantee, may identify an agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied.

(2) The tribe must identify the alternate agency to the responsible HHS official, in writing, within the time for filing an appeal under 45 CFR Part 1303.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify a suitable alternative agency, a replacement grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of 45 CFR Part 1303, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

§ 1302.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §§ 1302.10 (b)(1) through (5) and 1302.11 of this part.

§ 1302.32 Alternative agency—prohibition.

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee, and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management

standards described in the Head Start Act; and

(ii) Was the basis for the termination or denial of refunding described in § 1302.30 of this part.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

[FR Doc. 98–16826 Filed 6–23–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3968, Notice 1]

RIN 2127–AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Response to petitions for reconsideration.

SUMMARY: This action denies four petitions for reconsideration of NHTSA's final rule and correcting amendments concerning air bag warning labels. The rule requires vehicles with air bags to bear three new, attention-getting warning labels. Two of the labels replace previous labels on the sun visor and the third is a new temporary (i.e., removable) label located on the vehicle dash.

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection'', on November 27, 1996 (61 FR 60206). The rule requires vehicles with air bags to bear three new, attention-getting warning labels. Two of the labels replace previous labels on the sun visor and the third is a new removable label located on the vehicle dash. Under the final rule, the labels on the sun visors in vehicles produced after February 25, 1997, are required to state:

WARNING: DEATH or SERIOUS INJURY can occur. Children 12 and under can be killed by the air bag. The BACK SEAT is the SAFEST place for children. NEVER put a rear-facing child seat in the front (unless air bag is off)[1]. Sit back as far as possible from the air bag. ALWAYS use SEAT BELTS and CHILD RESTRAINTS.

The removable label on the dash must state:

WARNING: Children May Be KILLED or INJURED by Passenger Air Bag. The back seat is the safest place for children 12 and under. Make sure all children use seat belts or child seats.

The rule excludes vehicles with smart passenger air bags, as those devices are defined in the regulatory text made part of the final rule.[2]

Subsequent to the final rule, NHTSA published three correcting or technical amendments. On December 4, 1996, the agency published a correcting amendment allowing manufacturers of vehicles without passenger-side air bags to omit the required warning language concerning hazards to children from air bags (61 FR 64297). A second correcting amendment was issued on December 11, 1996 that allowed manufacturers of vehicles with no back seat to omit the required warning language stating that children are safest in the back seat (61 FR 57187). On January 2, 1997, NHTSA published a technical amendment correcting a typographical error by changing the word ''may'' to ''can'' in the temporary warning label (62 FR 31).

II. Summary of Petitions

NHTSA received three petitions for reconsideration of the November 27, 1996 final rule. Meyercord, a label manufacturer, petitioned for a definition of the term ''permanently affixed'' as used in the standard. The Parent's Coalition for Air Bag Warnings asked for the definition of ''smart passenger air bag'' to be refined to include air bags that do not deploy if the passenger seat is occupied by an individual weighing 130 pounds or less rather than 66 pounds or less. AAMA requested an amendment allowing the new air bag warning label and the utility vehicle rollover warning label required under 49 CFR section 575.105 to be on the same side of the sun visor.

The agency received one petition for reconsideration of the December 11, 1996 correcting amendment. AAMA asked that the required warning language regarding children and the back seat be changed from ''The BACK SEAT is the SAFEST place for children'' to ''If the vehicle has a BACK SEAT, that seat is the SAFEST place for children''. Under AAMA's petition, all vehicles, including those without a back seat, would be required to use its proposed language in the warning labels.

III. Discussion of Issues

A. Petitions for Reconsideration of the November 27, 1996 Final Rule

1. Meyercord

Meyercord petitioned the agency to ''require that the air bag warning graphics pass specifications to ensure that the important message does in fact remain ''permanently affixed.'' Meyercord maintains that there is consensus in the automotive industry that labels which are ''permanently affixed'' ''should last the life of the vehicle and that any attempt to remove it would result in the base material being cut or gouged in some way.'' According to Meyercord, only heat transfer graphics can meet this definition of ''permanently affixed''. Sticker graphics, Meyercord avers, can be peeled away. The company included in its petition a photograph of a sun visor with a peeling sticker graphic and Ford's 15-page Engineering Material Specification No. WSS–M7G7–B1, which it believes will assist the agency in defining a level of adhesiveness.

Meyercord's petition is denied. Following its practice in other NHTSA regulations where the term ''permanently affixed'' is also used, NHTSA did not define ''permanently affixed'' when it added the term to Standard No. 208. NHTSA has not found a definition necessary in those other regulations. When asked, NHTSA has issued an interpretation of the term.[3] Specifically, NHTSA has said that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions.

NHTSA does not know the context under which the label depicted in the photograph submitted by Meyercord began to peel away from the sun visor. NHTSA surmises that the vehicle was probably within its expected lifespan, given the time when such labels were first required on motor vehicles. Absent the existence of abnormal conditions in the history of the vehicle, the photograph might be an indication of a noncompliance with Standard No. 208. In such an instance, the existence of a performance test is not necessary to enforce the requirement for permanently affixing a label.

[1] Parenthetical text is only appropriate for vehicles with a factory-installed on-off switch.

[2] While the final rule includes a definition of ''smart passenger air bags'', the agency is currently working on a rulemaking which will replace this definition with a definition of ''advanced air bags''.

[3] *Cf.*, letter to Hank Thorp, Inc., August 7, 1973 (FMVSS No. 211); letter to Joseph Lucas North America, Inc., October 6, 1975 (FMVSS No. 106).