Subpart 3736—Mining Operations

■ 28. Amend § 3736.2 by revising the second sentence of paragraph (b) to read as follows:

§ 3736.2 Hearing; notice of protest.

* * * * *

(b) * * * Such notice, accompanied by the filing fee for notice of protest of placer mining operations found in the fee schedule in § 3000.12 of this chapter, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. * * *

* * * * *

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

■ 29. The authority citation for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3816—Mineral Locations in Reclamation Withdrawals

■ 30. Revise the last sentence of § 3816.2 to read as follows:

§ 3816.2 Application to open lands to location.

* * * Each application must be accompanied by the filing fee for application to open lands to location found in the fee schedule in § 3000.12 of this chapter.

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

■ 31. The authority citation for part 3830 continues to read as follows:

Authority: 18 U.S.C. 1001, 3571; 30 U.S.C. 22 *et seq.*, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1701 *et seq.* ; 44 U.S.C. 3501 *et seq.*; 115 Stat. 414.

Subpart D—BLM Service Charge and Fee Requirements

■ 32. Amend § 3830.21 by revising paragraph (h) to read as follows:

§ 3830.21 What are the different types of service charges and fees?

* * * * *

(h) Recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands (part 3838).	The filing fee for recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands found in the fee schedule in § 3000.12 of this chapter.	No.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 98

RIN 0970–AC29

Child Care and Development Fund Error Rate Reporting

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

ACTION: Final rule.

SUMMARY: This final rule revises the Child Care and Development Fund (CCDF) regulations to provide for the reporting of error rates in the expenditure of CCDF grant funds by the fifty States, the District of Columbia and Puerto Rico. The error rate reports will serve to implement provisions of the *Improper Payments Information Act of 2002 (IPIA)* and the *President's Management Agenda (PMA)'s* goal of ''Eliminating Improper Payments.''

DATES: Effective October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Cheryl Vincent, Child Care Program Specialist, Child Care Bureau, 1250 Maryland Ave., SW., 8th Floor, Washington, DC 20024, telephone (202) 205–0750, e-mail *cheryl.vincent@acf.hhs.gov.*

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I. Background

This final rule adds a new subpart to the Child Care and Development Fund (CCDF) regulations that requires States, the District of Columbia and Puerto Rico to employ a case review process in calculating CCDF error rates in accordance with an error rate methodology established by the Secretary of Health and Human Services (the Secretary). This methodology is specified in this rule and associated information collection forms and instructions. The final rule requires States, the District of Columbia and Puerto Rico to report specified information regarding errors to the Department of Health and Human Services. A discussion of comments received in response to the publication of a Notice of Proposed Rulemaking (NPRM) on March 2, 2007 (72 FR 9491) may be found below in the preamble. This final rule is not substantively different from the NPRM; however, minor technical changes have been made to address concerns raised by some commenters.

A. Child Care and Development Fund (CCDF)

CCDF provides Federal funds to States, Territories, Indian Tribes and tribal organizations for the purpose of assisting low-income families, including families receiving or transitioning from the Temporary Assistance for Needy Families program (TANF), in the purchase of child care services, thereby allowing parents to work or attend job training or an educational program. States and Territories also must spend no less than four percent of their CCDF allotment on expenditures to improve the quality and availability of child care. CCDF is provided to States, Territories and Tribes—there is no provision for direct funding to individual families or providers.

Federal law establishes eligibility criteria for families receiving CCDF assistance; however, States and Territories administering CCDF funds may impose more restrictive eligibility standards. Regulations governing CCDF are codified in 45 CFR parts 98 and 99, and the Federal definition of a child's eligibility for child care services is set forth in 45 CFR 98.20. This description includes eligibility requirements related to a child's age, a child's special needs or protective services status, family

income and parent's work, training or educational activity. Lead Agencies of the CCDF Program, which are the State, territorial or tribal entities to which CCDF grants are awarded and that are accountable for the use of the funds provided, have established policies and procedures that vary considerably across and even within jurisdictions, including, but not limited to, stricter income limits, special eligibility or priority for families receiving TANF and eligibility that differs for a child with special needs. All clients seeking child care assistance supported by CCDF funds must undergo an eligibility determination process when they initially apply, and all Lead Agencies have defined a process for verifying information submitted in the application. Eligibility determination affects many other aspects of the program, including provider payment rates, authorized hours of care and a family's co-payment responsibility.

Section 658E of the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9858c) and 45 CFR 98.52 limit expenditures by States and Territories for the costs of administering the CCDF program to no more than five percent of the State's or Territory's aggregate expenditures from a fiscal year's allotment of CCDF funds. Various costs that are considered an integral part of service delivery are excluded from the five percent administrative cap, including eligibility determination and redetermination and the establishment and maintenance of computerized child care information systems.

B. Summary of the Statutory and Administrative Directives To Measure Improper Payments

The Improper Payments Information Act of 2002 (IPIA) (31 U.S.C. 3321 note) requires Federal agencies to identify programs that are vulnerable to improper payments and to estimate annually the amount of underpayments and overpayments made by these programs. An improper payment, as defined by the IPIA, is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative or other legally applicable requirement. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or service). An improper payment includes any payment that was made to an ineligible recipient or for an ineligible service. Improper payments also are duplicate payments, payments for services not received and payments that do not account for credit for applicable discounts.

According to the IPIA, Federal agencies must report on the actions they are taking to reduce improper payments if the estimated amount of improper payments for an activity or program exceeds $10 million and 2.5 percent of program payments. CCDF has been identified by the Office of Management and Budget (OMB) as a program susceptible to significant erroneous payments and for which improper payment information is required to be reported under the IPIA. This report must include a discussion of the causes of improper payments, what actions Federal agencies have taken to correct those causes and the results achieved. Federal agencies also must state whether they have the information systems and other infrastructure needed to reduce improper payments and, if not, what resources they have requested in their budget submissions. Finally, Federal agencies must report on what steps they have taken to hold managers accountable for reducing improper payments. The IPIA may be downloaded at: *http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR04878:TOM:/bss/d107query.html*.

The Executive Branch also has worked to address the improper payments issue. The President's Management Agenda (PMA)'s goal of ''Eliminating Improper Payments'' promises to establish a baseline of the extent of improper payments and to work with agencies to set goals to reduce improper payments for each program. The anticipated result of this effort is greater accuracy in benefit and assistance programs, which will enable programs to serve additional eligible recipients. The PMA may be downloaded at: *http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf.*

The modifications in this final rule are designed to meet the requirements of the IPIA as well as to meet the PMA's goal of ''Eliminating Improper Payments.''

C. Error Rate Methodology

The methodology that is implemented in this final rule is based on a methodology the Child Care Bureau developed and field-tested in 2005 in partnership with four States that volunteered to participate in a pilot study (Arkansas, Colorado, Illinois and Ohio). This methodology focused on administrative error associated with client eligibility and improper authorizations for payment. At the conclusion of the pilot, it was determined that a version of the tested methodology would be an appropriate tool for calculating error rates related to client eligibility. A pilot study of additional States (Florida, Kansas, New Jersey, Oregon, and West Virginia) was completed in 2007. The final reports on the error rate methodology pilots may be downloaded electronically at: *http://www.acf.hhs.gov/programs/ccb/ccdf/ipi/ipi.htm.*

Although this final rule is broad enough to encompass reporting on all types of errors, the initial methodology and reporting requirements will focus on administrative errors associated with client eligibility and improper authorizations for payment, as described in more detail in the preamble and accompanying information collection forms and instructions associated with the rule (please refer to the section discussing the Paperwork Reduction Act below).

During the initial information collection, States, the District of Columbia, and Puerto Rico will evaluate both the frequency with which errors occurred and the amount of improper authorization for payment. ACF will use the improper authorization for payment error rates and amounts for each State, the District of Columbia, and Puerto Rico to compute a national improper authorizations for payment rate and amount that will be annually reported in the HHS' Performance and Accountability Report (PAR) beginning with the Fiscal Year 2008 PAR.

We will use a three-year rotational cycle to measure improper authorizations for payment in CCDF programs in the States, the District of Columbia, and Puerto Rico. Out of this group, we have selected 18 to measure in the first year of each cycle and 17 to measure in each of the remaining two years. The result is that each State, the District of Columbia, and Puerto Rico will be measured once, and only once, every three years. This rotation allows jurisdictions to plan for the reviews because they know in advance in which year they will be measured. States, the District of Columbia, and Puerto Rico have been randomly assigned using the following methodology. First, each entity was stratified by the 10 ACF regions, with the regions randomly ordered. Then within region each group was sorted by caseload, from the most cases to the least cases. Every third State (including the District of Columbia and Puerto Rico) on the list was selected, using a random start number between one and three the first year. After removing those selected for the first year from the frame, a second random start was drawn between one and two and every other State (including the District of Columbia and Puerto Rico, if they remained) was selected for the second

year. The third year includes those not selected in year one or year two. This sampling approach yielded a mix of county-administered and State-administered programs and programs serving both large and small numbers of children each year. A list of States (including the District of Columbia and Puerto Rico) assigned to each review year can be found in the information collection instructions.

D. Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on Friday, March 2, 2007 (72 FR 9491) with a 60-day public comment period. As discussed later in this preamble, we received comments from 19 entities, including State child care administrators, national child care advocacy groups, and other organizations.

II. Statutory Authority

This regulation is being issued under the authority granted to the Secretary by Section 658I of the CCDBG Act (42 U.S.C. 9858g) and in accordance with the IPIA (31 U.S.C. 3321 note).

III. Summary of the Existing Regulations

Under CCDF regulations, ACF employs several methods to gather the information from States, the District of Columbia, and Territories needed to comply with the statutory requirements of the CCDBG Act and to efficiently oversee the administration of the CCDF program. States and Territories must submit plans every two years detailing their intentions for implementing programs under 45 CFR 98.17. Pursuant to 45 CFR 98.70, States and Territories also must collect monthly case-level reports (which may be submitted monthly or quarterly) and submit annual aggregated reports on services provided through all CCDF grant funds. Finally, States and Territories are required to submit quarterly reports on estimates and expenditures in conjunction with 45 CFR 98.65.

45 CFR 98.65(a) requires Lead Agencies to have an audit conducted after the close of each program period in accordance with OMB Circular A–133 and the Single Audit Act Amendments of 1996 and 45 CFR 98.67(c) requires Lead Agencies to have fiscal control and accounting procedures sufficient to establish that funds have been expended appropriately. Further, the regulations at 45 CFR 98.66 provide that ''[a]ny expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.'' However, prior to this final rule statute and regulations governing CCDF did not require States and Territories to systematically measure or report on errors committed in the administration of CCDF funds.

IV. Provisions of Final Rule

While retaining the provisions governing CCDF Lead Agency audits, financial reporting requirements, and fiscal requirements (located in 45 CFR 98.65 and 45 CFR 98.67), this final rule adds a new Subpart K—Error Rate Reporting to require CCDF Lead Agencies of the fifty States, the District of Columbia and Puerto Rico to measure, calculate and report error rates to the Department of Health and Human Services. This reporting must be in accordance with an error rate methodology established by the Secretary, as summarized in this final rule and detailed in the associated information collection forms and instructions. States, the District of Columbia and Puerto Rico are required to report specified information regarding errors every three years and to report on strategies for reducing the error rate. The rule also requires States, the District of Columbia and Puerto Rico to set target error rates for the next cycle. The first cohort of States (including Puerto Rico) subject to the final regulations will need to complete their reviews and submit their data to ACF on or before June 30, 2008.

Requirements under Subpart K apply only to the fifty States, the District of Columbia and Puerto Rico. American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam and the Tribes are exempted from the requirements of this rule. We do not believe that the benefits of the error rate data obtained from these exempted Territories and Tribes justify the costs of compliance with the regulation, which would require a much greater portion of child care resources relative to the States, the District of Columbia and Puerto Rico. However, we encourage exempted Territories and Tribes to comply voluntarily with the requirements of the rule or to create their own methods and strategies for identifying and reducing improper payments. Additionally, should funding and provision of services change in these exempted Tribes and Territories, we will consider removing the exemption through the notice and comment rulemaking process.

Under Section 98.100(b) in the final rule, States, the District of Columbia and Puerto Rico are required to prepare a report calculating ''error rates.'' At this time—and consistent with our initial focus on client eligibility errors—we are operationalizing these requirements by asking States, the District of Columbia, and Puerto Rico to measure only administrative errors in eligibility determination and improper authorizations for payments to subsidy recipients rather than improper payments made to subsidy recipients.

As stated in the proposed rule and detailed in the associated information collection forms and instructions, the initial error rate methodology includes: (1) *Sample Selection:* A sample of 271 (or 276) cases will be selected by each State using a sampling frame based on the child population served by eligibility offices for each month of the designated Federal Fiscal Year to achieve a 90% confidence level +/− 5%; (2) *Record Review Worksheet:* A template of a record review worksheet will be customized by each State so its worksheet conforms to the specifics of State policies and procedures. The worksheet captures the detail for each element of eligibility, the benefit calculation as documented by the agency, the amount of the subsidy authorized, and any resulting errors; (3) *Case Review:* State reviewers will conduct case record reviews and collect key pieces of information, including administrative errors occurring during the review month, cause of improper authorization for payment, total amount of improper authorizations for payment during the review month, and total amount of authorizations during the review month; (4) *Error Measures Calculation:* States, the District of Columbia, and Puerto Rico will prepare a report calculating percentage of cases with an error, percentage of cases with an improper authorization for payment (expressed as the total number of cases with an improper authorization for payment as compared to the total number of cases), percentage of improper authorizations for payment (expressed as the total amount of improper authorizations for payment compared to the total dollar amount of authorizations made), average amount of improper authorization for payment, and the estimated annual amount of improper authorizations for payment; (5) *Federal Oversight and Monitoring, and Ongoing Technical Assistance:* The Child Care Bureau will provide ongoing oversight, monitoring, and technical assistance.

Under CCDF regulations at 45 CFR 98.52, Lead Agencies are prohibited from spending more than five percent of the aggregate CCDF funds expended by the Lead Agency from each fiscal year's allotment for administrative activities. Section 658E(c)(3)(C) of the CCDBG Act

(42 U.S.C. 9858c(c)(3)(C)) and the accompanying Conference Report (H.R. Conf. Rep. 104–725) specify that the costs of providing direct services are to be excluded from any definition of administrative costs. The Conference Report specifically identified eligibility determination and redetermination, reviews and supervision of child care placements and establishment and maintenance of computerized child care information systems as ''integral part[s] of service delivery'' that ''should not be considered administrative costs.'' Therefore, provided the focus of the error rate calculations and reports continue to focus on client eligibility, costs to Lead Agencies of conducting case reviews and preparing error rate reports shall be considered a part of service delivery and excluded from administrative costs subject to the five percent administrative cap. Further, any costs incurred by a Lead Agency in complying with this regulation that are directed toward establishing or improving child care information systems also shall be excluded from administrative costs subject to the five percent administrative cap.

Should an improper payment related to specific cases that were included in the sample during the case review process be identified, these funds are subject to existing disallowance procedures for misspent funds as set forth at 45 CFR 98.66 of CCDF regulations. Extrapolations of estimated improper payments derived from random sampling of total cases are not subject to disallowance.

Pursuant to CCDF regulations at 45 CFR 98.60(i), a Lead Agency is required to recover child care payments that are the result of fraud. The Lead Agency has discretion as to whether to recover misspent funds that were not the result of fraud, such as in cases of administrative error. Improperly spent funds are subject to disallowance regardless of whether the State pursues recovery.

In the event that improper payments identified through the case review process are recovered, 45 CFR 98.60(g) provides that such payments shall (1) If received by the Lead Agency during the applicable obligation period (described in 45 CFR 98.60(d) & (e)), be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or (2) if received after the end of the applicable obligation period, be returned to the Federal government.

Section 658F(a) of the CCDBG Act (42 U.S.C. 9858d(a)) makes clear that CCDF funding is not an entitlement to any child care provider or recipient of child care services. As a result, detection of an underpayment in any specific case during the error rate review process does not create an entitlement to that individual to a particular service or benefit. Nothing in this final rule should be construed to create a right requiring the States, the District of Columbia or Puerto Rico to remedy any individual, even if a payment error in the form of an underpayment has been made.

A. Consultation With States, Territories and Other Organizations

The Child Care Bureau has consulted with States, the District of Columbia and Territories since 2003 on different approaches to addressing improper payments and has field tested an error rate methodology in nine volunteer pilot States. Through quarterly conference calls, workshops at annual State Administrators Meetings and an Improper Payments survey, the Child Care Bureau has engaged States and Territories in conversations about strategies to identify, measure, prevent, reduce and collect improper payments. The Child Care Bureau also has been in contact with national organizations such as the American Public Human Services Association, the National Association for Program Information and Performance Measurement and the United Council on Welfare Fraud through conferences, meetings and conference calls regarding strategies to address improper payments.

B. Discussion of Comments

In response to the proposed rule, comments were received from 19 State child care administrators, national child care advocacy groups, and other organizations as follows.

National Error Rate Does Not Reflect Block Grant Flexibility

Comment: Several commenters questioned the practical application of a uniform national error rate to a block grant program, given the differences in programmatic activity that result from the flexibility inherent in CCDF. Commenters felt it would not be appropriate to establish a national error rate, since CCDF eligibility requirements vary greatly across States meaning that the difficulty of achieving accuracy in determining client eligibility varies from State to State. Commenters recommended that the final rule be limited to review of Federal requirements to reflect a true national error rate.

Response: We acknowledge concerns about establishing a national error measure for the CCDF program, and understand that States differ greatly in their eligibility requirements which may lead to a wide range of error rates. A principle goal of CCDF set forth in Section 658A of the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9858, *et seq.*), is to ''Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State.'' As a result, there is significant variation in how CCDF is implemented across the country.

However, the methodology focuses on administrative error associated with client eligibility and improper authorizations for payment. A principal reason for focusing on client eligibility is that, while the methods used to determine initial and ongoing client eligibility are not uniform across States, Territories and Tribes, all States, Territories and Tribes must have procedures in place for parents to apply for child care services and some system to initially determine and periodically re-determine eligibility. Also, determining client eligibility is the first step in the child care subsidy process and therefore affects the administration of the entire program.

The primary purpose of this final rule is to improve State administration of the CCDF program. We believe that the State error measures will be useful for improving overall program integrity and that it will help inform program administrators about which quality control or other initiatives will be most effective in reducing error rates and improper authorizations for payment in their own programs. At the same time, the Improper Payments Information Act (IPIA) requires a national-level measure of improper payments, which will provide a broader perspective of the CCDF program as it is administered across States.

Finally, we do not believe limiting the rule to only Federal requirements would be useful for the purpose of identifying and reducing improper payments. Federal law establishes broad eligibility criteria for families receiving CCDF assistance; however, States, Territories, and Tribes administering CCDF funds may impose more restrictive eligibility standards. States must describe the basis for determining family eligibility in their CCDF Plan and are responsible for ensuring that the program complies with the approved Plan and all Federal requirements. States are accountable for properly implementing the eligibility policies and procedures they have in place.

Short Implementation Timeframe

Comment: A number of commenters expressed concerns about the short implementation timeframe for the proposed rule. Commenters felt that States included in the first cycle of the review process would not have adequate lead time to secure funding from their State legislatures, hire and train staff, prepare and enhance their automated systems, and ensure access to archived records.

Response: The Improper Payments Information Act (IPIA) requires Federal agencies to submit estimates of improper payments to Congress in accordance with guidance prescribed by the Office of Management and Budget (OMB). The timeframe included in the rule is based on the requirement that HHS report a national improper authorizations for payment rate and amount for the CCDF program in the HHS Performance and Accountability Report (PAR) beginning with the Fiscal Year 2008 PAR. We recognize that the timeframe is expedited and will present challenges for some States. The Child Care Bureau intends to assist States by providing significant technical assistance and training to help them implement the error rate review process within the prescribed timeline.

Comment: Three commenters noted that under the proposed timeframe some States will be participating simultaneously in Medicaid's Payment Error Rate Measurement Project (PERM) and the CCDF error rate reporting cycle. Commenters felt that concurrent operation of these projects would create an extraordinary work burden, and asked that States not be subject to error rate reporting by multiple Federal agencies within the same year.

Response: States were randomly selected to participate in a three-year rotational cycle to arrive at a valid nationally representative improper authorizations for payment rate and amount for child care. The sampling approach yielded a mix of county-administered and State-administered programs and programs serving both large and small numbers of children each year. Selectively excluding States would undermine this methodology. The rotational cycle also allows jurisdictions to plan for future reviews because they know in advance in which year they will be measured.

Negative Fiscal Impact on States

Comment: Several commenters argued that the proposed rule would have a wide range of negative fiscal and operational impacts on States and that the additional costs of conducting the proposed activities would compromise the amount of funding available for program services.

Response: This final rule aims to identify and reduce errors and improper payments in the administration of CCDF funds, thus ensuring that the program is operated as efficiently and fairly as possible. Because States, Territories, and Tribes receive a fixed allotment of CCDF funds regardless of the number of children served, fewer improper payments translates into more funds for use in assisting eligible low-income families in purchasing child care services, providing comprehensive consumer education to parents and the public and improving the quality and availability of child care. In addition, we have tried to minimize the fiscal impact of conducting reviews by limiting the frequency of reporting to every three years and by allowing for sampling of cases as part of the review of case records.

Comment: Several commenters felt that the annual burden estimate included in the proposed rule did not reflect the full implementation cost of conducting the error rate review. Commenter's cited additional travel and mailing costs, staff hiring and training, updating automated computer systems, and costs associated with accessing hard copy records for the review process. Commenters found the estimated cost in the NPRM of approximately $150,000 for a single jurisdiction to conduct its case reviews and prepare the required reports to be insufficient. One commenter cited that travel costs alone would exceed the federally estimated cost. Commenters estimated the full implementation cost as ranging from 40 percent higher to as much as four times the proposed $150,000.

Response: We agreed with these comments and have revised the annual burden estimates for conducting the error rate case review and preparing the three required reports in compliance with the final rule. The cost estimate analysis was increased to reflect comments that costs of preparation, training, programming automated systems, and other support activities associated with the information collection forms were underestimated in the proposed rule. States vary greatly in their systems and personnel capacity and the burden of implementing the final rule may disproportionately impact some States more than others. The revised annual burden estimates account for these differences among States and reflect average burden. However, as States implement this methodology, we encourage all States to keep track of the burden associated with these reporting requirements—in terms of both time and monetary cost—and to provide us comments through the Paperwork Reduction Act information collection process so that we can update our estimates if necessary.

Distinction Between Improper Payments and Improper Authorizations for Payment

Comment: Several commenters questioned the inconsistency between the information collection forms and instructions and the regulatory language in the proposed rule, which distinguished between improper authorizations for payment and an actual improper payment. Commenters noted that the forms and instructions require States to report on the ''improper authorizations for payment,'' while the definition of ''improper payment'' given in Section 98.100(d) of the rule defines improper payment as an actual payment. Commenters noted that the broad language of the proposed rule would allow for the imposition of more extensive review and reporting requirements than discussed in the preamble and included in the information collection forms and instructions. Commenters recommended that we amend the rule to define ''improper payment'' consistently with the forms and instructions.

Response: This deviation between the rule and information collection forms and instructions is intentional. The terms ''error'' and ''improper payment'' have purposefully been defined broadly enough in the final rule to encompass reporting on all possible types of errors and improper payments, and are consistent with the definitions used in the Improper Payments Information Act (IPIA). Section 98.100 paragraph (c) defines the term ''error'' and paragraph (d) defines the term ''improper payment.'' The important distinction between the two terms is that every improper payment is the result of an error however, not every error results in an improper payment. Error is defined as any violation or misapplication of statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds, regardless of whether such violations result in an improper payment. An improper payment is defined to mean any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative or other legally applicable requirements governing the administration of CCDF grant funds, including any payment of

CCDF grant funds to an ineligible recipient, any payment of CCDF grant funds for an ineligible service, any duplicate payment of CCDF grants funds and payments of CCDF grant funds for services not received.

At this time, we are implementing this rule narrowly, collecting data from States on improper authorizations for payment due to administrative error in client eligibility determination because we believe that improper authorizations for payment are closely related to improper payments. The forms and instructions related to the regulation deal only with these errors. (**Note:** More information on the forms and instructions that accompany this regulation can be found in the Regulatory Impact Analysis—Paperwork Reduction Act section of this rule.)

Eligibility determination and payment authorization are the first steps in the child care subsidy process and errors made at this stage are likely to affect the administration of the entire program. However, the regulatory language in the final rule provides flexibility to allow for changing or expanding the error rate methodology if future circumstances warrant doing so. Should we decide to revise or broaden the examination of ''error'' and ''improper payment'' we would provide advance notice and an opportunity for public comment through the information collection process.

Comment: Several commenters asked that we clearly differentiate between administrative errors and errors involving the independent verification of eligibility and authorization data elements. Commenters recommended that we amend the language in the proposed rule limiting improper authorizations for payment— ''based on an administrative misapplication of statutory or other legally applicable requirements.''

Response: We believe that the review of administrative errors in eligibility determination should be based on policies States have in place. If a State has established an eligibility verification policy that requires caseworkers to independently verify eligibility through a phone call or otherwise, then this should be documented and supported in the case record. The error rate record review process itself does not require reviewers to independently verify eligibility or other authorization data elements.

Comment: A few commenters were concerned that the initial error rate methodology's focus on eligibility determination and authorization for payment does not mirror administrative procedures for many States in which clients are deemed eligible for CCDF and authorized for a range of services and a subsidy rate, but then choose a particular service from that range and receive actual payment based on the appropriate applied subsidy.

Response: We acknowledge that State policies regarding eligibility determination and subsidy payment vary in the extent to which they are interrelated. As long as the client's eligibility and authorization for payment is correctly determined there is no error. If the authorized payment range properly reflects the client's eligibility status and need for care there is no improper authorization for payment. The initial error rate methodology is focused on client eligibility, and authorization to receive a subsidy is indicative of whether the eligibility determination process was properly conducted. Further, we received comments from a number of States indicating that their administrative procedures do align with the error rate methodology. These commenters said that there was not a distinction between an authorization for payment and actual payment in their processing of claims for service, and thus there would be little additional value to expanding the measurement of improper payments beyond improper authorizations for payment.

Multiple and Combined Funding Sources for Child Care

Comment: Several commenters requested that the proposed rule apply only to those cases reported on the ACF–801 reporting form to define the sample population as only those cases paid for with CCDF and pooled funds. Commenters were concerned that purely State-funded child care services also would be accountable to the proposed rule.

Response: This final rule applies to all child care cases served with CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the Temporary Assistance for Needy Families Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE) Funds. In States that cannot separately report on cases served with CCDF funds only, the rule applies to cases served by all child care funds pooled with CCDF. For many States, this will correspond to those cases reported on the ACF–801 reporting form.

Comment: One commenter suggested that we allow States that pool CCDF and non-CCDF funds to use the percentage of total CCDF expenditures to calculate an estimated amount of CCDF funds used to provide child care subsidies impacted in the sample.

Response: We recognize that many States do not serve children exclusively with CCDF funds. Many States combine CCDF and non-CCDF funds to serve the child care needs of their State—referred to as ''pooling'' funds—and may be unable to isolate those cases served only by CCDF funds. We have modified the information collection forms and instructions to allow States that pool child care funds (and correspondingly draw their sample for the error rate review from the universe of cases served by these combined funds) to multiply the total pooled child care funds by a percentage that reflects the proportion of these funds that are CCDF funds (also referred to as a ''pooling factor'') when calculating the total estimated amount of annual improper authorizations for payment. This will more accurately reflect the amount of improperly spent CCDF funds in those States that combine CCDF with non-CCDF funds to provide child care services.

Anticipated Problems With Sampling Methodology and Record Review

Comment: Some commenters thought that the proposed sampling frame would be a burden for States with smaller caseloads and suggested the sample size be determined based on the universe of cases in a particular State.

Response: Under § 98.101, Case Review Methodology, the error reports required by this final rule must be based on comprehensive reviews of case records conducted in accordance with the methodology detailed in this final rule and associated information collection forms and instructions. In determining which case records to review, States, the District of Columbia, and Puerto Rico must select a random sample of 271 (or 276) child records to achieve the calculation of an estimated annual amount of improper authorizations for payment with a 90 percent confidence interval of +/−5.0 percent. We believe this sampling frame will achieve statistically valid data with the desired confidence levels. Sampling the same number of cases, regardless of caseload size, standardizes the methodology across States and reflects accepted practice for achieving the required precision.

Comment: Several commenters opposed the requirement to draw the sample of cases from 12 monthly sampling frames and suggested that States be allowed to choose a particular month from which to draw the sample for the error rate review.

Response: We believe the sampling methodology included in the rule

reduces the risk of bias in annual estimates associated with selection of the sample in particular months and accounts for variation that may occur throughout the year. If States were to review less than twelve months for the sampling frame, the resulting error rate would not be representative of the entire year.

Comment: A few commenters pointed out that some States do not have statewide data systems, particularly States that are county-administered, or do not have a system advanced enough to support the sampling methodology in the proposed rule. Commenters recommended that States be given flexibility to define the case review process based on the availability of data and case file information systems that exist in each State.

Response: A standard sampling methodology is necessary to ensure integrity and promote uniformity across States—particularly since State results will be used to calculate a national measure for improper payments. We understand automated systems capacity varies across States and that some States may have more difficulty in obtaining their sample and associated case records. For this reason we have increased the burden estimate associated with the information collection forms to reflect additional costs faced by States to implement the sampling methodology.

Comment: A number of commenters thought that accessing hard copy case records to conduct the record review process would require State staff to travel long distances in order to pick-up and/or review records or would require the case records to be mailed to the review location and require substantial postal costs. Commenters felt that there should be consideration in the proposed rule allowing for incomplete reviews due to inability to locate case records.

Response: We recognize that States have different recordkeeping procedures and may face additional costs to locate records for the review. As previously stated, we have tried to build these costs into the revised annual burden estimate in the final rule. The sampling process requires States to select at least three alternate replacement cases that can be used in the event a case cannot be reviewed for some valid reason.

Comment: Several commenters were unclear about the unit of measurement for drawing the sample. Section 98.101(a) of the proposed rule refers to both ''case records'' and ''child records.'' Commenters recommended the rule and information collection forms and instructions allow States flexibility to define the term ''case'' to be a child or a family.

Response: For initial implementation of the error rate methodology we intend for the error rate review to apply to child records and this is stated in the information collection forms and instructions. States do not have the flexibility to determine whether the case record should be based on the child or the family. However, consistent with the broader intent of the final rule, the regulatory language at 98.101(a) continues to use the more inclusive term ''case record'' to allow for future adjustments of the error rate methodology. The reference to ''child record'' also included at 98.101(a) has been changed to ''case record'' to eliminate any confusion.

Disallowance and Recovery of Funds

Comment: Many commenters did not understand the reference to disallowed funds in the proposed rule, given that the preamble and the information collection forms and instructions clearly stated the focus of the review to be on improper authorizations for payment. Commenters were further concerned that interest would be owed to the Federal government on disallowances. Commenters thought that as long as the case review is limited to improper authorizations for payment it would be incorrect to assume that an improper payment in the amount of the authorization resulted, meaning States would be unjustifiably penalized.

Response: In order for child care subsidies to be received by eligible recipients, States need to accurately authorize payment for child care services. It is our assumption that an improper authorization for payment will result in an improper payment which will be subject to a disallowance. However, if a State can demonstrate that an authorized improper payment was not actually made, that dollar amount would not be disallowed. Any actual improper payments related to specific cases in the sample are subject to disallowance in accordance with procedures set forth in 45 CFR 98.66 of the CCDF regulations. Section 98.66(3)(j) states that disallowances are subject to interest from the date of notification of the disallowance. When an improper authorization for payment is identified during the case record review process, the ACF regional office will work with the State to determine if an improper payment was made and the amount of the disallowance, if appropriate, using its customary procedures.

Comment: A few commenters pointed out that if the proposed error rate reporting cycle concludes after the grant year for which an obligation is paid to a recipient, States that recover payments may be acting after the obligation period, and thus must return the money to the Federal government. Commenters recommended that any payments recouped through the proposed rule be committed to program reinvestment and error rate reduction efforts.

Response: Pursuant to CCDF regulations at 45 CFR 98.60(i), a Lead Agency is required to recover child care payments that are the result of fraud. The Lead Agency has discretion as to whether to recover misspent funds that were not the result of fraud, such as in cases of administrative error. Improperly spent funds are subject to disallowance regardless of whether the State pursues recovery.

In the event that improper payments identified through the case review process are recovered, 45 CFR 98.60(g) provides that such payments shall (1) If received by the Lead Agency during the applicable obligation period (described in 45 CFR 98.60(d) & (e)), be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or (2) if received after the end of the applicable obligation period, be returned to the Federal government.

States may act to recover improper payments as soon as they are identified and need not wait until the end of the Federal error rate reporting cycle.

We do not have statutory authority to waive requirements related to funds that are recovered by Lead Agencies or mandated obligation and liquidation periods.

Penalties or Incentives Associated With Error Rates

Comment: Two commenters asked whether a State would be penalized if a certain error rate is found or if incentives would be offered for high performing States.

Response: While States are subject to disallowances for any identified improper payments (as they would be for any expenditures not made in accordance with CCDF regulations or the approved Plan identified outside of the error rate review process), there will not be penalties or incentives based on State error rates. We view the State error rate to be primarily useful for the States to inform quality control initiatives and improve program integrity. An incentive for States to decrease error rates and improper authorizations for payment is the increased availability of funds to serve CCDF eligible families.

Rule Undermines Existing State Efforts

Comment: Two commenters believed the focus in the proposed rule on client eligibility determination would be counterproductive for States that have existing strategies with proven results in reducing improper payments. Commenters felt the proposed rule might decrease focus in some States on errors in CCDF provider payments.

Response: We support existing State efforts to reduce improper payments and improve program integrity. States should continue to look at all aspects and areas in which there is risk for an improper payment to be made. We recognize that States are at different places in terms of approaches and initiatives to address program integrity. A section in the CCDF State Plan Pre-Print gives States an opportunity to provide descriptions and information related to these initiatives. We look forward to working with States to ensure that this final rule will complement, not supersede or complicate, existing State efforts.

Comment: A number of commenters thought that establishing a State baseline error rate and setting future target rates does not recognize the present actions of States to limit their exposure to incorrect eligibility authorizations. Commenters thought that States with more stringent standards for reducing administrative errors in client eligibility determination may be given an incentive to reduce their current efforts in order to establish more feasible future target rates.

Response: Section 98.102 of the final rule, Content of Error Rate Reports, addresses submission of baseline reports and standard reports. Under paragraph (a), in the initial cycle, States, the District of Columbia and Puerto Rico are required to submit a baseline report listing baseline error rate information and targets for the next cycle, as well as information about causes of, and strategies to address, error and information about their information technology systems. Under proposed paragraph (b), in subsequent cycles, States, the District of Columbia and Puerto Rico must submit a standard report that, in addition to updating the information provided in the baseline report, enables States, the District of Columbia and Puerto Rico to examine their ability to meet previously submitted targets, set future targets, and describe strategies to reduce their error rates.

Establishing a baseline error rate and setting future target rates is essential for measuring progress and improvement over time. Each State will have the ability to set its future targets based on their specific circumstances, including prior efforts to control improper payments. Additionally, the reported State error and improper authorizations for payment rates are not tied to any penalties. The State baseline and target setting should be used to inform existing prevention efforts and improve or validate their effectiveness.

We have deleted the parenthetical language at Section 98.102(a)(6) stating that targets for errors and improper payments must be lower than the most recent estimated error rates. We made this change recognizing that it is possible for a State to achieve a zero error rate thereby making the requirement obsolete.

We continue to expect States to set ambitious targets for reducing improper payments for each reporting cycle. As is described in the accompanying forms and instructions, State targets should anticipate continuous improvement. We intend this rule to be written broadly to accommodate any future efforts to revise or change the error rate reporting methodology. We believe it is more practical to add guidance on setting future target rates to the information collection forms and instructions rather than include it in the regulatory language.

Combining Overauthorizations and Underauthorizations

Comment: One commenter noted that the proposed rule requires States to report a combined ''improper authorizations'' figure that sums overauthorizations and underauthorizations together. The commenter thought that reporting only a combined figure could be misleading and mask the underlying source of the error. The commenter recommended that we require States to report separate figures for overauthorizations and underauthorizations along with a combined figure, and clarify in the instructions what amount of actual improper payments States are to base an anticipated recovery amount on.

Response: We agree with the comment and have changed the information collection forms and instructions to require States to separately report overauthorizations, underauthorizations, and the total combined figure. We also have clarified that States should base their expected recovery amounts on overauthorization amounts only.

Allowing a Threshold for Improper Authorizations

Comment: One commenter argued that factors affecting authorized payment levels could fluctuate from month to month, and States have discretion to determine the magnitude of changes that must be reported and applied in calculating CCDF benefits. The commenter felt that, similarly, small fluctuations in a clients' financial status should not be considered in the calculation of the number and percentage of cases with an improper authorization for payment. The commenter recommended clarifying the regulation to stipulate that changes in circumstances that do not need to be reported by clients will not be counted against the States as administrative errors.

Response: The initial methodology for the error rate review process is developed according to State-established policies and procedures in place to determine client eligibility for CCDF and to authorize payments. The process examines administrative error based on information in the case record that is available to the State. If a State does not require a client to report small changes in financial status this would not violate State policy and it would not be considered an error or improper authorization for payment, provided that the small change in financial status did not result in a violation of Federal income requirements, which cannot be waived.

C. Changes Made in Final Rule

As discussed above, three technical changes are made to the final rule in response to public comment. First, the annual burden estimate associated with the accompanying information collection forms and instructions has been increased to reflect public comments regarding additional costs of the error rate reporting review associated with staff, travel, accessing records, and automated systems. Secondly, the word ''child''after Sec. 98.101(a) has been replaced with the word ''case''to provide consistency in the terms used to refer to ''record''in the regulation. Lastly, we have deleted the parenthetical language at Section 98.102(a)(6) stating that targets for errors and improper payments must be lower then the most recent estimated error rates. We intend this rule to be written broadly and believe it is more practical to add guidance on setting future target rates to the information collection forms and instructions rather than include it in the rule itself.

V. 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 Executive Order 12866. The Department has determined that this final rule is consistent with these priorities and principles.

Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier, the Child Care Bureau has consulted with States, the District of Columbia, and Territories on numerous occasions since 2003 concerning different approaches to addressing improper payments and has field tested an error rate methodology in nine volunteer pilot States. Specifically, through quarterly conference calls, workshops at annual State Administrators Meetings and an Improper Payments survey, the Child Care Bureau has engaged States and Territories in conversations about strategies to identify, measure, prevent, reduce and collect improper payments. The Child Care Bureau also has been in contact with national organizations such as the American Public Human Services Association, the National Association for Program Information and Performance Measurement and the United Council on Welfare Fraud through conferences, meetings and conference calls regarding strategies to address improper payments. In addition, we have provided a 60-day public comment period and have responded to comments in this final rule.

This rule is considered a ''significant regulatory action'' as defined under Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget. Specifically, the rule raises ''novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (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 RFA 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 Puerto Rico. 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 final rule's impact on the well-being of families, as required under Section 654 of the Treasury and General Appropriations Act of 1999. This final rule aims to identify and reduce errors in the administration of CCDF funds, thus ensuring that the program is operated as efficiently and fairly as possible. Because States receive a fixed allotment of CCDF funds regardless of the number of children served, fewer improper payments translates into more funds for use in assisting low-income families in purchasing child care services, providing comprehensive consumer education to parents and the public and improving the quality and availability of child care.

D. Paperwork Reduction Act

The final rule requires States, the District of Columbia and Puerto Rico to compile information regarding errors made in the administration of CCDF funds using an error rate methodology established by the Secretary and detailed in this rule and information collection forms and instructions. Towards this end, this rule will require States, the District of Columbia and Puerto Rico to submit reports to the Department on their findings.

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The information collections in this rule, described below, are being reviewed by OMB and will not be effective until they have received OMB approval. Once they have received OMB approval, ACF will publish a notice in the **Federal Register** and make them available on the Child Care Bureau's Web page on Addressing Improper Payments at: *http://www.acf.hhs.gov/programs/ccb/ccdf/ipi/ipi.htm.*

Title: Child Care and Development Fund: Error Rate Report for States, the District of Columbia and Puerto Rico.

Description: States, the District of Columbia and Puerto Rico must prepare and submit to the Department reports of errors occurring in the administration of CCDF grant funds. They will be required to report the percentage of cases with an error; the percentage of cases with an improper authorization for payment; the percentage of improper authorizations for payment; the average improper authorization for payment amount; and the estimated annual amount of improper authorizations for payment. The report also will provide strategies for reducing the error rates and allow States, the District of Columbia and Puerto Rico to set target error rates for the next cycle.

Respondents: The fifty States, the District of Columbia and Puerto Rico.

Changes in Estimate of Burden

The annual burden in the proposed rule was estimated to be $150,000 per respondent. This estimate included the cost of drawing the sample of cases from 12 monthly sampling frames, training staff, conducting record reviews, compiling data, calculating error rates and preparing the final report. In estimating burden, we used information based on the error rate pilots and an estimation of the amount of time and cost required to complete various tasks associated with each of the three reporting forms: (1) The Record Review Worksheet, (2) the Data Entry Form, and (3) the State Improper Authorizations for Payment Report. In response to public comments, we have recalculated the burden estimate associated with each of these forms. The final rule increases the total cost estimate for case reviews and preparing the required reports to approximately $180,000 per respondent.

In the proposed rule the total burden hours associated with the Record Review Worksheet included sampling, preparation and training, and record review. We have increased the burden associated with the preparation and training component of this estimate to account for additional costs of mailing hard copy records, traveling to sites where records are maintained, or costs to enhance automated systems to access case records. Additionally, we have increased the burden associated with the record review component for completion of the Record Review Worksheet. Based on public comment we felt the original estimate did not adequately reflect the burden of implementing quality control activities associated with completion of this form.

In the proposed rule, the burden hours associated with the Data Entry Form primarily included the costs of consolidating information. The burden estimate associated with this form has been increased to account for public comment regarding costs of writing computer programs and making enhancements to automated systems to consolidate large quantities of data,

which were not considered in the original estimate.

Finally, in the proposed rule the burden hours associated with the State Improper Authorizations for Payment Report included the calculation of the findings and discussion of findings and report preparation. The burden estimate for completion of these two tasks associated with this form was not changed. However, we have added an additional component necessary for completion of this report, which was not previously considered. This component is the calculation of the total amount of authorizations for payment during the review period needed to compute the final error measure. The burden hours associated with completion of this report increased with the addition of this task.

The original burden estimate in the proposed rule did not account for States in which aggregate information on total amount of authorized payments was not readily available. Obtaining aggregate authorizations for payment information increases burden for States in which normal reporting requirements involve aggregate payments or total expenditures, not authorizations for payment. These States will experience increased burden for completion of this report if they are to generate the total for calculation of the required error measure. While it is important to account for the additional burden associated with this task, we continue to believe that reviewing authorizations for payment, rather than actual payments, is less burdensome for States when reviewing individual case records. We believe the benefits of focusing the individual record reviews on authorizations for payments outweighs any additional costs we have added here for completing the aggregated State Improper Authorizations for Payment Report. However, we encourage all States to keep track of the burden associated with these reporting requirements—in terms of both time and monetary cost—and to provide us comments through the Paperwork Reduction Act information collection process so that we can accurately account for the burden and more precisely determine the benefits and costs of these requirements.

RECALCULATED ANNUAL BURDEN ESTIMATES FOR FINAL RULE

Instrument or requirement	Number of respondents*	Yearly submittals	Average burden hours per submittal		Total burden hours	
			NPRM	Final rule	NPRM	Final rule
Record Review Worksheet	17.33	**271	13.74	15.43	64,562	72,478
Data Entry Form	17.33	**271	.14	.17	652	815
State Improper Payments Report	17.33	1	367	627	6360	10,864
Estimated Total Annual Burden Hours					71,574	84,157

* States, the District of Columbia and Puerto Rico will compile and submit error rate reports in staggered three-year cycles.
** These burden estimates are based on a review of 271 cases, which is estimated to be the amount needed to meet the sampling requirements of the rule.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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.

The total annual cost burden of having 17.33 respondents, the average number required in any year, to conduct error rate case reviews and prepare the required reports would be approximately $3.1 million. Thus, this final rule will not result in the expenditure by State, territorial, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

F. Congressional Review

This final rule is not a major rule as defined in 5 U.S.C. 804.

G. Executive Order 13132

Executive Order 13132 guarantees ''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.''

The Secretary certifies 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. This final rule does not preempt State law and does not impose unfunded mandates.

This final rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials.

List of Subjects in 45 Part 98

Administrative practice and procedure, Day care, Grant programs, Reporting and recordkeeping requirements.

(Catalogue of Federal Domestic Assistance Programs: 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: June 22, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: July 19, 2007.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

■ For the reasons set forth in the preamble, the Administration for Children and Families amends part 98 of title 45 of the Code of Federal Regulations as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority for part 98 continues to read:

Authority: 42 U.S.C. 618, 9858.

■ 2. Amend 45 CFR part 98 to add Subpart K to read as follows:

Subpart K—Error Rate Reporting

Sec.
98.100 Error Rate Report.
98.101 Case Review Methodology.
98.102 Content of Error Rate Reports.

Subpart K—Error Rate Reporting

§ 98.100 Error Rate Report.

(a) *Applicability*—The requirements of this subpart apply to the fifty States, the District of Columbia and Puerto Rico.

(b) *Generally*—States, the District of Columbia and Puerto Rico shall calculate, prepare and submit to the Department, a report of errors occurring in the administration of CCDF grant funds, at times and in a manner specified by the Secretary in instructions. States, the District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); the average amount of improper payment; and the estimated annual amount of improper payments. The report also will provide strategies for reducing their error rates and allow States, the District of Columbia and Puerto Rico to set target error rates for the next cycle.

(c) *Error Defined*—For purposes of this subpart, an ''error'' shall mean any violation or misapplication of statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds, regardless of whether such violation results in an improper payment.

(d) *Improper Payment Defined*—For purposes of this subpart, ''improper payment.''

(1) Means any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds; and

(2) Includes any payment of CCDF grant funds to an ineligible recipient, any payment of CCDF grant funds for an ineligible service, any duplicate payment of CCDF grant funds and payments of CCDF grant funds for services not received.

(e) *Costs of Preparing the Error Rate Report*—Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to Section 98.52(a).

§ 98.101 Case Review Methodology.

(a) *Case Reviews and Sampling*—In preparing the error reports required by this subpart, States, the District of Columbia and Puerto Rico shall conduct comprehensive reviews of case records using a methodology established by the Secretary. For purposes of the case reviews, States, the District of Columbia and Puerto Rico shall select a random sample of case records which is estimated to achieve the calculation of an estimated annual amount of improper payments with a 90 percent confidence interval of +/−5.0 percent.

(b) *Methodology and Forms*—States, the District of Columbia and Puerto Rico must prepare and submit forms issued by the Secretary, following the accompanying instructions setting forth the methodology to be used in conducting case reviews and calculating the error rates.

(c) *Reporting Frequency and Cycle*—States, the District of Columbia and Puerto Rico shall conduct case reviews and submit error rate reports to the Department according to a staggered three-year cycle established by the Secretary such that each State, the District of Columbia, and Puerto Rico will be selected once, and only once, in every three years.

(d) *Access to Federal Staff*—States, the District of Columbia and Puerto Rico must provide access to Federal staff to participate and provide oversight in case reviews and error rate calculations, including access to forms related to determining error rates.

(e) *Record Retention*—Records pertinent to the case reviews and submission of error rate reports shall be retained for a period of five years from the date of submission of the applicable error rate report or, if the error rate report was revised, from the date of submission of the revision. Records must be made available to Federal staff upon request.

§ 98.102 Content of Error Rate Reports.

(a) *Baseline Submission Report*—At a minimum, States, the District of Columbia and Puerto Rico shall submit an initial error rate report to the Department, as required in § 98.100, which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) Percentage of cases with an error (regardless of whether such error resulted in an over or under payment), expressed as the total number of cases in the sample with an error compared to the total number of cases in the sample;

(2) Percentage of cases with an improper payment (both over and under payments), expressed as the total number of cases in the sample with an improper payment compared to the total number of cases in the sample;

(3) Percentage of improper payments (both over and under payments), expressed as the total dollar amount of improper payments in the sample compared to the total dollar amount of payments made in the sample;

(4) Average amount of improper payments (gross over and under payments, divided by the total number of cases in the sample that had an improper payment (both over and under payments));

(5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period

(6) For each category of data listed above, targets for errors and improper payments in the next reporting cycle;

(7) Summary of methodology used to arrive at estimate, including fieldwork preparation, sample generation, record review and error rate computation processes;

(8) Discussion of the causes of improper payments identified and actions that will be taken to correct those causes in order to reduce the error rates;

(9) Description of the information systems and other infrastructure that assist the State, the District of Columbia and Puerto Rico in identifying and reducing improper payments, or if the State, the District of Columbia or Puerto Rico does not have these tools, a description of actions that will be taken to acquire the necessary information systems and other infrastructure; and

(10) Such other information as specified by the Secretary.

(b) *Standard Report*—At a minimum, the State, the District of Columbia and Puerto Rico shall submit an error rate report to the Department, as required in § 98.100, made subsequent to the baseline submission report as set forth in § 98.102(a) which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) All the information reported in the baseline submission, as set forth in § 98.102(a), updated for the current cycle;

(2) For each category of data listed in § 98.102(a)(1) through (5), States, the District of Columbia and Puerto Rico must include data and targets from the prior cycle in addition to data from the current cycle and targets for the next cycle;

(3) Description of whether the State, the District of Columbia or Puerto Rico met error rate targets set in the prior cycle and, if not, an explanation of why not;

(4) Discussion of the causes of improper payments identified in the prior cycle and actions that were taken to correct those causes, in addition to a discussion on the causes of improper payments identified in the current cycle and actions that will be taken to correct those causes in order to reduce the error rates; and

(5) Such other information as specified by the Secretary.

[FR Doc. 07–4308 Filed 8–29–07; 3:01 pm]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2007–29131]

RIN 2127–AI93

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

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

ACTION: Final rule.

SUMMARY: Our safety standard on occupant protection in interior impact requires, in part, that light vehicles provide head protection when an occupant's head strikes upper interior components, such as pillars, side rails, headers, and the roof during a crash. While these requirements already apply to most vehicles, the compliance date for altered vehicles and vehicles built in two or more stages is September 1, 2007. In April 2006, we responded to two petitions for rulemaking by proposing certain amendments to the head protection requirements as they apply to these vehicles. We also proposed to delay the compliance date of the requirements for these vehicles. In this document, after carefully considering both the safety benefits of the upper interior protection requirements and practicability concerns relating to vehicles built in two or more stages and certain altered vehicles, we are amending the standard to limit these requirements to only the front seating positions of those vehicles. In addition, we are excluding from the requirements a narrow group of multi-stage vehicles delivered to the final stage manufacturer without an occupant compartment. Finally, we have decided to delay the compliance date of the head impact protection requirements as they apply to final stage manufacturers and alterers until September 1, 2009.

DATES: The amendments made by this final rule are effective September 1, 2007. The compliance date for the head impact protection requirements for altered vehicles and vehicles built in two or more stages is September 1, 2009.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than October 22, 2007.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, 4th Floor, Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section V; Rulemaking Analyses and Notices) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590:

For technical and policy issues: David Sutula, Office of Crashworthiness Standards, telephone: (202) 366–3273, facsimile: (202) 366–7002, E-mail: *David.Sutula@dot.gov.*

For legal issues: Ari Scott, Office of the Chief Counsel, telephone: (202) 366–2992, facsimile: (202) 366–3820, E-mail: *Ari.Scott@dot.gov.*

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  d. Multi-Stage Vehicles Completed From a Cutaway Chassis
  e. Delay of Compliance Date
  f. Miscellaneous Issues
  g. Effective Date
V. Regulatory Analyses and Notices
VI. Regulatory Text

I. Background

a. Previous History of Head Protection Requirements of FMVSS No. 201

On August 18, 1995, the National Highway Traffic Safety Administration (NHTSA) issued a final rule (August 1995) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 201, ''Occupant Protection in Interior Impact,'' to provide enhanced head impact protection.[1] The August 1995 final rule required passenger cars, and trucks, buses and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The final rule set minimum performance requirements for upper interior components by establishing target areas that must be padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. The final rule added procedures for a new in-vehicle component test in which a free-motion head form (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of 24 km/h (15 mph). Targets that are

[1] See 60 FR 43031, Aug. 18, 1995; Docket No. NHTSA–1996–1762–1.