EXHIBIT 7
DATE Tues Feb 8 2004
HB

Gervais, Pat (LEG)

From: humserv-l-request@ncsl.org on behalf of Sheri Steisel [sheri.steisel@ncsl.org]
Sent: Friday, February 04, 2005 4:29 PM
To: Humserv-l
Cc: bird
Subject: HHS Proposes Rule to Change IV-E Reimbursement With Cost Implications for States

HHS Proposes Changing Reimbursement for IV-E Administrative Costs: Will Reduce Funds to States and Savings Could Be Included in the President's Budget

On January 31, 2005, the U.S. Department of Health and Human Services issued a Notice of Proposed Rulemaking (NPRM) that would change current regulations regarding the eligibility of certain administrative costs to be reimbursed by the federal foster care program under Title IV-E of the Social Security Act ("Title IV-E") program. The rule is attached. **Comments are due to HHS by April 1, 2005. This regulation will have cost implications for state child welfare budgets.**

First, under the new rule, states could not claim administrative costs for children in unlicensed foster care homes. This means that states would not get federal financial participation for children in relative care if the relative was not a licensed foster care provider. There is an exception—states can claim administrative costs on behalf of a child placed in an unlicensed home of a relative while the agency is in the process of licensing that home. The exemption applies for the standard length of time it takes the state to license foster family homes.

Second, the rule would state that the state cannot claim federal financial participation for foster care administrative payments for a child in an ineligible facility such as a detention center, medical or psychiatric hospital, a public institution that accommodates more than 25 children, or a facility intended primarily for detention of delinquent children. There is an exception in this part of the rule as well. A state agency would be permitted to claim IV-E administrative costs for one calendar month for a child in an ineligible facility. This is to ensure continuity of care as the child transitions into a licensed family home or foster care institution.

Third, language in the rule establishes the state agency's authority and responsibility for conducting determinations and re-determinations of IV-E eligibility and candidacy. The rule requires the IVE agency or other public agency that has entered into an agreement with the IVE agency to re-determine IVE foster care eligibility every 12 months. The rule also requires the IVE agency or other public agency that has entered into an agreement with the IVE agency to re-determine eligibility for IVE foster care candidacy every six months.

A change in federal financial participation for foster care administrative costs could have serious financial implications for your state and child welfare program. There could be programmatic and administrative effects as well. We urge you to look at the NPRM to see how you state would be impacted. **We would appreciate hearing from you about the impact on your state as NCSL frames the comments it will submit to HHS.** The financial impact is important. However, we would note that in this federal budget environment, anything would save the federal government money is being identified by federal budget writers. In fact, a 2005 budget document assumes a savings to the federal government of $82 million beginning in 2006. You may want to bear this in mind. A voluntary OMB survey is being sent to states to determine how much federal financial participation states would be forgoing under this rule. If the rule sounds familiar to you, in 2001, HHS introduced a new policy incorporating these changes, but states objected to the changes being made without going through the formal rulemaking process. There had been no further regulatory action since then. Now HHS has begun that process.

For more information, please contact Sheri Steisel (sheri.steisel@ncsl.org) or Lee Posey (lee.posey@ncsl.org), or call NCSL's D.C. office at (202) 624-5400.

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A change in federal financial participation for foster care administrative costs could have serious financial implications for your state and child welfare program. There could be programmatic and administrative effects as well. We urge you to look at the NPRM to see how you state would be impacted. **We would appreciate hearing from you about the impact on your state as NCSL frames the comments it will submit to HHS.** The financial impact is important. However, we would note that in this federal budget environment, anything would save the federal government money is being identified by federal budget writers. In fact, a 2005 budget document assumes a savings to the federal government of $82 million beginning in 2006. You may want to bear this in mind. A voluntary OMB survey is being sent to states to determine how much federal financial participation states would be forgoing under this rule. If the rule sounds familiar to you, in 2001, HHS introduced a new policy incorporating these changes, but states objected to the changes being made without going through the formal rulemaking process. There had been no further regulatory action since then. Now HHS has begun that process.

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litigated and negotiated issues that were not present in the baseline docket. This culminated in the submission of two proposed Stipulations and Agreements late in the proceeding addressing risks identified by the participants.[8] Finally, the details of the Bank One agreement and the specific facts presented in this docket were more complex than what was presented in the baseline docket. The Commission believes it unlikely that this many complicating factors are likely to be present in future requests for functionally equivalent Negotiated Service Agreements. Thus, the anticipated time for the Commission to review a request and render a recommendation still appears to be realistic.

The Presiding Officer decided to proceed under the rules for functionally equivalent Negotiated Service Agreements to lend structure to the Bank One proceeding. He recognized that future revelations might require a change in direction.[9] Although there were unanticipated complications in the Bank One docket, the rules for functionally equivalent Negotiated Service Agreements proved flexible and sufficient to hear the request and render a recommended decision.

The Commission indicated in the Discover and the Bank One recommendations that it would solicit comments on the first use of the new rules. The comments will be used to evaluate whether improvements should be made to the rules to facilitate the Commission's review of future requests predicated on functionally equivalent Negotiated Service Agreements. Comments are welcome of a general nature, or that address specific procedural or data requirement issues. By this order, the Commission hereby gives notice that comments from interested persons concerning the first use of the rules applicable to Negotiated Service Agreements are due February 28, 2005. Reply comments may also be filed and are due March 28, 2005.

In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. Docket No. RM2005–2 is established to solicit comments on possible improvements to the Commission's rules applicable to Negotiated Service Agreements.
2. Interested persons may submit comments no later than February 28, 2005.
3. Reply comments also may be filed and are due March 28, 2005.
4. Shelley S. Dreifuss, director of the Office of the Consumer Advocate, is designated to represent the interests of the general public in this docket.
5. The Secretary shall arrange for publication of this Notice of Proposed Rulemaking in the **Federal Register**.

Issued: January 25, 2005.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. 05–1732 Filed 1–28–05; 8:45 am]

BILLING CODE 7710–FW–P

[8] The rules for functionally equivalent Negotiated Service Agreements should provide adequate expedition without the need to file Stipulations and Agreements. Stipulations and Agreements should not be used as a procedural mechanism to expeditiously conclude a docket. In this docket, the Stipulations and Agreements were properly used to resolve issues unique to the request.

[9] An alternative could have been to reject the request as submitted, with directions to supplement testimony where necessary and refile as a new baseline docket. This would have considerably added to the length of the procedural schedule.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1356

RIN 0970–AC14

Administrative Costs for Children in Title IV–E Foster Care

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) is proposing to amend the regulations for Child and Family Services with respect to title IV–E administrative costs and eligibility determinations and re-determinations for title IV–E foster care recipients and foster care "candidates." This Notice of Proposed Rule Making (NPRM) proposes rules to implement title IV–E foster care eligibility and administrative cost provisions in sections 472 and 474 of the Social Security Act (the Act) and incorporates previously issued policy guidance.

DATES: Consideration will be given to written comments received by April 1, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to Kathleen McHugh, Director, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 330 C Street, SW., Washington, DC 20447. You may download an electronic version of the rule at *http://www.regulations.gov*. You may also transmit written comments electronically via the Internet at: *http://www.regulations.acf.hhs.gov*. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at the above address by contacting Jan Rothstein, in room 2411.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Director, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, (202) 401–5789 or by e-mail at *kmchugh@acf.hhs.gov*. Do not e-mail comments on the Notice of Proposed Rule Making to this address.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is issued pursuant to 42 U.S.C. 1302, which authorizes the Secretary of Health and Human Services (the Secretary) to publish regulations that may be necessary for the efficient administration of the functions for which he/she is responsible under the Act.

II. Background

Section 474(a) in title IV–E of the Act entitles a State agency to Federal financial participation (FFP) for three separate categories of expenditures: title IV–E foster care maintenance payments for eligible children in licensed or approved foster family homes or child care institutions; adoption assistance payments; and payments for the proper and efficient administration of the title IV–E State plan. Furthermore, section 474(a)(3)(E) sets the rate of FFP for allowable administrative costs at 50 percent. Federal regulations at 45 CFR 1356.60(c) implement the title IV–E administrative cost requirements and subparagraph (c)(3) lists several examples of allowable administrative costs necessary for the administration of the title IV–E foster care program. As a general rule, a State agency may claim allowable title IV–E administrative costs for a child in title IV–E foster care who is eligible for title IV–E foster care

maintenance payments pursuant to sections 472(a), (b) and (c) of the Act or for a child who is a "candidate" for title IV–E foster care.

On July 3, 2001, ACF issued policy announcement ACYF–CB–PA–01–02 to clarify our policy regarding title IV–E administrative costs for title IV–E foster care "candidates" and other related issues. The policy announcement, in part, made clear that a State agency could not claim FFP for administrative costs for children in unlicensed foster care, with the exception of children in relative foster family homes while the State agency is in the process of licensing the home. Prior to ACYF–CB–PA–01–02, many States agencies were operating under an expansive interpretation of an August 17, 1993 memorandum from the Acting Commissioner of the Administration for Children, Youth and Families (ACYF) to the ACF Regional Administrators. That guidance allowed State agencies to claim FFP for title IV–E administrative costs associated with a child who otherwise would be eligible for title IV–E foster care maintenance payments but for his/her placement in an unlicensed foster family home, if the child could be considered a "candidate" for title IV–E foster care. A determination of title IV–E candidacy permits a State agency to claim the full Federal share (50 percent) of child-specific title IV–E administrative costs. ACYF–CB–PA–01–02 clarified that a child who has been removed from home and placed in title IV–E foster care cannot be considered a "candidate" since the term "candidate" refers to a child prior to such placement.

Pending the issuance of a Final Rule, a State agency may continue to claim FFP for the administrative costs associated with an otherwise title IV–E eligible child placed in an unlicensed foster family home. All other policies expressed in ACYF–CB–PA–01–02 (as incorporated into the Children's Bureau's Child Welfare Policy Manual (CWPM), found at *http://www.acf.dhhs.gov/programs/cb/laws/cwpm*) remain in effect.

However, as noted above, ACYF–CB–PA–01–02 also addressed other policy issues, some but not all of which are included as subjects of this NPRM. We have included these issues in response to the numerous letters we received from States and other interested parties who objected to our making some of the changes contained in ACYF–CB–PA–01–02 without providing an opportunity for public comment. Specifically, we propose to codify the following policies contained in ACYF–CB–PA–01–02: administrative cost claims for children in facilities not eligible for title IV–E foster care reimbursement; the requirement that the State agency itself must make the determinations of title IV–E foster care candidacy; and, the requirement that the State agency document (re-determine) a child's candidacy for title IV–E foster care every six months.

III. Discussion of the Proposed Regulatory Changes

Section 1356.60(c)(3) Administrative Cost Claims for a Child Placed in an Ineligible Facility

In new paragraph 1356.60(c)(3), we propose to state explicitly that title IV–E administrative costs do not include costs claimed on behalf of a child placed in an ineligible facility such as a detention center, a hospital (medical or psychiatric), a public institution that accommodates more than 25 children, or a facility operated primarily for the detention of children who are determined to be delinquent. This is consistent with policy guidance clarified in ACYF–CB–PA–01–02 and contained in the CWPM at section 8.1D, question 7, which prohibits a State agency's administrative cost claims on behalf of a child who is placed in an ineligible facility and CWPM section 8.1B, question 12, which prohibits administrative cost claims on behalf of a child placed in a public institution that accommodates more than 25 children.

A State agency may claim title IV–E administrative costs for the administration of the Federal title IV–E foster care program on behalf of an eligible child during the time the child is in a licensed or approved title IV–E foster care facility. The statute, at section 472(c)(2), expressly excludes from eligible title IV–E placement settings detention facilities, forestry camps, training schools, public institutions that accommodate more than 25 children and facilities that are primarily for the detention of children who are determined to be delinquent. Except as proposed in 1356.60(c)(5), a child who is placed in such a facility is not eligible under title IV–E and the State agency, therefore, may not claim FFP for foster care maintenance or administrative payments for such a child. Similarly, a child who is placed in a psychiatric hospital is not eligible for title IV–E. The State agency, therefore, may not claim FFP for foster care maintenance or administrative payments for such a child, except as proposed in 1356.60(c)(5), because psychiatric hospitals are not foster family homes or child-care institutions.

A child who is placed in the aforementioned facilities cannot be considered a "candidate" for title IV–E foster care because the child has been removed from his/her home and placed into some alternative care setting. The statute does not set forth separate eligibility criteria for title IV–E administrative cost claims nor does it allow ACF to disregard one or more of the eligibility criteria in section 472 of the Act in order to permit State agencies to claim title IV–E administrative costs. The requirements of section 472(c) of the Act apply to both administrative costs and foster care maintenance payments. A child must, therefore, satisfy all statutorily prescribed eligibility criteria to be eligible for either title IV–E foster care maintenance payments or title IV–E administrative funds.

We propose to re-designate § 1356.60(c)(3) as (c)(4).

Section 1356.60(c)(5) Administrative Cost Claims for a Child in an Ineligible Facility: An Exception

In new paragraph 1356.60(c)(5), we propose an exception to the general provision at proposed new paragraph 1356.60(c)(3). Proposed new paragraph (c)(5) permits a State agency to claim title IV–E administrative costs for up to one calendar month on behalf of a child in an ineligible facility such as a detention center, a hospital (medical or psychiatric), a public institution that accommodates more than 25 children, or a facility operated primarily for the detention of children who are determined to be delinquent. The one month exception is designed to ensure the child's continuity of care as the child transitions into a licensed foster family home or child care institution.

Following the release of ACYF–CB–PA–01–02, we learned that many State agencies considered an otherwise eligible child placed in an *ineligible* facility for whom the plan was placement into or return to title IV–E foster care as a title IV–E foster care "candidate" and were claiming title IV–E administrative costs accordingly. A child who is placed in an ineligible facility cannot be considered a "candidate" for title IV–E foster care. We agree that title IV–E administrative funds should be available for such a child for a limited period of time to ensure continuity of care as the child transitions into a licensed foster family home or child care institution. However, one month is a sufficient period of time for the State agency to develop or update the child's case plan, identify the appropriate placement, and make referrals to any necessary supportive

services. This continuity of care payment may be applied at any time a child experiences a brief disruption in title IV–E foster care, such as a short-term hospitalization. A State agency must apply this exception retroactively, after the child has been placed in or returned to an eligible facility.

Allowing State agencies to claim administrative costs for up to one calendar month prior to the child's placement into or return to title IV–E foster care is good child welfare practice because it allows the child welfare worker to adequately prepare for the child's transition from the ineligible placement into a foster care setting. Furthermore, it is consistent with the effective and efficient administration of the program pursuant to section 474(a)(3) of the Act because it encourages State agencies to ensure that a child is placed in the most appropriate, least restrictive placement available consistent with his/her needs. Moreover, it is consistent with the Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) policy at section 1.2B.7, question 21 of the CWPM that instructs State agencies not to count brief disruptions in a title IV–E foster care placement of the type described above as a change in placement.

Section 1356.60(c)(6) Administrative Cost Claims for a Child in an Unlicensed Foster Family Home

In new paragraph (c)(6), we propose that a State agency may not claim title IV–E administrative costs on behalf of a child placed in an unlicensed foster family home. However, we make an exception to allow State agencies to claim administrative costs on behalf of a child placed in the unlicensed home of a relative while the State agency is in the process of licensing that home in accordance with its standard procedures. If the State agency does not license the relative's home within its standard time frame, the State agency must discontinue all claims for administrative costs incurred on behalf of the child until such time as it licenses the home.

Making this exception for a relative foster family home is in keeping with section 471(a)(19) of the Act that requires State agencies to consider giving relatives preference when making placement decisions. The statutory requirements for State agencies to consider giving relatives preference in making placement decisions on the one hand, and to place children in licensed foster family homes on the other hand, create competing priorities for State agencies. We have attempted to harmonize these two provisions by permitting State agencies to claim title IV–E administrative costs, but not title IV–E foster care maintenance payments, on behalf of a child placed in an unlicensed related foster family home while the home is in the process of being licensed.

This is a reasonable exception because a State agency may have access to several licensed, unrelated foster family homes in which to immediately place a child who enters foster care, but no similar readily available pool of licensed relative homes. For this reason, this exception does not apply to children placed in the unlicensed homes of non-relatives.

We considered proposing a specific time limit for how long a State agency may claim administrative costs on behalf of a child in the unlicensed home of a relative. Specifically, we considered requiring State agencies to license the relative within 6 months of the child's placement or ceasing administrative cost claims for the child. We struggled, however, with the following challenges to doing so: (1) It is inconsistent with section 471(a)(10) of the Act, in which State agencies are vested with the authority to establish licensing standards for foster family homes; (2) The length of time it customarily takes to license a foster home varies from State to State and often within a State. For example, in rural areas, the necessary foster parent training may not be offered as frequently as in urban areas; (3) Some State agencies have procedures in place to expedite licensing of relative foster family homes. We do not want to create a disincentive for State agencies to follow the procedures they have in place by establishing a Federal timeframe that is longer than a State agency's licensing process; and (4) Conversely, we do not want to set a time limit that encourages a State agency to accelerate the licensing process and inadvertently creates safety concerns for children.

Our ultimate goal is to ensure that children are placed and sustained in appropriate and safe settings. We are, therefore, proposing to continue our policy as stated in ACYF–CB–PA–01–02 that allows a State agency to claim the administrative costs for children in the unlicensed home of relatives during the standard time frame for licensing foster family homes in that State. We are particularly interested in public comments on this section of the proposed rule.

Section 1356.60(c)(7) State Agency Authority and Responsibility To Make Title IV–E Foster Care Eligibility and Candidacy Determinations and Re-Determinations

In new paragraph (c)(7), we propose adding language that establishes the State agency's authority and responsibility for conducting determinations and re-determinations of title IV–E foster care eligibility and foster care candidacy.

The regulations at 45 CFR 1355.30(p)(4) which cross reference to 45 CFR 205.100, require that officials of the State agency perform administrative functions that require the exercise of discretion and do not permit the State agency to delegate such functions. Under long-standing Departmental policy that originates with the 1939 amendments to the Act, the determination of an individual's eligibility for a Federal entitlement is considered an inherently governmental function that requires the exercise of discretion. The determination of eligibility is fundamental to the administration of an entitlement program because it is the basis for the flow of funds. A determination of title IV–E foster care candidacy is a type of eligibility determination because title IV–E funds are expended as the result of this determination.

We propose in paragraph (c)(7)(i) that the title IV–E agency or other public agency that has entered into an agreement with the title IV–E agency pursuant to section 472(a)(2) of the Act re-determine title IV–E foster care eligibility every 12 months, consistent with policy guidance at section 8.3A.10, question 1 of the CWPM. The State agency should review and document factors subject to change, such as continued deprivation of parental support and care of the child and the child's financial need. We propose to regulate the 12-month timeframe for re-determinations of foster care eligibility to take the opportunity to propose a more comprehensive approach to eligibility determinations in general.

Similarly, we propose in paragraph (c)(7)(ii) that the title IV–E agency or other public agency that has entered into an agreement with the title IV–E agency pursuant to section 472(a)(2) of the Act re-determine eligibility for title IV–E foster care candidacy every six months. This is consistent with section 8.1D, question 5 of the CWPM, which requires a State to document its justification for retaining a child in "candidate" status for longer than six months. We propose to regulate the timeframe for candidacy re-

determinations in response to numerous comments from States and other interested parties who objected to our issuing policy clarifications in ACYF–CB–PA–01–02 without providing an opportunity for public comment.

Given the many contingencies that may arise in a particular case, we have not set a maximum time for which a child may be a "candidate"; however, if a child continues in such status for more than six months, the State agency must confirm that the child is still at serious risk of removal but safe enough to remain in the home. A child who is a "candidate" must be at serious risk of removal from the home, so that the status of "candidate" is necessarily a temporary one; either the risk to the child will be alleviated or the necessity for removal will become clear and the child will be removed.

Good child welfare practice suggests, in light of the goals of both safety and permanency, that a child should not remain a "candidate" indefinitely. This proposed policy is also consistent with several Departmental Appeals Board (DAB) Decisions, which make clear that the basic purpose of the title IV–E program is to fund foster care maintenance payments for children who are eligible for the former Aid to Families with Dependent Children program and who must be placed in foster care. For example, in DAB Decision 1783, issued August 29, 2001, the DAB stated that we must be "mindful of the purpose of the IV–E program and the limited authorization in the statute and regulations for title IV–E funding for administrative activities on behalf of children prior to their actual placement in foster care." The DAB in that decision further clarified that "[t]he Act and the regulations contemplate only very limited funding under the IV–E program for administrative activities on behalf of children who have not yet been placed in foster care."

We propose in paragraph (c)(7)(iii) to specify the limits of the role of contract personnel in completing the steps necessary for an eligibility determination. Specifically, the State agency may permit contract personnel to gather the necessary documentation, prepare the case plan, complete the steps necessary for an eligibility determination, and make a recommendation to the State agency about a child's eligibility for title IV–E foster care or foster care candidacy.

The State agency, however, must actually make and document the final determination of eligibility for title IV–E foster care or eligibility for foster care candidacy. We felt it was necessary to clarify these roles in regulation to ensure that State agencies and contractors are clear on their roles in the foster care eligibility determination process and the foster care candidacy determination process.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This rule is considered a "significant regulatory action" under 3(f) of the Executive Order and therefore has been reviewed by the Office of Management and Budget.

We believe the majority of States have implemented the policy on children in unlicensed relative foster family homes correctly. In fact, when policy announcement ACYF–CB–PA–01–02 was issued in 2001, we were surprised by the reaction of some State agencies to the policy clarification. We were unaware of the extent to which State agencies were operating under an expansive interpretation of the policy. Therefore, our cost estimates reflect our best assessment of the number of States that are currently employing this more expansive policy interpretation. Based on available data we estimate that this policy clarification will result in a reduction of Federal reimbursement to those States that are claiming inappropriate administrative expenses ranging from approximately $65–$78 million in FY 2006 and increasing to approximately $75–$88 million by FY 2009.

We developed these costs estimates using data gathered through informal surveys conducted by the American Public Human Services Association (APHSA) and ACF regional offices. Specifically, in an informal survey conducted by ACF, 24 States indicated that this policy would have a financial impact ranging from $200,000 per year at the low end to $79 million at the high end. In addition, 15 States indicated that there would be little or no financial impact and two States were uncertain whether there would be any impact. In a second survey conducted by APHSA 16 States responded, with five reporting no anticipated impact, one reporting uncertain impact, and the remaining 10 States reporting very wide ranging impacts. Eight of these States estimated financial impact in the range of $80,000 to $20 million in reduced Federal funding and the remaining two States estimated that the impact could be as high as $21 million to $100 million.

Based on the response to these surveys we assumed that approximately 20–25 States would be impacted to some extent by the policy clarification contained in this proposed rule. It was more challenging to determine the total financial impact on States given the wide ranges reported by some States and the lack of clarity regarding how the States developed their estimates.

Given this uncertainty we were extremely cautious in developing these costs estimates. In addition to these data concerns, there are other mitigating circumstances that could result in increased Federal administrative and maintenance payment reimbursements which would offset the potential financial impact on States. The primary mitigating factor turns on a State's ultimate decision regarding the licensing of relative homes when final regulations are published in the **Federal Register**. We would expect that States will move in the direction of licensing relative foster care homes, the most beneficial outcome for foster care children resulting from this regulatory change. States choosing this option will then be able to claim both Federal reimbursement for administrative costs as well as maintenance payments for children in these newly licensed homes. In addition to the positive programmatic outcome of this policy shift, we have observed an increasing propensity on the part of States to move in the direction of licensing relative foster care homes. This trend is supported by Federal policy that eases licensing requirements for relative foster care homes while ensuring that children are in safe and stable environments.

In addition, this regulatory document contains two provisions that may impact States ability to claim Federal reimbursement for administrative costs, thereby reducing the impact cited in our cost estimates and those estimates originally submitted by the States. First, we have proposed that States be allowed to claim Federal financial participation during the period of time in which it takes to license a relative foster family home. Licensing authority is vested with the States so the time frame in which licensing occurs varies from State to State. Second, we have proposed that States be allowed to claim one month of administrative costs for children who are transitioning between allowable and unallowable facilities, such as placement in a hospital to address medical issues. This added flexibility should provide much needed relief to States and offers a reasonable approach

to address short term shifts in placements for foster care children.

We especially welcome comments on our cost estimates and the other mitigating circumstances that could impact Federal reimbursement to States. We urge States to consider the interaction of these factors as they review the proposed regulatory changes. We will carefully consider these comments as we finalize the regulations.

Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to State agencies that administer child and family services programs and the title IV–E foster care program.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). We have determined that this rule will not have an impact of $100,000,000 or more in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule. This NPRM contains information collection requirements in sections 1356.60(c)(7)(i) and (ii) which the Department has submitted to OMB for its review. The respondents to the information collection in this proposed rule are State agencies. The Department must require this collection of information to ensure State agencies are properly claiming title IV–E maintenance payments and administrative costs for the appropriate children. Re-determinations of title IV–E foster care eligibility must be conducted every 12 months for children in title IV–E foster care and every six months for "candidates" for title IV–E foster care.

The following are estimates:

Instrument	Number of respondents	Number of responses per respondent annually	Average burden hours per response (hours)	Total annual burden (hours)
Title IV–E foster care eligibility re-determination	264,670	1	0.5	132,335
Title IV–E foster care candidacy re-determination	144,600	2	0.5	144,600

Title IV–E Foster Care Eligibility Re-Determination—There were 264,670 children in title IV–E foster care in FY 2002. We estimate each title IV–E foster care eligibility re-determination will take approximately one-half hour and that there will be one per year. Therefore, we estimate the total number of respondents to be 264,670 for title IV–E eligibility re-determinations. The total annual burden in hours will be 132,335 (264,670 multiplied by 0.5 hours).

Title IV–E Foster Care Candidacy Re-Determination—Using State administrative cost claiming data for title IV-E foster care for FY 2002, we estimate the number of foster care "candidates" to be 144,600. We estimate each title IV–E foster care candidacy re-determination will take approximately one-half hour and there will be two per year. Therefore, we estimate the total annual burden hours for title IV–E foster care candidacy re-determinations to be 144,600 hours per year (144,600 multiplied by 1.0).

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB on the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington DC 20503, Attention: Desk Officer for the Administration for Children and Families.

Congressional Review

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

Assessment of Federal Regulations on Policies and Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family wellbeing. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. These regulations will not have an impact on family wellbeing as defined in the legislation.

Executive Order 13132

Executive Order 13132 on Federalism requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federal implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

List of Subjects in 45 CFR Part 1356

Adoption and Foster Care.

(Catalog of Federal Domestic Assistance Program Number 93, 658, Foster Care Maintenance)

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: July 21, 2004.

Tommy G. Thompson,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register January 19, 2005.

For the reasons set forth in the preamble, we propose to amend 45 CFR 1356.60 as follows:

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

1. The authority citation for part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, and 42 U.S.C. 1302.

2. We propose to amend § 1356.60 to re-designate paragraph (c)(3) as paragraph (c)(4), and add new paragraphs (c)(3), (5), (6) and (7) as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(c) * * *

(3) Subject to the exception in paragraph (c)(5) of this section, a State agency may not claim FFP as an allowable administrative cost on behalf of a child placed in an ineligible facility, including but not limited to the following facilities: a detention center, a hospital (medical or psychiatric), a public institution that accommodates more than 25 children, or a facility operated primarily for the detention of children who are determined to be delinquent.

(4) * * *

(5) Notwithstanding paragraph (c)(3) of this section, a State agency may claim administrative costs for up to one calendar month on behalf of a child in an ineligible facility, including but not limited to the following facilities: a detention center, a hospital (medical or psychiatric), a public institution that accommodates more than 25 children, or a facility operated primarily for the detention of children who are determined to be delinquent as the child transitions into a licensed foster family home or child care institution. The claims must be submitted after the child is in an eligible placement.

(6) Allowable administrative costs do not include costs claimed on behalf of a child placed in an unlicensed foster family home. Exception: A State agency may claim such costs on behalf of a child placed in an unlicensed relative foster family home while it is in the process of licensing that home in accordance with its standard procedures for licensing foster family homes. If the State agency does not license the foster family home within its standard time frame, the State agency must discontinue administrative cost claims on behalf of the child.

(7) Determinations of title IV–E foster care eligibility and foster care candidacy must be performed by an employee of the title IV–E State agency or an employee of another public agency that has entered into an agreement with the title IV–E State agency pursuant to section 472(a)(2) of the Act.

(i) The State agency must re-determine title IV–E foster care eligibility every 12 months.

(ii) The State agency must re-determine title IV–E foster care candidacy every 6 months.

(iii) Contract personnel may gather the necessary documentation, prepare the case plan, complete the steps necessary for an eligibility determination, and make a recommendation to the State agency about a child's eligibility for title IV–E foster care or foster care candidacy.

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[FR Doc. 05–1307 Filed 1–28–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050112008–5008–01; I.D. 010605E]

RIN 0648–AS23

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2005 specifications for the Atlantic herring fishery; request for comments.

SUMMARY: NMFS proposes specifications for the 2005 Atlantic herring fishery, which would be maintained through 2006 unless stock and fishery conditions change substantially. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery. NMFS also proposes one clarification to the Atlantic herring regulations, which would remove references to the dates on which the proposed and final rules for the annual specifications must be published.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on March 2, 2005.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov*.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: "Comments–2005 Herring Specifications." Comments may also be sent via facsimile (fax) to 978–281–9135. Comments on the specifications may be submitted by e-mail as well. The mailbox address for providing e-mail comments is *Herr2005Specs@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments–2005 Herring Specifications." Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259, e-mail at *eric.dolin@noaa.gov*, fax at 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS. NMFS reviews the Council recommendation, and may modify it if necessary to insure