

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
VMT Offset SIP Revision ..	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04 .....	5/16/05, 70 FR 25688 .....	
Contingency Measure Plan	Washington, DC Area .....	9/2/03, 2/24/04 .....	5/16/05, 70 FR 25688 .....	
1-hour Ozone Modeled Demonstration of Attainment.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04 .....	5/16/05, 70 FR 25688.	
Attainment Demonstration and Early Action Plan for the Washington County Ozone Early Action Compact Area.	Washington County .....	12/20/04, 2/28/05 .....	8/17/05, 70 FR 48283.	
1-hour Ozone Attainment Plan.	Washington DC 1-hour ozone nonattainment area.	9/2/2003, 2/24/2004 .....	11/16/05, 70 FR 69440.	
8-hour Ozone Maintenance Plan for the Kent and Queen Anne's Area.	Kent and Queen Anne's Counties.	05/2/06, 05/19/06 .....	12/22/06, 71 FR 76920.	

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 98**

**RIN 0970-AC18**

**Child Care and Development Fund State Match Provisions**

**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 permit States to designate multiple public and/or private entities as eligible to receive private donations that may be certified as child care expenditures for purposes of receiving CCDF Federal matching funds. This final rule also raises from 20 to 30 percent the amount of each State's match requirement that may be met with public pre-kindergarten expenditures in order to implement a provision of the President's Good Start, Grow Smart initiative. These provisions are intended to give States increased flexibility in making the necessary State expenditures on child care to draw down their full allotment of CCDF Federal matching funds.

**DATES:** *Effective:* October 1, 2007.

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**I. Background**

This final rule makes revisions to the matching fund requirements of the Child Care and Development Fund (CCDF) regulations. The new requirements permit States to designate multiple public and/or private entities as eligible to receive donated funds that States certify as child care expenditures for purposes of receiving Federal CCDF

matching funds and permit States to use public pre-kindergarten expenditures for up to 30 percent of the expenditures required to claim their full allotment of CCDF Federal matching funds. A discussion of comments to the final rule's revisions that were received in response to the publication of a Notice of Proposed Rulemaking (NPRM) on November 9, 2004, (69 FR 64881) may be found below in the preamble. This final rule is not substantively different from the revisions proposed by the NPRM; however, minor technical changes have been made to address concerns raised by some commenters.

*A. Child Care and Development Fund (CCDF)*

CCDF assists 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 training or education. States must spend a portion of their CCDF allotment on expenditures to improve the quality and availability of child care.

*B. Summary of the Statutory Provisions Related to the State Match Requirement*

CCDF is comprised of three funding streams—discretionary funds subject to annual appropriation by Congress as authorized under Sec. 658B of the CCDBG Act, 42 U.S.C. 9858, and mandatory and matching funds appropriated under Sec. 418 of the Social Security Act ("SSA"), 42 U.S.C. 618. Pursuant to Sec. 418(a)(2) of the SSA, the Federal CCDF matching funds are the funds remaining after the mandatory funds have been distributed to the States. Matching funds are allocated to the States on the basis of the

number of children under age 13 in the State compared with the number of children under age 13 in the Nation. These funds must be matched by States at the State's Federal medical assistance percentage (FMAP) rate.

### C. State Match Requirement Regulations

CCDF regulations are codified at 45 CFR part 98. Previously, the relevant matching fund requirements of the CCDF regulations provided that donated funds from private sources could be qualified as State expenditures for purposes of receiving Federal CCDF matching funds, provided that such funds were transferred to or under the control of the State CCDF Lead Agency or given to the single entity designated by the State to receive donated funds. 45 CFR 98.53(f). In order to qualify as State CCDF matching funds, the former CCDF regulations also stipulated that private donations, whether they were transferred directly to the State or to a designated entity, (i) must have been donated without any restriction that would require their use for a specific individual, organization, facility or institution; (ii) could not revert to the donor's facility or use; (iii) were not used to match other Federal funds; (iv) shall have been certified both by the donor and by the Lead Agency as available and representing expenditures eligible for Federal match; and (v) shall have been subject to the audit requirements in Sec. 98.65. 45 CFR 98.53(e)(2).

The former relevant matching fund requirements also provided that States could use public pre-kindergarten expenditures for up to 20 percent of the expenditures serving as maintenance-of-effort and up to 20 percent of the expenditures meeting CCDF matching requirements. 45 CFR 98.53(h). States seeking to use pre-kindergarten expenditures for between 10 and 20 percent of the expenditures serving as maintenance-of-effort or meeting CCDF matching requirements had to provide a description of the efforts they would undertake to ensure that pre-kindergarten programs meet the needs of working families. They also were required to demonstrate how they will coordinate their pre-kindergarten and child care services to expand the availability of child care. 45 CFR 98.53(h)(4).

While retaining most of the provisions governing CCDF State matching requirements, this rule finalizes the provisions of the NPRM to give States more flexibility in making the necessary State expenditures for child care to draw down their full allotment of Federal CCDF matching funds. Since

FY1999, nine States have failed to draw down their full allotment of Federal CCDF matching funds in at least one year. Five of these States have failed to draw down their full allotment of Federal CCDF matching funds in multiple years. Three States failed to draw down their full allotment of Federal CCDF matching funds in each of fiscal years 2003 and 2004. State expenditure and allotment data can be found at <http://www.acf.dhhs.gov/programs/ccb/data/index.htm>. In recent months, ACF Regions and the Child Care Bureau have received requests from States for increased flexibility in the use of donated funds and public pre-kindergarten expenditures to meet CCDF matching requirements.

Furthermore, Good Start, Grow Smart: The Bush Administration's Early Childhood Initiative, the document that describes the President's Good Start, Grow Smart initiative, specifically provides that the amount of State pre-kindergarten expenditures that may be used for Federal match should be increased to give States more flexibility in funding quality activities in support of early learning. This final rule implements that recommendation. Good Start, Grow Smart: The Bush Administration's Early Childhood Initiative may be downloaded from the President's Web site at <http://www.whitehouse.gov/infocus/earlychildhood/toc.html>.

Finally, this final rule makes technical corrections and clarifies some ambiguities in the CCDF regulations.

### D. Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on November 9, 2004 (69 FR 64881) with a 60-day public comment period. As discussed later in this preamble, we received comments from 9 commenters: three State child care administrators and six national advocacy groups for child care.

## II. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services (HHS) by Sec. 658E of the CCDBG Act, 42 U.S.C. § 9858c.

## III. Provisions of Final Rule

### A. Certifying Private Donations as State Expenditures

#### 1. Summary of the Former Regulations Regarding Certifying Private Donations as State Expenditures in the CCDF Regulations

In order to certify funds donated from private sources that are not transferred

to or under State control as expenditures for the purpose of receiving Federal CCDF matching funds, former CCDF regulations provided that States must designate a single entity to receive such privately donated funds and all such privately donated funds must be transferred to this single designated entity. The specific provisions setting forth this requirement appeared at § 98.53(f) of the CCDF regulations and provided that funds donated from private sources "may be given to the entity designated by the State to receive donated funds" in the State Plan.

#### 2. Consultation With States and Other Organizations

Requests have been made by State officials for increased flexibility in meeting the States' CCDF matching requirements. The Child Care Bureau has also learned that States found the CCDF regulations too restrictive when States sought to encourage coordination among early childhood education programs or to implement the President's Good Start, Grow Smart initiative. For example, the requirement for a single designated entity to receive privately donated funds has impeded the ability of some States to partner with multiple organizations that are interested in contributing towards the State's match requirement.

#### 3. Discussion of Comments

##### Greater Flexibility and Coordination

*Comment:* Two commenters noted that the proposed rule would allow greater flexibility in making the necessary State expenditures on child care to draw down the full allotment of Federal CCDF matching funds and would promote the ability of States to coordinate the use of private funds in a more cohesive system of early care and education. However, several commenters noted concerns regarding the tracking and reporting that would be needed to comply with Federal requirements.

*Response:* It is the intent of the Child Care Bureau that the flexibility created by this rule will ease the burden on States in meeting their CCDF matching requirement and free more State funds for use in coordinated efforts that emphasize quality child care and early education.

With respect to the concerns raised by the commenters regarding the tracking and reporting of privately donated funds, we note that States are responsible for ensuring that private donations counted towards a State's CCDF match requirements meet all the

rules and restrictions set forth for such funds in CCDF regulations. As provided in the Child Care Bureau's October 30, 1996 Program Instruction on Matching Funds, Maintenance of Effort, and Administrative Costs (ACYF-PI-CC-96-17), "Federal matching funds are only available to match State expenditures for those child care service [sic] and related activities, including quality activities, that are allowable and are also included by the State as part of its program under the Act and noted in the approved State Plan." Sec. 98.53(e)(2) of the CCDF regulations (as amended by this final rule) provides for special rules concerning privately donated funds: (1) Such funds must be donated without any restriction that would require their use for a specific individual, organization, facility or institution; (2) such funds may not revert to the donor's facility or use; (3) such funds may not be used to match other Federal funds; (4) such funds must be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the entity designated by the State to receive donated funds pursuant to Sec. 98.53(f) (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and (5) such funds shall be subject to the audit requirements in Sec. 98.65 of the CCDF regulations. States must take responsibility to ensure compliance with CCDF rules and restrictions regarding private donations when considering which and how many private or public entities will be designated as eligible to receive private donations for CCDF match.

We take this opportunity to make a technical change to the CCDF regulations in response to the concern raised regarding the tracking of private donations. Sec. 98.53(e)(2)(iv) of the former CCDF regulations required both the donor and the Lead Agency to certify that privately donated funds were "available and representing expenditures eligible for Federal match." Read literally in the case of a State using private donations to an entity designated by the State to receive such funds for the purpose of meeting CCDF matching requirements, this would require the State and/or the designated entity to obtain numerous certifications from individual donors who neither had control over funds they had already donated to the designated entity, nor had the expertise to determine whether such funds represented expenditures eligible for Federal match.

We believe that requiring donors to certify to the availability and eligibility

of unrestricted funds donated to a designated entity would be unduly burdensome on donors, designated entities, and Lead Agencies. Requiring designated entities to make or collect numerous certifications from donors who contributed some portion of unrestricted funds, often in small amounts, that were used to pay for an expenditure meeting CCDF State match requirements, would have a chilling effect on the donation process. Further, we see little value in certifications from donors who have neither control over funds that have already been donated, nor the expertise to determine whether such funds represent expenditures eligible for CCDF State match. We therefore revise Sec. 98.53(e)(2)(iv) to provide that privately donated funds must "be certified both by the Lead Agency and by the donor as available and representing funds eligible for Federal match if funds are donated directly to the Lead Agency. If private funds are donated directly to the designated entity, those funds must be certified both by the Lead Agency and the entity designated by the State to receive donated funds as available and representing funds eligible for Federal match, pursuant to Sec. 98.53(e)." The preamble to the CCDF regulations supports this interpretation, noting, "Both the Lead Agency and the entity designated by the State to receive donated funds must \* \* \* certify that the donated funds are available and eligible for Federal match." 63 FR 39965. Therefore, we believe that the intent of the CCDF regulations has always been that the Lead Agency and the entity designated by the State to receive donated funds should certify to the availability and eligibility of privately donated funds donated to the designated entity, and thus consider this revision to be a technical change. In cases where private donations are made directly to the Lead Agency, donors are still required to make the required certifications.

#### Reduced Accountability/Increased Fraud and Misexpenditure

*Comment:* Several commenters opined that allowing States to designate multiple entities to receive private donations would lead to reduced accountability and increased fraud and misexpenditure. According to these commenters, it would be difficult under the proposed rule for States to independently determine whether funds reported as collected were actually collected in a manner consistent with the CCDF regulations and harder to determine whether the safeguards were being followed. The commenters

suggested: (1) Making funds subject to audit requirements that would specifically focus on determining compliance with safeguards applicable to donated funds; (2) collecting and publishing information on the amount of donated funds used to help States draw down Federal matching funds and ensuring that program reviews include components designed to monitor compliance with Federal requirements applicable to donated funds; and (3) requiring the State agency, rather than the agency receiving the donated funds, to make determinations on whether donated funds count as a State match.

*Response:* It is important to recognize that under existing CCDF regulations, States have the flexibility to designate a single entity to receive privately donated funds. To date, we are not aware of any documented instances of fraud or misexpenditure by these designated entities despite regular audits. We see no reason why simply allowing States to designate more than one entity to receive privately donated funds would lead to greater fraud or misexpenditure.

At the same time, we recognize the importance of maintaining accountability and integrity in the program, and we reiterate that Sec. 98.53(e)(2)(v) of the CCDF regulations explicitly requires that State match funds derived from privately donated funds are subject to the audit requirements in Sec. 98.65 of the CCDF regulations.

Therefore, pursuant to Sec. 98.65(d), any Federal match funds drawn down with privately donated funds that are determined through the audit process not to have been expended in accordance with CCDF statutory or regulatory provisions, or with the State Plan, are subject to disallowance and being returned to the Federal government. States using privately donated funds to meet their CCDF State match requirement, whether such funds are received by the State or a designated third party, should be cognizant of this requirement and implement all necessary systems and procedures to ensure that all funds used to meet CCDF State match requirements comply with CCDF's statutory and regulatory requirements.

We also note that States are required to report their use of privately donated funds to meet their CCDF State match requirement in two places. First, in Sec. 1.8 of the Child Care and Development Fund Plan for FFY 2006-2007, States must answer whether they will use privately donated funds to meet a part of their CCDF State match requirement and identify and describe the entity or

entities designated to receive privately donated funds. Second, States must report on a quarterly basis the amount of privately donated funds used to meet their CCDF State match requirement on the ACF-696 Financial Report. We recommend that States take appropriate measures with respect to their own data-collection requirements to ensure that donors and entities designated to receive private donations comply with CCDF statutory and regulatory requirements.

Further, we note that the State as well as the donor or the entity receiving privately donated funds are required by CCDF regulations to certify that the privately donated funds are both available and represent expenditures eligible for Federal match. Through the certification process, States are held accountable for all privately donated funds used as CCDF State match whether such funds are donated to the State directly or donated to a designated entity. Further, we reiterate that designations of privately donated funds as eligible for CCDF Federal matching funds are subject to verification through audit.

Finally, in an effort to reduce the chances of fraud or misexpenditure and to further clarify our regulations, we take this opportunity to make another technical change by removing the word "and" after Sec. 98.53(e)(2)(i). One Lead Agency interpreted the inclusion of the word "and" between clauses (ii) and (iii) of Sec. 98.53(e)(2) to mean that privately donated funds were only required to meet the requirements of clauses (i) and (ii) or clauses (iii)-(v), but not all five clauses. We believe that the word "and" was inadvertently left in the regulations when they were revised in 1998. We further believe that removing the word "and" does not change the meaning or our interpretation of Sec. 98.53(e)(2). However, we want to avoid any misinterpretation of Sec. 98.53(e)(2) that might lead to privately donated funds being claimed as CCDF State match without meeting all five requirements of Sec. 98.53(e)(2). We consider this revision to be a technical change.

#### Distorted Program Priorities

*Comment:* Several commenters argued that CCDF rules that prohibit special conditions on private donations and the reversion of donations back to the donor may be interpreted to apply only to donors and not the entities designated to receive donations. According to these commenters, if private donations are generated with special conditions, entities could raise funds that would be limited to the benefit of their members.

Allowing the entity receiving donated funds to impose special conditions or spend donated funds on their own programs increases the risk that overall program priorities would be distorted. The commenters suggested: (1) Specifying that the entity receiving funds may not impose a requirement that the funds be used for a specific individual or group of individuals, organization, facility or institution; (2) specifying that funds may not revert to such entity's facility or use; and (3) specifying that decisions about the appropriate expenditures of donated funds counting as State match must be made by the State agency rather than the entity receiving donated funds.

*Response:* Sec. 98.53(e)(2) prohibits donors from placing special conditions on private donations that would require their use for a specific individual, organization, facility or institution or that would result in their reversion to the donor's facility or use. However, the preamble to the CCDF regulations makes clear that limiting the use of privately donated funds to a specific geographic area, such as within the limits of a specific city or even a single neighborhood, is permissible, as this was one of the intentions of allowing separate entities to receive privately donated funds for use as CCDF State match. 63 FR 39965.

CCDF regulations provide that restrictions on placing special conditions on privately donated funds apply only to donors and not to the entities receiving them. However, CCDF regulations also provide that the entities receiving privately donated funds as well as the State must certify that such donated funds are both available and eligible for Federal match. Therefore, both the entities receiving privately donated funds as well as the State must take appropriate steps to ensure that such funds are spent on allowable activities, as described in the approved State Plan, that meet the goals and purposes of the CCDBG Act. States must be vigilant in monitoring the entities that they designate as eligible to receive privately donated funds, and should act quickly and decisively to remove their designation if any impropriety has occurred.

Entities that receive privately donated funds may expend such funds on their own activities, provided that such activities qualify as eligible child care activities under the CCDBG Act and CCDF regulations, and provided further that such activities are permissible under State or local law and regulations governing conflict of interest. Qualifying child care activities may include child care direct services or related activities,

including quality activities, provided that such services and activities meet eligibility and other program requirements, are consistent with the goals and purposes of the CCDBG Act, and are noted in the approved State Plan. Again, States have the responsibility of ensuring that the activities funded through private donations meet all the requirements to qualify as CCDF State match. If a State determines that an entity designated to receive private donations is acting improperly, it must remove that entity's designation and find another source to meet the State's CCDF State match requirement.

#### Competition/Inequitable Distribution of Funds

*Comment:* Several commenters believed that allowing States to designate multiple entities to receive private donations creates the risk that that such entities would compete in the collection of private funds. These commenters opined that competition could lead to inequitable distribution of funds because wealthy communities could generate more private donations than poor communities. They also argued that the proposed rule could result in competition among child care providers that might be put in a position of having to raise funds to contribute to match. The commenters suggested: (1) Specifying that any State electing to use donated funds as CCDF State match must provide assurances that CCDF matching funds will be allocated in an equitable manner that does not result in disproportionate allocation of resources to communities or entities based on the collection of donated funds; and (2) requiring States to describe in their State Plans how the allocation of funds for services and quality activities between areas of the State is reasonable and appropriate in light of the identified needs of the respective areas of the State.

*Response:* As noted above, the preamble to the CCDF regulations makes clear that limiting the use of privately donated funds to a specific geographic area, such as within the limits of a specific city or even a single neighborhood, was one of the intentions of allowing separate entities to receive privately donated funds for use as CCDF State match. To date, we have found no evidence that this has led to inequity in child care spending among communities of varying economic status. We see no reason why simply allowing States to designate more than one entity to receive privately donated funds would lead to greater inequities among various regions of a State.

We take this opportunity to remind States of CCDF's parental choice requirements. Sec. 98.30(f) of the CCDF regulations prohibits States or local governments from establishing rules, procedures or other requirements promulgated for purposes of the CCDF that significantly restrict parental choice by: (i) Expressly or effectively excluding any category of care or type of provider, or any type of provider within a category of care; (ii) having the effect of limiting parental access to or choice from among such categories of care or types of providers; or (iii) excluding a significant number of providers in any category of care or of any type of care. If a State enacted a rule, procedure or other requirement to take advantage of the additional flexibility provided by this final rule that had the effect of limiting parental choice in violation of CCDF regulations, then that State would be subject to losing all or a portion of its CCDF grant. We urge States to consider CCDF's parental choice requirements carefully in crafting new rules, procedures, or other requirements designed to take advantage of this final rule.

We further urge States to monitor how State and Federal child care funds are distributed across a State and use the flexibility provided by CCDF statute and regulations to ensure that child care resources are distributed equitably and optimally. Further, we will take under advisement prior to the 2010–2011 State Plan submission process the recommendation to require States to describe in their State Plans how they make use of privately donated funds and whether such use leads to disparate services across varying regions of a State. We will, at that time, publish a **Federal Register** notice (OMB Control Number 0970–0114) to solicit public comment as to the availability of child care services that meet the needs of working parents.

#### Reduced Funding for Child Care

*Comment:* Several commenters opined that child care is not adequately funded and that the proposed changes to CCDF regulations may actually result in fewer child care services, particularly for infants and toddlers. They argue that increased use of private donations to meet CCDF State match requirements could result in shrinkage of public commitment because legislatures might reduce appropriations in the expectation that agencies or communities should generate private match instead. Those commenters suggest that States be prohibited from reducing their current child care

spending for subsidies, quality improvement, and infants and toddlers.

*Response:* Allowing more than one public or private entity to receive private donations in no way changes States' CCDF matching and MOE requirements. Whether the source of the CCDF matching or MOE funds is from the State or from a private donation to a designated entity, the amount required to draw down a State's full allotment of CCDF matching funds is not altered by this regulatory change. Further, these rules are intended to increase State flexibility and should have a positive impact on funding child care. States ultimately have responsibility to determine how best to address child care and this regulation will give States additional flexibility to meet the needs of children and families.

With respect to child care funding for certain ages of eligible children, such as infants and toddlers, we note that States already have the flexibility to allocate funds between direct services and quality activities and among the various ages of eligible children according to the particular circumstances within the State. However, there are several requirements of States that ensure that CCDF funds are spread across all eligible children and types of child care activities. States are required to spend at least four percent of their CCDF allotment on quality activities and at least 70 percent of their allotment of CCDF mandatory and matching funds on direct services for families receiving TANF assistance, transitioning off of TANF assistance, or at risk of becoming dependent on TANF assistance. Additionally, set-asides in annual appropriation of CCDF discretionary funds require States to spend CCDF funds on specified activities, such as "activities that improve the quality of infant and toddler care."

This rule is not intended to reward one group of children at the expense of the other. Rather, this rule hopes to facilitate greater funding opportunities for all eligible children through private donations and to encourage greater cooperation and coordination between the child care and early education communities. We feel this is in the best interests of all children. However, we will continue to monitor States' implementation of the CCDF program through State Plans, annual State expenditure data and other reporting requirements. We also will publish a **Federal Register** notice (OMB Control Number 0970–0114) to solicit public comment as to the availability and coordination of child care services that meet the needs of working parents prior

to 2010–2011 State Plan submission process.

#### Lack of Rationale

*Comment:* Several commenters noted that the NPRM does not adequately explain why the existing requirement restricting States to the designation of a single entity for receipt of private donations has been a problem and offers no examples of any instance in which it has impeded coordination or discouraged the use of private contributions. They argue that States should be required to demonstrate in their State plan how they are using any increase in available funds to both improve coordination and to increase the availability of services for low-income working families.

*Response:* As noted above, since FY1999, nine States have failed to draw down their full allotment of Federal CCDF matching funds in at least one year, and five of these States have failed to draw down their full allotment of Federal CCDF matching funds in multiple years. It is our belief that greater flexibility in meeting their State match could have helped these States draw down their full allotment of CCDF Federal match funds. We also reiterate that the Child Care Bureau has received requests from State officials for increased flexibility in meeting the States' CCDF matching requirements, particularly for States seeking to encourage coordination among early childhood education programs or to implement the President's Good Start, Grow Smart initiative. It is our belief that this rule change will enable States to raise more funds for child care and encourage more public-private partnerships in increasing the quality and availability of affordable child care.

We do see merit in the suggestion that States should be required to demonstrate in their State Plan how they are using privately donated funds to both improve coordination and to increase the availability of services for low-income working families. While no regulatory changes are needed, we will take that suggestion under advisement prior to the 2010–2011 State Plan submission process. We will, at that time, publish a **Federal Register** notice (OMB Control Number 0970–0114) to solicit public comment as to the availability and coordination of child care services that meet the needs of working parents.

#### 4. Changes Made in Final Rule

In order to grant States greater flexibility in meeting the matching requirements for Federal CCDF matching funds, this final rule provides

that States shall be allowed to designate multiple public and/or private entities to receive privately donated funds that may be certified as State expenditures for purposes of receiving Federal CCDF matching funds. We revised Sec. 98.53(f) to provide that privately donated funds “may be given to the public or private entities designated by the State to implement the child care program in accordance with Sec. 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds pursuant to Sec. 98.16(c)(2).” Additionally, conforming changes to Secs. 98.16(c)(2) and 98.53(e)(2)(iv) reflect the fact that privately donated funds may be given to “public or private entities.”

Also, as discussed above, two technical changes are made to address concerns noted in comments. First, Sec. 98.53(e)(2)(iv) is revised to provide that privately donated funds must “be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the entity designated by the State to receive donated funds pursuant to Sec. 98.53(f) (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match.” Second, the word “and” after Sec. 98.53(e)(2)(ii) is removed.

## B. Public Pre-Kindergarten Expenditures

### 1. Summary of the Former Regulations Regarding Public Pre-Kindergarten Expenditures in the CCDF Regulations

Former CCDF regulations provided that, once States had met their maintenance-of-effort requirement, they could use public pre-kindergarten expenditures for up to 20 percent of their child care expenditures designated toward meeting CCDF matching requirements. States seeking to use the full 20 percent of pre-kindergarten expenditures to meet the matching requirements were required to provide a description of the efforts they would undertake to ensure that pre-kindergarten programs met the needs of working families. They were also required to demonstrate how they would coordinate their pre-kindergarten and child care services to expand the availability of child care. The specific provisions setting forth this requirement appeared at Sec. 98.53(h)(3) of the CCDF regulations and provided that “[i]n any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State’s matching funds under this subsection.”

### 2. Consultation With States and Other Organizations

Requests have been made by State officials for increased flexibility in meeting the States’ CCDF matching requirements. The Child Care Bureau has also been informed that States were finding the former CCDF regulations to be too restrictive when States sought to encourage coordination among early childhood education programs or to implement the President’s Good Start, Grow Smart initiative. This rule will provide greater leverage to ensure coordination between pre-kindergarten and child care.

### 3. Discussion of Comments

#### More Funds for Quality Enhancements

*Comment:* Two commenters noted that CCDF funds freed by the proposed change could be directed toward quality enhancements supporting early learning, and that increased coordination could lead to increased efficiencies, improved service effectiveness, and the potential to leverage additional private donations.

*Response:* We agree. It is the intent of the Child Care Bureau that the flexibility created by this rule will ease the burden on States in meeting their CCDF matching requirement, free more State funds for use in funding quality activities in support of early learning, and encourage coordination among those working to improve and expand early education and child care.

#### Reduced Funding for Child Care

*Comment:* Several commenters reiterated their argument that child care is not adequately funded and the proposed changes to the CCDF regulations may actually result in fewer child care services, particularly for infants and toddlers. One commenter argued that if preschool children move away from community-based child care to State pre-K programs, child care providers would be left with a disproportionate share of infants and toddlers who are more expensive to serve. Commenters noted that increased use of pre-k expenditures for CCDF State match could lead to the supplanting of current State investments in child care subsidy programs and an overall reduction of funding for child care. The commenters suggested: (1) Prohibiting States from reducing their current child care spending for subsidies, quality improvement, and infants and toddlers; and (2) specifying that any State using pre-k expenditures for more than 20 percent of their matching funds provide assurances that the State will not supplant existing

services and demonstrate that the increase in funds has not resulted in a decline in State child care expenditures.

*Response:* Increasing the allowable pre-K funds for State match from 20% to 30% is intended to provide an incentive for States to more closely link their pre-K and child care systems and establish a coordinated system that better meets the needs of working families for full-day/full-year services that prepare children to enter school ready to learn. The intent is not to create an incentive for States to divert State funds away from other child care programs to meet their Matching requirements solely through pre-K expenditures. Additionally, we note that to address potential concerns about the use of pre-K expenditures in meeting CCDF requirements, expenditures for pre-K programs may constitute no more than 30 percent of State match expenditures.

To reiterate what we stated in the 1998 final rule, a chief concern to working parents is that many pre-K services are only part-day and or part-year and such programs may not serve the family’s real needs. CCDF regulations require a State using pre-k expenditures to meet its CCDF State match requirement to describe in its State Plan the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

We further note that CCDF regulations require that State Plans shall reflect a State’s intent to use public pre-K funds in excess of 10% of its or State matching funds in a fiscal year and how the State will coordinate its pre-K and child care services to expand the availability of child care. Thus, the CCDF regulations do require States to take steps to ensure that their pre-k programs meet the needs of working parents and, in some instances, to coordinate their pre-k and child care services to expand the availability of child care to all.

#### Rationale for Rule Change

A number of commenters argued that it is unclear how increasing the amount of State pre-k dollars that can be used to meet the match requirement will in any way improve coordination. These commenters suggested requiring States to demonstrate in their State plan how they are using any increase in available funds to both improve coordination and to increase the availability of services for low-income working families.

*Response:* As discussed above, since FY1999, nine States have failed to draw down their full allotment of Federal CCDF matching funds in at least one year, and five of these States have failed to draw down their full allotment of

Federal CCDF matching funds in multiple years. It is our belief that greater flexibility in meeting their State match could have helped these States draw down their full allotment of CCDF Federal match funds. We also reiterate that the Child Care Bureau has received requests from State officials for increased flexibility in meeting the States' CCDF matching requirements, particularly for States seeking to encourage coordination among early childhood education programs or to implement the President's Good Start, Grow Smart initiative. It is our belief that this rule change will enable States to raise more funds for child care and encourage more public-private partnerships in increasing the quality and availability of affordable child care.

We do see merit in the suggestion that States should be required to demonstrate in their State Plan how they are using any increase in available funds to both improve coordination and to increase the availability of services for low-income working families. While no regulatory changes are needed, we will take that suggestion under advisement prior to the 2010–2011 State Plan submission process. We will, at that time, publish a **Federal Register** notice (OMB Control Number 0970–0114) to solicit public comment as to the availability and coordination of child care services that meet the needs of working parents.

#### 4. Changes Made in This Final Rule

In order to grant States greater flexibility in meeting the matching requirements for Federal CCDF matching funds, this final rule provides that once a State has met its maintenance-of-effort requirement, it may designate a portion of its public pre-kindergarten expenditures as expenditures toward Federal CCDF matching funds; provided that the portion of public pre-kindergarten expenditures designated as State matching funds may not exceed 30 percent of the amount of expenditures required by the State to draw down its full allotment of Federal CCDF matching funds. We propose to revise Sec. 98.53(h)(3) to provide that, “[i]n any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to draw down the

State's full allotment of Federal matching funds available under this subsection.” Additionally, conforming changes would be made to Sec. 98.53(h)(4) to provide that the CCDF Plan “shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year.”

### III. 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. Moreover, we have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

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 and ACF regional offices have been contacted by numerous States expressing their desire for greater flexibility in meeting their matching requirement for Federal CCDF matching funds. This rule addresses these concerns. In addition, we have provided a 60-day public comment period and have responded to or addressed all comments in this final rule.

#### B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) (RFA) 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 and the District of Columbia. 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 Sec. 654 of the Treasury and General Appropriations Act of 1999. This final rule will make it easier for States to receive their full allotment of Federal matching funds through CCDF. These funds are to be used by States to assist low-income families in purchasing child care services, to provide comprehensive consumer education to parents and the public, and to improve the quality and availability of child care.

#### D. Paperwork Reduction Act

In order for States to use the increased flexibility provided by the final rule, Lead Agencies must amend their Lead Agency Plans, the information requirements of which are set forth in Sec. 98.16 of the CCDF regulations. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of this section, together with a copy of this final rule to the Office of Management and Budget (OMB) for its review.

*Title:* Amendment to State/Territorial Plan Pre-Print (ACF–118) for the Child Care and Development Fund (Child Care and Development Block Grant).

*Description:* The legislatively-mandated plans serve as the agreement between the Lead Agency and the Federal Government as to how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information is used for Federal oversight of the Child Care and Development Fund. Because the State Plans must accurately reflect the manner in which a State meets the matching requirements for Federal CCDF matching funds, in order for a State to use the increased flexibility provided by this final rule, it must submit an amendment to its plan reflecting the change in the manner in which it meets the matching requirement for Federal CCDF matching funds. Because the information required to take advantage of the provisions of this final regulation are already collected in the ACF–118 (OMB Control Number 0970–0114), a new information collection document will not be necessary.

*Respondents:* State and territorial governments.

## ANNUAL BURDEN ESTIMATES

Number of respondents*	Number of submittals	Average burden hour per submittal	Total burden hours
22	1	2	44

\* Estimate based upon the total number of States using private donations and/or their public pre-kindergarten expenditures as their expenditures toward Federal CCDF matching funds in FY2002, plus an additional number of States that are expected to take advantage of the increased flexibility in using private donations and/or public pre-kindergarten expenditures to meet their State CCDF matching requirement.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

(1) Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

(2) Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this final rule 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 final rule. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202-395-6974 or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please mark faxes and e-mails to the attention of the desk officer for ACF.

#### *E. Unfunded Mandates Reform Act of 1995*

Sec. 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.

This final rule will not 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. Expenditures made to meet the requirements for Federal CCDF matching funds are made entirely at the option of the State or Tribal government seeking the Federal CCDF matching funds.

#### *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**

Charitable donation, Child care, Day care, Early education, Grant programs—social programs, Pre-kindergarten, State match.

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

Dated: April 13, 2007.

**Daniel C. Schneider**,  
*Acting Assistant Secretary for Children and Families.*

Approved: May 9, 2007.

**Michael O. Leavitt**,  
*Secretary, Department of Health and Human Services.*

■ For the reasons set forth in the preamble, Part 98 of Subtitle A of Title 45 of the Code of Federal Regulations are amended 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 98.16 to revise paragraph (c)(2) as follows:

#### **§ 98.16 Plan provisions.**

\* \* \* \* \*

(c) \* \* \*

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to Sec. 98.53(f);

\* \* \* \* \*

■ 3. Amend 45 CFR 98.53 to revise paragraphs (e)(2), (f), (h)(3), and (h)(4) to read as follows:

#### **§ 98.53 Matching fund requirements.**

\* \* \* \* \*

(e) An expenditure in the State for purposes of this subpart may be:

\* \* \* \* \*

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use;

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to § 98.53(f) (if funds are donated directly to the

designated entity) as available and representing funds eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this subsection. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(c)(2).

\* \* \* \* \*

(h) \* \* \*

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to draw down the State's full allotment of Federal matching funds available under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

\* \* \* \* \*

[FR Doc. E7-9626 Filed 5-17-07; 8:45 am]

BILLING CODE 4184-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XA25

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less than 60 Feet (18.3 m) LOA Using Pot or Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 15, 2007, through 2400 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007), the reallocation on March 5, 2007 (72 FR 10428, March 8, 2007), and the reallocation on April 31, 2007 (72 FR 18595, April 30, 2007) allocated a directed fishing allowance for Pacific cod of 2,853 metric tons to catcher

vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2007 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 14, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 15, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07-2473 Filed 5-15-07; 1:42 pm]

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