

overpayments that are subject to recovery to HCFA through a credit on its Quarterly Statement of Expenditures (Form HCFA-64).

(2) The Federal share of overpayments subject to recovery must be credited on the Form HCFA-64 report submitted for the quarter in which the 60-day period following discovery, established in accordance with § 433.316, ends.

(3) A credit on the Form HCFA-64 must be made whether or not the overpayment has been recovered by the State from the provider.

(b) *Effect of reporting collections and submitting reduced expenditure claims.*

(1) The State is not required to refund the Federal share of an overpayment when the State reports a collection or submits an expenditure claim reduced by a discrete amount to recover an overpayment prior to the end of the 60-day period following discovery.

(2) The State is not required to report on the Form HCFA-64 any collections made on overpayment amounts for which the Federal share has been refunded previously.

(3) If a State has refunded the Federal share of an overpayment as required under this subpart and the State subsequently makes recovery by reducing future provider payments by a discrete amount, the State need not reflect that reduction in its claim for Federal financial participation.

(c) *Reclaiming overpayment amounts previously refunded to HCFA.* If the amount of an overpayment is adjusted downward after the agency has credited HCFA with the Federal share, the agency may reclaim the amount of the downward adjustment on the Form HCFA-64. Under this provision—

(1) Downward adjustment to an overpayment amount previously credited to HCFA is allowed only if it is properly based on the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution processes specified in State administrative policies and procedures.

(2) The 2-year filing limit for retroactive claims for Medicaid expenditures does not apply. A downward adjustment is not considered a retroactive claim but rather a reclaiming of costs previously claimed.

(d) *Expiration of 60-day recovery period.* If an overpayment has not been determined uncollectable in accordance with the requirements of § 433.318 at the end of the 60-day period following discovery of the overpayment, the agency must refund the Federal share of the overpayment to HCFA in accordance with the procedures specified in paragraph (a) of this section.

(e) *Court-approved discharge of bankruptcy.* If the State recovers any portion of an overpayment under a court-approved discharge of bankruptcy, the agency must refund to HCFA the Federal share of the overpayment amount collected on the next quarterly expenditure report that is due to HCFA for the period that includes the date on which the collection occurs.

(f) *Bankruptcy petition denied.* If a provider's petition for bankruptcy is denied in Federal court, the agency must credit HCFA with the Federal share of the overpayment on the later of—

(1) The Form HCFA-64 submission due to HCFA immediately following the date of the decision of the court; or

(2) The Form HCFA-64 submission for the quarter in which the 60-day period following discovery of the overpayment ends.

(g) *Reclaim of refunds.* (1) If a provider is determined bankrupt or out of business under this section after the 60-day period following discovery of the overpayment ends and the State has not been able to make complete recovery, the agency may reclaim the amount of the Federal share of any unrecovered overpayment amount previously refunded to HCFA. HCFA allows the reclaim of a refund by the agency if the agency submits to HCFA documentation that it has made reasonable efforts to obtain recovery.

(2) If the agency reclaims a refund of the Federal share of an overpayment—

(i) In bankruptcy cases, the agency must submit to HCFA a statement of its efforts to recover the overpayment during the period before the petition for bankruptcy was filed; and

(ii) In out-of-business cases, the agency must submit to HCFA a statement of its efforts to locate the provider and its assets and to recover the overpayment during any period before the provider is found to be out of business in accordance with § 433.318.

(h) *Supporting reports.* The agency must report the following information to support each Quarterly Statement of Expenditures Form HCFA-64:

(1) Amounts of overpayments not collected during the quarter but refunded because of the expiration of the 60-day period following discovery;

(2) Upward and downward adjustments to amounts credited in previous quarters;

(3) Amounts of overpayments collected under court-approved discharges of bankruptcy;

(4) Amounts of previously reported overpayments to providers certified as bankrupt or out of business during the quarter; and

(5) Amounts of overpayments previously credited and reclaimed by the State.

§ 433.322. Maintenance of records.

The Medicaid agency must maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR Part 74, Subpart D.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: October 6, 1988.

William L. Roper,
Administrator, Health Care Financing
Administration.

Approved: November 9, 1988.

Otis R. Bowen,
Secretary.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6823]

List of Communities Eligible for the Sale of Flood Insurance; Maryland et al.

AGENCY: Federal Emergency
Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in last column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202)

646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 418, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of

Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Maryland:			
Unincorporated areas.....	Allegany.....	240001	Dec. 2, 1988. Suspension Withdrawn.
Annapolis, city of.....	Anne Arundel.....	240009	Do.
Baltimore, city of.....	Independent city.....	240087	Do.
Eldorado, town of.....	Dorchester.....	240105	Do.
Havre De Grace, city of.....	Harford.....	240043	Do.
Hurlock, town of.....	Dorchester.....	240112	Do.
Salisbury, city of.....	Wicomico.....	240080	Do.
West Virginia:			
Ansted, town of.....	Fayette.....	540027	Dec. 16, 1988.
Mt. Hope, city of.....	Fayette.....	540280	Do.
Oak Hill, city of.....	Fayette.....	540031	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Refugee Resettlement Office

45 CFR Part 400

Refugee Resettlement Program; Refugee Cash Assistance; Requirements for Employability Services, Job Search, and Employment; Refugee Medical Assistance; and Refugee Social Services

AGENCY: Refugee Resettlement Office, Family Support Administration (FSA), HHS.

ACTION: Final Rule.

SUMMARY: This regulation sets forth requirements governing refugee cash

assistance; employability services, job search, and employment on the part of recipients of refugee cash assistance (RCA); refugee medical assistance; and refugee social services.

A proposed rule was published in the Federal Register of January 30, 1986 (51 FR 3918). Substantial changes have been made in this final regulation after consideration of the written comments received and a consultation on the proposals.

This regulation completes the issuance of comprehensive regulations covering the basic operation of the State-administered Refugee Resettlement Program (RRP). It implements Chapter 2 of title IV of the Immigration and Nationality Act, added by section 311(a)(2) of the Refugee Act of 1980 (Pub. L. 96-212) and amended by the Refugee Assistance Amendments of 1982 (Pub. L. 97-363) and the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605).

EFFECTIVE DATE: July 1, 1989.

ADDRESS: Office of Refugee Resettlement, Family Support Administration, Department of Health

and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Philip A. Holman, (202) 252-4563.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act to revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance and services to refugees in the United States regardless of their country of origin. Previously, refugees in the U.S. had been aided under separate programs for (1) Cuban refugees, (2) Indochinese refugees, and (3) Soviet and other non-Cuban, non-Indochinese refugees. Those programs were regarded as temporary, and, therefore, the issuance of program instructions to the States through Action Transmittals, rather than regulations, was considered appropriate. With the enactment of comprehensive authority in 1980, the Department began the issuance of formal regulations at 45 CFR Part 400, the first of which was published on September 9, 1980 (45 FR

59323), covering State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841). Regulations covering grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures were published January 30, 1986 (51 FR 3904).

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order since it does not create new costs. To the contrary, the regulation is intended to reduce costs by aiding refugees in achieving earlier employment and self-support.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 604(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule will indirectly affect small entities because some services funded in the RRP are provided by not-for-profit institutions under contract with the States. However, nothing in the rule imposes a significant burden on these small entities, and the rule therefore does not meet the threshold for regulatory flexibility analysis.

Sections 400.11, 400.55, 400.64, 400.79, 400.82, 400.94, and 400.147 of this rule contain collection-of-information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the reporting and recordkeeping requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Discussion of Changes

The Department received approximately 250 comments, signed by about 500 persons, on the proposed regulations. The commenters included State and local governments, national and local voluntary refugee resettlement agencies, refugee mutual assistance associations, State refugee advisory committees, refugee service providers, employers of refugees, and individual refugees.

On May 12, 1987, the Office of Refugee Resettlement held a consultation on the proposals, to which all persons who had provided written comments were invited. Approximately 50 commenters, principally State refugee coordinators, participated. The views and recommendations expressed in that consultation, as well as the written recommendations received previously, were taken into consideration in reaching the decisions reflected in this final regulation. Major changes have been made as a result of the comments.

The principal changes made in this final regulation, as compared with the proposed rule published January 30, 1986, are as follows:

1. The proposal (in § 400.11(b) of the proposed rule) that States submit administrative costs budgets as part of annual applications for grants for cash and medical assistance (CMA grants) and for social services has been eliminated from this final regulation.

In this section we have also revised the date by which a State submits its annual plan for social services from the proposed "45 days prior to the beginning of the [Federal] fiscal year" to "45 days prior to the beginning of the State's annual planning cycle for social services." This change provides a more realistic date and greater flexibility for the States. As part of this revision, ORR also plans to delete from its State estimate form (Form ORR-1) the projections currently required on social services.

2. The proposed requirement (in § 400.55(b)(3)) that States count in-kind assistance in the program of refugee cash assistance (RCA) has been modified to require a State to count in-kind assistance only if it counts in-kind assistance in its AFDC program.

3. We have deleted the proposals (§ 400.63) that would have required States (a) to combine into a single filing unit all RCA applicants and recipients who live in a single household and (b), in determining eligibility for and amount of RCA, to take into consideration the needs, resources, and income of all other persons living in the household. In lieu thereof, this final rule requires a State to prorate allowances for shelter, utilities, and similar needs among RCA recipients living in the same household if the State prorates such allowances in its AFDC program. (The regulation would not change the current policy of permitting a State to combine RCA recipients in the same household into a single filing unit, if the State so decides.)

4. The proposed rule (§ 400.64) that would have required monthly reporting by RCA recipients during their receipt of RCA has been revised to require

monthly reporting only after an RCA recipient has been in the United States more than 6 months.

5. The proposed rule (§ 400.79(a)) would have required an employability plan to be developed for both applicants for and recipients of RCA. The final regulation requires this only for recipients of RCA.

6. The proposed rule (§ 400.80) would have required applicants for and recipients of RCA to carry out a continuing program of job search beginning at the time the refugee applied for RCA and comprising at least 20 hours of employer contacts per week. The final regulation makes several revisions: Job search will not be required for an RCA applicant; it will be required of an RCA recipient only after the recipient has been in the United States more than 6 months; it will be required to continue for 8 consecutive weeks; and the State will determine the amount of time (or employer contacts) required.

7. The proposal (§ 400.81(d)) which, with a few exceptions, would have prohibited the scheduling of services at times that would have interfered with the previously proposed job search requirements, has been deleted. This change, together with the revisions in the job search requirements, will provide States with the flexibility to develop the individual service and job search plans that can be most effective in enabling RCA recipients to be placed in jobs as soon as possible after their arrival in the United States.

8. Under the proposed rules (§ 400.82(b)(3)), failure or refusal of RCA recipients to meet requirements for participation in employability services, carrying out job search, and acceptance of job offers would have resulted in the application of sanctions to the entire household filing unit. In this final regulation, the sanctioning requirement (§ 400.82(b)(3)) has been changed to apply only to the individual RCA recipient who fails to meet requirements. With this change, the application of sanctions in RCA will be comparable to the sanctioning provisions in the basic AFDC program.

9. The proposed rule (§ 400.104) would have extended the medical assistance coverage of an RCA recipient who would otherwise become ineligible solely because of increased earnings from employment. The period of extension under the proposal would have been for 9 months or until the refugee reached the end of his or her period of time-eligibility for RMA, whichever occurred first. After consideration of the comments received

and further analysis of the differences between this proposal and the AFDC policy from which it was derived (at section 402(a)(37) of the Social Security Act), we have decided to revise § 400.104 to continue the current RMA policy of providing for a 4-month extension of RMA (or as much of such extension as is within the RMA time-eligibility period) if the recipient loses RCA eligibility because of increased earnings from employment. This provision is more closely comparable to Medicaid regulations at 42 CFR 435.112. (See further discussion, below, in section on comments received, "Comments on Subpart G.")

10. The proposed rule (§ 400.146) would have continued the policy, which has been in effect during recent years, of requiring States to use at least 85 percent of their refugee social service funds for employability services. We have revised this policy to make it apply only to those States in which 55 percent or more of the State's population of "time-eligible" refugees is receiving cash assistance. "Time-eligible" refers to refugees whose cash assistance and medical assistance, if they were to qualify for such assistance, would be funded in whole or in part with Federal refugee funds. Under current funding, this population is refugees who have been in the U.S. less than 24 months. Fifty-five percent was selected because it has been approximately the national mean average dependency rate of time-eligible refugees during the last few years.

If a State is successful in reducing the dependency rate to less than 55 percent, this requirement will no longer apply.

11. The proposed rule (§ 400.147 (a)) would have required a State to use "an appropriate portion of [its social service] funds, based on population," to provide services to new and recently arrived refugees. We have revised the wording slightly to provide that such portion be "based on population and service needs, as determined by the State." This change is intended to make clear that the portion need not be based solely on numbers of persons and that it is the State which determines what the appropriate portion is.

12. The proposed rule (§ 400.147(c)) would have restricted the use of social service funds to refugees who have been in the U.S. less than 36 months, except for emergency services and for extreme and unusual needs that a State justified in its annual services plan. We have removed this proposed 36-month restriction.

13. The proposed rule (§ 400.156(a)) would have prohibited States from using their social service funds to provide

orientation services to "familiarize refugees with Western culture or to provide basic local orientation since this responsibility rests with the resettlement agency which sponsors a refugee." We have removed this paragraph in order (a) to avoid the implication that additional specific types of orientation not covered by the resettlement agencies could not be provided and (b) to permit local orientation for refugees who have migrated from their initial resettlement site. A general prohibition on duplication of services remains in § 400.156(b) (numbered § 400.156(c) in the proposed rule).

Four additional changes have been made in this final regulation in order to reflect changes made by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605) which was enacted November 6, 1986:

1. Language has been included in § 400.75(a) of this final regulation to reflect the requirement added by section 9(a) of the 1986 Amendments that assistance be terminated if an RCA recipient: (a) Refuses an offer of employment which has been determined to be appropriate either by the resettlement agency responsible for the initial resettlement of the refugee or by the appropriate State or local employment service; (b) refuses to go to a job interview which has been arranged through such agency or service; or (c) refuses to participate in a social service or targeted assistance program which such agency or service determines to be available and appropriate.

2. Section 400.82(b)(1), referring to sanctions of RCA recipients who fail to meet requirements, has been revised to eliminate the requirement that the sanction begin "with the month in which such failure or refusal occurred." The 1986 Amendments removed this timing requirement, which had been added by the 1982 Amendments. We have also provided, in § 400.82(b)(3)(B)(iii) of this final regulation, for a conciliation period of up to 30 days before the imposition of a sanction; this conciliation provision follows procedures which are applicable to AFDC recipients and which were in effect in the refugee program prior to the 1982 Amendments.

3. Language has been included in § 400.146(a), regarding the percent of funds which a State whose dependency rate is over 55 percent must use for employability services, to reflect the following language added by section 6 of the 1986 Amendments: "(C) Any limitation which the Director establishes on the proportion of [social service] funds allocated to a State * * * that the

State may use for purposes other than [employment-related services, English-as-a-second-language training (in nonwork hours where possible), and case-management services] * * * shall not apply if the Director receives a plan (established by or in consultation with local governments) and determines that the plan provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act." (This statutory provision is also reflected in ORR's notice of social service allocations for FY 1987 (52 FR 18283).)

4. In § 400.11(b)(2), we have changed the reference to an annual "application" for grants for refugee social services to an annual "plan" in order to reflect the use of the term "plan" in section 6 of the 1986 Amendments.

We have also made one technical change in the terminology used in these regulations: We have used the term "social services" rather than "support services," which was used in the proposed rule. "Social services" has continued to be the term used in the authorizing legislation for the refugee program, including the 1986 Amendments. It is also the term in general use in the refugee resettlement field.

Description of the Regulation

This regulation restates some current policies and modifies or augments others. The changes in policy which are made here have one central aim: To aid refugees in achieving earlier employment as a step toward self-support.

Throughout the Nation there is wide variation in the extent to which, and rapidly with which, refugees find employment. In some States, this occurs relatively quickly; in others, a substantial portion of the refugee population may spend its first 24 months in the United States—the period during which Federal refugee funding is currently provided to States for cash and medical assistance to refugees—receiving fully federally funded welfare assistance and, after the completion of that period, may continue on assistance, usually financed by a combination of Federal and State funds and sometimes by local funds as well.

Refugee dependency rates, as measured by the portion of the refugee population who had been in this country less than 31 months as of September 30, 1987 (the period of Federal refugee funding prior to the reduction to 24

months on February 1, 1988), and who were receiving cash assistance, ranged from a high of over 70 percent in three States to less than 20 percent in several other States. These wide differences among States do not appear to be fully explainable by differences in the employment situation in various States, or by differences in the scope and benefit levels of existing welfare programs, or by differences in the background, training, and work experience of the refugees themselves.

At the same time, there are substantial differences in the ways in which different States carry out the RRP. In some States, for example, refugee services (such as English language training) are widely available outside normal working hours, refugees are referred to job opportunities soon after their arrival in the U.S., become employed, and are able to continue their language or vocational training. In other States, refugee services tend to be available only during working hours, refugees are enrolled for services and training on a relatively long-term basis and are not required to seek employment, and referrals to job opportunities do not occur until much later.

This regulation attempts to address these problems by including more specific requirements for the way in which the RRP is to be carried out by States which have relatively high dependency rates, by allowing greater flexibility than current policy in States which have lower than average dependency rates, and by placing additional employment-related requirements on refugees who are receiving refugee cash assistance (RCA).

Thus a new Subpart F, Requirements for Employability Services, Job Search, and Employment, requires employable adult RCA recipients who have been in the U.S. more than 6 months to carry out an 8-week program of job search. At the same time, flexibility is provided to the States to determine the details of such a job search program so that each State can design the specific program which will be most effective in placing refugees in jobs.

A new Subpart I, Refugee Social Services, regroups the designation of social services to fit in with the requirements of Subpart F. It also removes most of the specific eligibility requirements for particular services (as currently set forth in Action Transmittals SSA-AT-79-33, August 24, 1979; ORR-AT-80-1, March 26 1980; and ORR-AT-80-2, April 28, 1980), simplifying the administration of the social service program for States and service providers.

Subpart I also provides greater flexibility than current policy for States with lower-than-average dependency rates by removing the current requirement (most recently contained in ORR's notice of FY 1987 social service allocations at 52 FR 18283, May 14, 1987) that 85 percent of their social service funds must be used for employment services, English language training, and case management—identified herein as "employability services."

Other changes which this regulation makes are described in the sections which follow on the several subparts.

Subpart A—Introduction

Section 400.2

Two changes are made in the list of definitions in § 400.2: A definition of "case management services" is inserted in the definitions in § 400.2, and these services are further addressed in §§ 400.154(j) and 400.155(g) of Subpart I. The definition of "refugee medical assistance" is updated to include references to the appropriate sections of Subpart G.

Subpart B—Grants to States for Refugee Resettlement

Sections 400.11 and 400.13

Section 400.11(a) is revised to conform with ORR's present policy, begun in fiscal year 1985, of issuing two types of basic grants to States for the operation of the State-administered refugee program: (1) CMA grants, covering funding for cash assistance, medical assistance, the program for refugee unaccompanied minors, and related State administrative costs; and (2) social services grants to fund the activities identified in Subpart I.

Section 400.11(b) is revised to require a State to submit an annual State social services plan. This requirement will help to assure that appropriate efforts and funds will be devoted to address the major Congressional intent of placing refugees on jobs as soon as possible after their arrival in the United States.

A new § 400.13 is added on cost allocation. This provision places in regulatory form the basic requirements of ORR's current cost-allocation guidelines which were issued after consultation with the States. A principal purpose of the guidelines is to assure that costs are correctly allocated between the RRP and other programs administered by the State and, within the RRP, among the CMA, social services, and any other RRP grants. Paragraph (c) of this section continues to permit certain overall management costs to be charged against the CMA grant. Paragraph (d) identifies the

circumstances under which certain case management costs may be charged against the CMA grant, again reflecting current policy. Section 400.13 does not change the current guidelines, which continue in effect.

Subpart C—General Administration

Section 400.27

A new paragraph (c) is added to § 400.27, "Safeguarding and sharing of information," to clarify, that information concerning persons who have applied for or received assistance or services under the RRP may be released for any of the same purposes as are permissible under the AFDC program, as set forth in 45 CFR 205.50(a). Such purposes include: Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program; any other Federal or federally assisted, needs-based assistance or service program; any audit or similar activity; and the location or apprehension of a fugitive felon.

Subpart E—Refugee Cash Assistance

Sections 400.50 through 400.64

Subpart E contains rules governing refugee cash assistance (RCA). The term "refugee cash assistance" refers specifically to cash assistance to needy refugees who do not meet all eligibility requirements for the programs of aid to families with dependent children (AFDC) and supplemental security income (SSI) for the aged, blind, and disabled. The provisions of this subpart do not govern the receipt of assistance by refugees who qualify for AFDC or SSI: they must meet the requirements of those programs which apply to refugees and nonrefugees alike.

Current regulations at 45 CFR 400.62 set forth the basic policies with respect to the provision of refugee cash assistance (RCA) and the extent and duration of Federal refugee program funding for RCA and other cash assistance programs for which refugees may qualify. These regulations do not change those rules.

A change in this subpart is the application of certain additional AFDC provisions to the RCA program (§ 400.64).

A. Recovery of Overpayments and Correction of Underpayments (Section 400.52)

Section 400.52 confirms current practice by applying AFDC rules when overpayments or underpayments occur.

B. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.55 through 400.57)

Under current policy, when a refugee applies for cash assistance a State must first determine his or her eligibility under other federally aided public assistance programs (i.e., AFDC, SSI, or—in Guam, Puerto Rico, and the Virgin Islands—old age assistance (OAA), aid to the blind (AB), aid to the aged, blind, and disabled (AABD), or aid to the permanently and totally disabled (APTD)).

If a refugee is eligible under one of the above programs, a State must provide assistance to that refugee under the appropriate program. If a refugee does not meet the categorical requirements of these other public assistance programs (i.e., family composition, the presence of children, age, disability, etc.), the State must determine eligibility for RCA.

In determining RCA eligibility, a State is required to contact an applicant's sponsor or the resettlement agency to determine the amount of assistance, if any, being provided to the refugee and to inquire whether the applicant has voluntarily quit employment or refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application. This requirement ensures that States verify at the time of application that a refugee has not refused to accept an offer of employment within 30 days prior the date of application for assistance, in accordance with current policy contained in § 400.77(a).

Section 400.55(d) requires a State to distinguish clearly, in its notices to applicants and recipients, between RCA, AFDC, and GA. The purpose of this requirement is to assure that clients are appropriately informed of their eligibility or ineligibility and receive information sufficiently specific to enable them to exercise their right to appeal if they wish to do so.

Conditions of Eligibility for Refugee Cash Assistance (Sections 400.60 through 400.64)

Under current policy, refugees who are ineligible for AFDC, SSI, OAA, AB, AABD, or APTD, but who meet the AFDC need standard in their State of residence, after consideration of income and resources in accordance with 45 CFR 233.20(a) (3) through (11) (except that the two earned income disregards of \$30 and of \$30 plus one-third at § 233.20(a)(11)(ii)(B) are not applied), are eligible for refugee cash assistance if they have resided in the U.S. less than 18 months following their initial entry into this country. In determining

financial eligibility, a State may not consider income and resources of refugee's sponsor which are not contributed to the refugee, or a refugee's resources which are not readily accessible to the refugee—e.g., resources in the refugee's country of origin. A State may not apply to applicants for or recipients of refugee cash assistance the rule under the AFDC-Unemployed Parents (AFDC-UP) program at 45 CFR 233.100(a)(1) that generally defines unemployment as employment less than 100 hours a month. Eligible refugees receive benefits and services at levels equivalent to those provided under the State's AFDC program. This regulation continues the current policy.

Section 400.60(a)(5) adds a requirement that a refugee provide the name of the resettlement agency which was responsible for his or her resettlement. This information is needed to enable the State to verify any assistance being provided and to determine whether the refugee has quit or refused employment, as required under § 400.55(b) (3) and (4). Section 400.60(a)(5) places on the refugee the responsibility for providing the name of the resettlement agency by making this a condition of eligibility. This requirement does not apply to asylees since persons granted asylum under section 208 of the Act usually do not have a sponsoring resettlement agency.

D. Proration of Shelter, Utilities, and Similar Needs (Section 400.63)

Section 400.63 requires a State to prorate allowances for shelter, utilities, and similar needs among RCA and AFDC filing units residing in the same household if it prorates such allowances in its AFDC program. This requirement will help to assure equal treatment between the RCA and AFDC programs in a State.

E. Other AFDC requirements applicable to refugee cash assistance (Section 400.64)

This section formalizes the applicability of certain additional AFDC requirements to the RCA program with respect to budgeting methods, determining eligibility, computing the assistance payment, recovering overpayments and correcting underpayments, and identifying and dealing with fraud.

This section also applies to RCA recipients who have been in the U.S. for at least 6 months and AFDC requirements regarding monthly reporting. Monthly reporting is especially applicable to caseloads in which changes in employment and income are likely to occur—such as the RCA caseload which excludes the aged, blind, and disabled who are covered

under SSI and the one-parent families which are covered under AFDC. A State may also require monthly reporting by RCA recipients who have been in the U.S. less than 6 months, if it so decides.

Subpart F—Requirements for Employability Services, Job Search, and Employment

Refugees who apply for or receive refugee cash assistance (RCA) must meet the requirements in Subpart F of these rules. These rules are based on requirements of the Refugee Act, as amended. The rules in Subpart F apply to RCA applicants and recipients. Refugees who receive AFDC must meet the requirements of that program rather than Subpart F.

A. Arrangements for Employability Services (Section 400.72)

Section 400.72 of the regulation allows States to make certain arrangements with appropriate agencies to provide refugees with required employability services as defined in § 400.71. It also formalizes a requirement that an agency providing employability services, in order to qualify to receive referrals of employable refugees by the State agency, must agree to advise the State agency whenever a refugee fails or refuses to participate in the required services or to accept an offer of employment.

B. Registration for Employment Services, Participation in Employability Service Programs, and Acceptance of Offers of Employment (Section 400.75)

Section 400.75 generally reflects section 412(e)(2)(A) of the Immigration and Nationality Act, which, except for good cause shown, conditions the receipt of cash assistance by an employable refugee on that refugee's registration with an agency offering employment services specifically designed to assist refugees in attaining economic self-sufficiency. If no such agency is available, the refugee must register with the State or local employment service. Section 412(e)(2)(A) of the Act also conditions receipt of cash assistance on the participation of employable refugees in available and appropriate social service and targeted assistance programs, funded under section 412(c) of the Act, which provide job or language training.

Section 400.75 clarifies the registration requirement by specifying that an "appropriate agency providing employment services" means (as defined in § 400.71) an agency whose services must include "an established program of job referral to, and job placement with, private employers" and

"must be determined acceptable by the State." Previous studies have shown that some referrals for employment services were being made to agencies whose services did not include job referral and placement.

This section also requires that an employable refugee participate in a program of job search, described subsequently in § 400.80.

These requirements are intended to encourage early employment.

C. Criteria for Exemption from Registration (Section 400.76)

Section 400.76 exempts certain individuals from registration for employment services and required social services because of age, full-time attendance at school or training, illness, incapacity, responsibility for the care of a child or another member of the household, or being in the third trimester of pregnancy. These exemptions, which are followed in current policy, are modeled after exemptions which apply to AFDC recipients.

Inability to communicate in English does not exempt a refugee from registration.

D. Effect of Nonparticipation in Services and of Quitting Employment (Section 400.77)

Under current policy, employable refugees may not, without good cause, within 30 consecutive days prior to the date of application, or at any time when receiving refugee cash assistance, have voluntarily quit employment or refused to accept an appropriate offer of employment services, training, or employment. Section 400.77 formalizes these requirements.

E. Service Requirements for Employed RCA Recipients (Section 400.78)

A recipient of refugee cash assistance who is employed less than 30 hours a week must accept appropriate part-time English language training or other employment-related training if available and determined appropriate by the State.

Under current policy, a State may encourage but not require part-time English or other employment-related training if a recipient is employed full time. Section 400.78(b) expands this policy to permit a State to require part-time training in this circumstance. We believe that providing this flexibility to a State is in keeping with the objective of full self-support since such training can aid a refugee who is partially supported by cash assistance to acquire additional skills which may lead to advancement, higher income, and full self-support.

Language has also been included to provide that employed recipients may not be required to accept services which interfere with their jobs.

F. Development of an Employability Plan (Section 400.79)

Section 400.79 formalizes current practice in the refugee program by requiring the State agency, or its designee, to develop an employability plan for each registrant if such a plan has not been developed by the resettlement agency.

Section 400.79 clarifies current practice by requiring that the employability plan be designed to lead to the earliest possible employment and contain a definite employment goal that would be attainable in the shortest possible time period consistent with a refugee's employability and the local job market. This requirement reflects the statutory intent, contained in section 412(a)(1)(B) of the Immigration and Nationality Act, that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States".

Section 400.79 also imposes a new requirement, by providing that the employability plan must enable the individual to meet the job search requirements of § 400.80.

We believe that this focus is essential to promoting early employment. Information has shown that, under existing practices, employability plans are often constructed which defer job search and employment for all or nearly all of the period of potential eligibility for RCA.

G. Job Search Requirements (Section 400.80)

Although current policy emphasizes early employment and self-support and requires registration for employment services and acceptance of job offers, it does not contain specific requirements for a job search program to be carried out by RCA recipients.

Section 400.80 specifically requires an employable recipient of refugee cash assistance who has been in the U.S. more than 6 months to carry out an 8-week job search program. The specific requirements and procedures of the job search program—such as the amount of time or number of employer contacts per week—are left up to the States in order to provide each State with the flexibility to develop the most effective programs possible in order to achieve job placements and reduced dependency.

The requirement for job search is intended to reflect the primary emphasis of the resettlement program on early employment and, together with other

requirements which RCA recipients must meet, to result in a focused program consisting of the services and activities necessary to achieve early job placement: Employability assessment and planning; employment services to provide the orientation, information, and guidance necessary for effective job search; referrals to employment opportunities; and contacts with potential employers.

H. Criteria for Appropriate Employability Services and Employment (Section 400.81)

Section 412(e)(2)(B) of the Act conditions receipt of refugee cash assistance (RCA), except for good cause shown, on a refugee's acceptance of appropriate offers of employment. Under current policy, criteria and standards adapted from regulations governing WIN (45 CFR 224.34), and referenced in § 400.81, are used by the State agency or its designee to determine if a particular job or training opportunity is appropriate. In order to allow greater flexibility, § 400.81(a) permits a State, if approved by the Director of ORR, to use comparable criteria applied in an alternate program for AFDC recipients.

Existing policy does not require an RCA recipient to accept a job if he or she is receiving training as part of an employability plan approved by the welfare agency. Section 400.81(c) changes current policy by requiring a refugee to accept an appropriate job offer even if it interrupts participation in a program of services except for a program in progress of on-the-job training, vocational training, or professional recertification.

I. Failure or Refusal To Carry Out Job Search or To Accept Employability Services or Employment (Sections 400.82 and 400.83)

Under current policy, if an employable recipient of cash assistance refuses to register for or to accept or continue an employment or training opportunity without good cause, the State agency must terminate assistance with the month of such refusal. This sanction remains in effect for 3 payment months in the first instance, and for 6 payment months in any subsequent instance. Current policy also includes a provision for hearings, as contained in § 400.83.

Under existing policy for RCA, as in the basic AFDC program, only the individual who fails to meet the employment and service requirements is sanctioned. That policy is continued under these regulations. However, the inclusion of failure or refusal to carry out job search as a basis for sanction is

a change from current policy, reflecting the addition of job search requirements by § 400.80. Failure to go to a job interview is also newly identified as a basis for sanction, reflecting a requirement added at section 412(e)(2)(C)(ii) of the Immigration and Nationality Act by the Refugee Assistance Extension Act of 1986.

Subpart G—Refugee Medical Assistance

A State must provide a program of refugee medical assistance (RMA) in accordance with the rules in Subpart G.

A. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.93 and 400.94)

Under current policy, a State must first determine the eligibility of each applicant for Medicaid under its State plan, complying with regulations governing applications, determinations of eligibility, and furnishing Medicaid under 42 CFR Part 435, Subpart J (in the States and the District of Columbia), and 42 CFR Part 436, Subpart J (in Guam, Puerto Rico, and the Virgin Islands). A State with a medically needy program under 42 CFR Part 435, Subpart D, must also determine a refugee's eligibility under that program.

A State must provide Medicaid to eligible refugees. If a refugee is determined ineligible for Medicaid, the State must determine eligibility for refugee medical assistance (RMA).

As set forth in the definition under § 400.2 of this part, the term "refugee medical assistance" (RMA) refers specifically to medical assistance to refugees who do not meet all eligibility requirements for Medicaid, to services provided under § 400.106 to refugees who are eligible either for RMA or for Medicaid, and to services provided under § 400.107.

Section 400.93(d) requires a State to distinguish clearly, in its notices to applicants for and recipients of medical assistance, between RMA and Medicaid. This is parallel to the notice requirement concerning cash assistance at § 400.55(d).

B. Conditions of Eligibility for Refugee Medical Assistance (Sections 400.100 through 400.104)

Under current policy, a State must determine eligibility for refugee medical assistance of refugees who are ineligible for Medicaid. Recipients of refugee cash assistance (RCA) are eligible for refugee medical assistance (RMA). Also, refugees who meet the eligibility requirements for but are not receiving refugee cash assistance are eligible for refugee medical assistance, and States may not require them to actually receive

or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance. Medicaid categorical eligibility requirements (family composition, age, disability, or blindness) are not applied to applicants for refugee medical assistance.

In States with Medicaid medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's medically needy financial eligibility standards under Medicaid regulations at 42 CFR Part 435, Subpart I, and regulations governing the determination of income eligibility in 42 CFR 435.831, in accordance with the State's approved title XIX State Medicaid plan.

In States without medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's AFDC need standard established under 45 CFR 233.20(a)(2) and regulations governing consideration of income and resources under the AFDC program in 45 CFR 233.20(a)(3) through (11) except that the two earned income disregards of \$30 and of \$30 and one-third do not apply. In addition, under § 400.103 of this regulation, if an applicant for refugee medical assistance in a State without a medically needy program does not meet the State's AFDC need standard, the State must allow the applicant to "spend down" to the AFDC need standard using methods for deducting incurred medical expenses in 42 CFR 435.831(c). This means that an applicant with income in excess of the AFDC need standard may deduct from his or her countable income certain incurred medical expenses, thereby lowering the amount of countable income to the AFDC need standard and potentially qualifying the applicant for refugee medical assistance.

Section 400.100(a)(4) has been included to make clear that a State may not determine a refugee to be eligible for medical assistance if the eligibility of the refugee for cash assistance has been terminated because of failure or refusal to meet the requirements of subpart F. We do not believe it would be appropriate to continue RMA eligibility if RCA eligibility has been terminated because of failure or refusal to carry out employment-related requirements.

Section 400.104 extends the medical assistance eligibility of an RMA recipient who would otherwise become ineligible solely because of increased earnings from employment. The period of extension, which is based on a provision applicable to the Medicare program, is for 4 months or until the refugee reaches the end of his or her period of time-eligibility for RMA, whichever occurs first.

C. Scope of Medical Services (Sections 400.105 through 400.107)

A State must provide refugees eligible for refugee medical assistance at least the same services in the same manner and to the same extent as are provided under the State's Medicaid program. If refugees need medical services which are beyond the scope of the State's Medicaid program but which are available to destitute U.S. citizens in the State through public facilities, such as county hospitals, the State agency may provide such services to eligible refugees through public facilities in order to avoid refugees becoming a burden on publicly funded local facilities.

Section 400.107 clarifies current policy with respect to health assessments of newly arrived refugees by specifically permitting such assessments as part of the scope of services of the RMA program if they are provided in accordance with requirements established by, and with the approval of, the Director. If such an assessment is done during a refugee's first 90 days in the United States, it can be provided as part of the RMA program without prior determination of the refugee's eligibility for RMA or Medicaid and without regard to whether the refugee is subsequently determined eligible for either RMA or Medicaid.

Subpart I—Refugee Social Services

A State must provide refugee social services in accordance with the rules in subpart I.

A. Applications, Determinations of Eligibility, and Provision of Services; Funding and Service Priorities; and Purchase of Services (Sections 400.145 through 400.148)

Under current practices, States follow procedures established for their social service programs under title XX of the Social Security Act with respect to providing refugees with the opportunity to apply for services, determining eligibility, and providing services. States currently purchase services for refugees from public and private service providers or provide services directly. The rule does not change these current practices.

Section 412(a)(6)(B) of the Immigration and Nationality Act authorizes the Director to develop, and require States to meet, "Standards, goals, and priorities * * * which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services." Under this authority, the Director

previously established as a priority "the provision of English language training and employment services" (§ 400.1(c) of the existing regulations, unchanged in this rule). In addition, section 412(a)(6)(A)(ii) of the Act requires that plans submitted by States contain "a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance" (reflected in § 400.5(c) of the existing regulations).

In light of the intent of the Act, the number of refugees dependent on cash assistance, and the limited funds available for training and services, §§ 400.146 and 400.147 establish funding and service priorities.

Section 400.146 represents a change in current policy. Previously, States were required to use at least 85 percent of their social service grants to provide employability services (now specified by § 400.154) and not more than 15 percent to provide other services (now specified by § 400.155) unless the Director of ORR waived this requirement.

This policy has been established in a statement of program goals, priorities, and standards issued to States—first in August 1982 and with revisions in March 1984—the Director set as objectives that 85 percent of ORR social service funds be targeted for employment services and English language training and that services be focused on the earliest possible movement of refugees from cash assistance to self-support. Subsequently, this was established as a requirement, after consideration of public comments, by notices in the *Federal Register* regarding the annual allocations of social service funds (first at 50 FR 8194, February 28, 1985, and most recently at 52 FR 18283, May 14, 1987) after consideration of public comments.

As a result of comments on the proposed rule published January 30, 1986, we have revised this requirement in order to provide greater flexibility to States which have lower-than-average cash assistance dependency rates. As revised, the 85-percent requirement applies only to States whose cash assistance dependency rate, as described elsewhere in this preamble and in the regulation, exceeds 55 percent. This is approximately the national mean average dependency rate experienced in recent years.

Section 400.147 also makes revisions in current policy:

Section 400.147(a) requires that a State's social service program use an appropriate portion of funds to provide services to newly arriving and recently arrived refugees, based on population

and service needs, as determined by the State. This is intended to avoid a situation, which has sometimes occurred, in which employment-directed services are concentrated on refugees around the time that their time-eligibility for RCA or for fully federally funded AFDC or Medicaid expires rather than at or near the time of their arrival.

Section 400.147(b) requires a state, in providing employability services, to give priority to refugees who are receiving cash assistance which is funded in whole or in part with Federal refugee funds. This emphasis is important to achieving early employment and reducing both Federal assistance costs and State/local assistance costs that occur after the period of full Federal funding has terminated if employment has not previously been attained.

Section 400.147(c) required that if a State intends to provide services to refugees who have been in the U.S. more than 36 months, the State must specify and justify the portion proposed to be used to meet the needs of these refugees as part of its annual social services plan under § 400.11(b)(2).

B. Conditions of Eligibility for Refugee Social Services (Sections 400.150 through 400.152)

Under existing policy, a refugee who meets immigration status and documentation requirements may receive any social service permissible under a State's title XX program. In addition, certain specific services are identified as "refugee social services" and may be provided in accordance with eligibility criteria based on receipt of cash assistance, family income, age, and employment status. The existing criteria are as follows:

- The following refugee social services may be provided to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, without regard to other criteria: English language training; career counseling; job orientation; and job placement and followup.
- In addition to the age/nonstudent criterion previously stated, refugees who are unemployed or receiving cash assistance may receive the following services: Employability assessment; development of an individual employability plan.
- In addition to the age/nonstudent criterion previously stated, refugees who are within the family income limit (not more than 90 percent of a State's median family income) or receiving cash assistance (but not necessarily unemployed) may receive

the following services: Job development; vocational training; and skills recertification.

- To receive the following services, refugees must be within the family income limit or receiving cash assistance (but other criteria do not apply): Day care; transportation; and translation/interpreter services.
- The following services may be provided to refugees without regard to any of the above eligibility criteria: Outreach; social adjustment.

Under the present rule, employability services § 400.154 continue to be limited to persons 16 years of age or older who are not full-time students in elementary or secondary school, except that employment services could be provided to enable a student to obtain part-time or summer work or full-time permanent employment upon completion of schooling. In addition, title XX social services provided under § 400.155(h) are subject to whatever limitations apply under a State's title XX program.

The requirements for all other specific eligibility limitations are removed (i.e., receipt of cash assistance, unemployment, and income limitations). We believe that this change will improve the focus of social services and at the same time provide greater flexibility to, and less complexity for, States in designing and implementing their programs in order to achieve the most effective outcomes in terms of increased employment and reduced dependency.

For States which have higher-than-average dependency rates, this change—when combined with the requirements that 85 percent of social service funds be used for employability services, that an appropriate portion be used for newly arriving and recently arrived refugees, that priority be given to cash assistance recipients, and that States specify and justify any funds intended to meet the needs of refugees who have been in the U.S. longer than 36 months—can improve the focus of social services while at the same time offering greater flexibility and less complexity in serving high-priority refugees.

C. Scope of Refugee Social Services (Sections 400.154 and 400.155)

Under current policy, refugees may receive any service which is permissible under a State's title XX program. In addition, refugees may receive any of a specified list of refugee social services which a State may provide regardless of whether these services are included in the State's title XX program.

Under this rule, the scope of allowable services remains unchanged from

current policy. In addition, "case management services" has been added to the list, recognizing an already allowable service not previously specifically identified.

However, the allowable services have been regrouped and in some instances slightly redefined in accordance with the employment objective of the program: Section 400.154, "Employability services," identifies and defines those services directed toward refugee employment, for which 85 percent of social service funds must be used in a State whose dependency rate exceeds 55 percent. Section 400.155, "Other services," identifies and defines those services not necessarily specifically directed toward employment.

D. Limitations and Restrictions (Section 400.156)

Under current guidance, States have been instructed to avoid duplication of services and to provide English language training generally outside normal working hours. Section 400.156 formalizes the existing guidance.

Section 400.156(a) formalizes the requirement that English language instruction be provided to the fullest extent feasible outside normal working hours and applies the same requirement to vocational training. This will be beneficial to refugees in becoming employed and continuing their training.

Under existing practices, many training courses are offered during daytime hours, making it difficult for refugees to accept employment without having to terminate their participation in English or other training. Resettlement workers have frequently cited this as a basic problem. In addition, in the Refugee Assistance Amendments of 1982, Congress made clear its intent that English language training should be provided "in nonwork hours where possible" and that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1) of the Act as amended by section 3(a) of the 1982 Amendments). This regulation helps to address these requirements.

Paragraph (b) of this section requires a State to take into account services which a resettlement agency is required to provide for a refugee and not to duplicate those services through its social service program.

Subpart J—Federal Funding

A new § 400.206 is added in Subpart J to cover funding for social services, and a new § 400.220 is added to clarify the calculation of refugee time-eligibility.

Both of these sections reflect existing policy.

Discussion of Comments Received

As noted earlier, the Department received approximately 250 comments, signed by about 500 persons, on the proposed regulations. The views and recommendations expressed both in the written comments and in the consultation which ORR held on May 12, 1987, were taken into consideration in reaching the decisions reported below.

The major comments and our responses to them are as follows:

Comments on Subpart A—Introduction (Section 400.2)

Comment: Several commenters recommended expanding the definition of case management to emphasize the need for the case manager to be more proactive in helping refugees attain self-sufficiency.

Response: The definition of "case management" proposed in the regulation is identical to the one used in ORR's cost allocation guidelines. The guidelines went into effect in 1985 after thorough consultation with the States. We believe that the case management definition in the regulation permits case managers to promote the earliest possible employment of refugees—which is the major objective of the program—and have decided not to change this definition which has been working well in practice for the past 2 years.

Comments on Subpart B—Grants to States for Refugee Resettlement (Sections 400.11 and 400.13)

Comment: Several commenters objected to the requirement in § 400.11(b) that States include an administrative costs budget as part of an annual application for Federal refugee grants for cash and medical assistance and social services. Commenters cited the administrative burden involved.

Response: We have concluded that the burden would exceed the value of the information and have eliminated the requirement.

Comment: Regarding § 400.13, several commenters suggested that a number of elements which are contained in ORR's cost-allocation guidelines also be made part of the regulatory language. For example, several commenters asked that the reference in the guidelines to "core staff" be included in the regulation, and a few commenters requested clarification on the treatment of direct and indirect costs.

Response: The regulatory language establishes the basic framework for

cost-allocation policies in the refugee program. The regulation is not intended to supplant the more extensive cost-allocation guidelines which have been in effect since 1985 and will continue to apply after the regulation goes into effect. We have added language in the preamble to indicate more clearly that the existing cost-allocation guidelines remain in effect, and we have also made some technical revisions in § 400.13(d) to make the wording conform more closely with that used in the guidelines.

Comments on Subpart E—Refugee Cash Assistance (Sections 400.50–400.64)

Comment: Several commenters disagreed with the proposal in § 400.55(b)(3) to require that in-kind assistance received by an applicant for or recipient of refugee cash assistance (RCA) be counted in determining RCA eligibility. Commenters cited the difficulties of determining in-kind contributions and their value. They also referred to the special initial needs of refugees when they arrive in the United States without resources and to the time-limited responsibilities of the voluntary refugee resettlement agencies under their cooperative agreements with the Department of State for initial reception and placement services.

Response: We have considered the points raised by the commenters—including the fact that the counting of in-kind income is permissible but not mandatory in the program of aid to families with dependent children (AFDC)—and have revised this proposal to require that the State count in-kind contributions only if it counts in-kind contributions in its AFDC program.

Comment: Proposed paragraphs (b)(3), (b)(4), and (c) of § 400.55 required that, in determining eligibility for RCA, the State must verify with the applicant's sponsor or resettlement agency the amount of financial assistance being provided to the refugee, must contact the sponsor or resettlement agency about whether the refugee has refused a job offer, and must notify the resettlement agency whenever a refugee applies for cash assistance. A few commenters objected to these provisions, with most recommending that the requirements be limited to a refugee's first 90 days—a resettlement agency's current period of responsibility under its agreement with the Department of State.

Response: These requirements reflect long-standing policies of the refugee program. In addition, the requirement of § 400.55(c)—that the State notify the resettlement agency (or its local affiliate) whenever a refugee applies for

assistance—reflects the language of the statute.

Although the current cooperative agreements of voluntary resettlement agencies with the Department of State provide for a 30-day period of providing food, clothing, and shelter and a 90-day period of other responsibilities, resettlement agencies and sponsors may go beyond these periods in assisting refugees. Also, under the voluntary agency matching-grant program, administered by ORR, the resettlement agency responsibility typically extends through at least the fourth month after a refugee's arrival in the U.S.

Given these facts, plus the limited duration of the RCA program itself—to which these requirements apply—we have concluded that it is appropriate to continue these long-standing policies.

Comment: Seven commenters objected to § 400.55(d) which requires that a State clearly distinguish in its notices to applicants and recipients as to which programs the refugee has been determined to be eligible or ineligible for. The commenters felt that such distinctions would be confusing to clients and would create an administrative burden for States.

Response: Some of the commenters felt that this requirement would be burdensome by requiring a revision of State application forms. We wish to clarify that the preamble to the proposed regulation was in error in referring to "requiring a State to distinguish clearly, in its applications and notices to recipients * * *." The provision does not refer to application forms, but only to notices to applicants and to recipients of determinations of eligibility and ineligibility. With this clarification, we believe the requirement will be seen as less burdensome. While we agree with the commenters that a refugee may find references to the various public assistance programs confusing, we believe that it is essential that applicants and recipients be provided with notices which clearly advise them what programs they have been determined eligible or ineligible for.

Comment: A large number of commenters, including a majority of States, objected to the proposal, contained in § 400.63, that eligibility for RCA and assistance under RCA be based on a household filing unit that took into account the needs, income, and resources of all persons living in the household. Commenters most often cited the following reasons: The frequently changing composition of refugee households with the arrival of new refugees from overseas and the moving of recent refugees from temporary to

more permanent accommodations; the possibility that the provision would discourage sponsorship by making sponsors responsible for all aid to sponsored refugees while living in the sponsors' household; the difficulty or impossibility of obtaining income and resource information from unrelated nonapplicants in the same household; problems of verifying household composition; and legal questions about imposing sanctions on persons who have no relationship of legal responsibility with the individual whose failure or refusal to meet requirements leads to sanctions.

Response: We have found several of the points raised by the commenters to be persuasive and have removed the proposal for use of a household filing unit. Instead, we have substituted a requirement that if a State prorate allowances for shelter, utilities, and similar needs in a household in its AFDC program, it must prorate such allowances in the same manner in its RCA program.

Comment: Section 400.64 proposed to apply certain AFDC requirements to the RCA program. Six commenters recommended that monthly reporting to the State welfare agency not be required of RCA recipients. One commenter recommended that it be optional with small States with low dependency rates; another commenter recommended that it apply only to those RCA cases in which changes in employment and income could be expected to occur; and one commenter supported the requirement.

Response: The RCA program is comprised of the types of cases that are not eligible for AFDC or for the program of supplemental security income (SSI) for the aged, blind, and disabled. Thus RCA consists of single adults, married couples without minor children, and two-parent families with minor children which do not qualify for AFDC either because they are in a State which does not have an AFDC-Unemployed Parent (AFDC-UP) program or because they do not meet all of the requirements for an existing AFDC-UP program. In general, RCA recipients are the most potentially employable of the types of refugee cases receiving cash assistance since they do not include one-parent families with minor children, who qualify for AFDC, or persons who qualify for SSI. We continue to believe, therefore, that monthly reporting is an important requirement for the RCA program.

At the same time, we recognize that monthly reporting creates an administrative workload for the State as well as a requirement that may be confusing to refugees during their initial period in the United States. Therefore

we have revised this requirement to provide that monthly reporting not be required in the RCA program until a refugee has been in the United States for at least 6 months. Since refugees remain on RCA for only a short period of time in many States, this revision will mean that monthly reporting will not have to be required of many RCA recipients who are placed in jobs and go off assistance before the 6-month threshold is reached.

States may continue to require monthly reporting before the 6-month point is reached if they so decide.

Comments on Subpart F—Requirements for Employability Services, Job Search, and Employment (Sections 400.70–400.83)

Comment: Two commenters objected to the description of an "employability plan" in § 400.71 as "intended to result in the earliest possible employment of the refugee."

Response: We see this as reflecting the statement of Congressional intent in section 412(a)(1)(B) of the Immigration and Nationality Act that "It is the intent of Congress that in providing refugee assistance under this section * * * employable refugees should be placed on jobs as soon as possible after their arrival in the United States".

Comment: Several commenters objected to the provision in § 400.76(b) that would consider an RCA recipient to be employable even if he or she does not know English. A major concern expressed by commenters was the inability to carry out the proposed job search activities without a knowledge of English.

Response: The policy of not considering a person to be exempt from training and employment requirements because of lack of English has been in effect in the refugee program for more than a decade. However, the specific job search requirements that were proposed were new. After considering these and other comments related to job search, we have made major changes in the job search requirements (described below with reference to § 400.80) which we believe help to address the concerns expressed by these commenters.

At the same time, we have decided not to change the long-standing policy of the refugee program, expressed in § 400.76(b), of considering a refugee to be employable even if he or she does not know English. Many refugees have been successful in obtaining employment with little or no knowledge of English, an initial step toward self-support in the United States.

Comment: A few commenters pointed to difficulties in implementing a proposed requirement in § 400.79(a) that employability plans be developed for applicants for—as distinguished from recipients of—RCA. The commenters noted that an applicant might be found ineligible for RCA.

Response: We concur and have revised the requirement to apply only to recipients.

Comment: Seven commenters noted an error in § 400.79(b) of the proposal in referring to a requirement that voluntary resettlement agencies develop employability plans, a requirement that was contained in proposed legislation but not enacted at the time the proposed rules were published.

Response: We have revised § 400.79(b) to state that if an individual employability plan has been developed by a resettlement agency, the State agency may accept it if it determines it to be appropriate. Section 412(b)(7)(D) of the Immigration and Nationality Act, referred to in the proposed rule, was subsequently enacted as part of the Refugee Assistance Extension Act of 1986 and, in part, calls for the resettlement agency "to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan."

Comment: Section 400.80 of the proposal would have required RCA applicants and recipients to carry out a continuing job search of at least 20 hours of employer contacts per week. Only a few services, directly related to employment, could be counted toward meeting the job search requirements under the proposal.

This proposal was objected to by nearly all commenters, including a majority of States. The major objections were that many new refugees are not ready to begin job search upon arrival in the U.S.; that job placements are currently being made in a more effective manner than the proposed job search requirement would yield; that in smaller communities with limited job opportunities the effect of continuous job search would be a burden on employers and would not result in increased placements; that the proposal was too prescriptive to permit adaptation to the needs of individual refugees; and, in general, that the proposal would create a major administrative burden on States. The major recommendation by the commenters was that each State be allowed to determine how best to design and implement a program of job search.

Response: In response to the comments, we have made major

changes in the job search proposal by not requiring RCA recipients to carry out job search until they have been in the U.S. 6 months (while still allowing a State to require job search sooner), by shortening the mandatory period of job search to 8 weeks (rather than the continuing job search originally proposed), and by allowing each State to determine the amount of time which the recipient must devote to job search each week or the number of employer contacts which the recipient must make per week and the procedures the State will follow to assure fulfillment of its job search requirements.

The 8-week mandatory period of job search does not preclude a State from requiring job search at other times.

Comment: A number of commenters recommended that changes be made in § 400.81(c) of the proposed regulations which would have required that an appropriate job offer be accepted even if it interrupted a service program unless the services were being provided on evenings or weekends. The objections centered around the evenings and weekends requirement but also reflected a view that at least some types of training should not be interrupted.

Response: We have revised this provision to remove the reference to evenings and weekends and to specifically exempt on-the-job training and vocational training.

Comment: A few commenters recommended that the proposed requirement in § 400.82(a) for a 90-day deregistration of voluntary registrants for employability services be revised to allow the State to determine whether to apply a deregistration period.

Response: We concur and have revised the wording accordingly.

Comment: A few commenters recommended that we revise the procedures in § 400.82(b)(2) for sending notices of intended termination of RCA to follow AFDC procedures.

Response: We agree and have revised this paragraph to follow AFDC procedures.

Comments on Subpart G—Refugee Medical Assistance (Sections 400.90–400.107)

Comment: Several commenters disagreed with the proposal in § 400.100(a)(4) to remove an entire household filing unit from RMA if the filing unit was sanctioned because of failure to meet RCA requirements for services and employment. The most frequent recommendations were either to remove the RMA sanction or to apply it only to the RCA recipient who failed to meet requirements.

Response: We have revised the sanction so that it applies only to the individual who fails to meet requirements.

Comment: Several commenters indicated their support for § 400.104 of the proposal which would have provided up to 9 months of additional RMA coverage when RMA eligibility would otherwise have been terminated as a result of increased earnings from employment. A few commenters disagreed with the proposal, stating that the extension period should conform to the 4-month Medicaid extension (at 42 CFR 435.112) that results when AFDC is terminated because of increased earnings rather than the 9-month extension (at 45 CFR 233.20(a)(14)) that results from the termination of an AFDC income disregard since the \$30 and one-third AFDC income disregards do not apply in the RCA program. The vast majority (nearly 80 percent) of the 250 comments received omitted any reference to the 9-month proposal.

Response: After consideration of the comments received and further analysis, the Department has concluded that the 9-month Medicaid extension that results from the loss of a disregard cannot appropriately be applied to RMA since the RCA/RMA program does not include the Medicaid disregards on which the extension is based. In addition, the 9-month extension, as proposed, would have extended RMA for all recipients whereas the 9-month Medicaid extension applies to only a small percentage of cases whose loss of eligibility is directly the result of the termination of a disregard. Therefore we have decided that it is more appropriate to continue in RMA the 4-month Medicaid extension that is related to increased earnings. We have not included the requirement (at 42 CFR 435.112(a)), applicable to the 4-month extension in the Medicaid program, that the recipient must have received cash assistance for at least 3 months out of the preceding 6-month period since this could serve as a disincentive to early employment of refugee cash assistance recipients. We consider it essential that eligibility for a 4-month extension of refugee medical assistance not be contingent on a refugee's having received refugee cash assistance for a longer, rather than shorter, period of time after arrival in the U.S.

Comments on Subpart I—Refugee Social Services (Sections 400.140–400.156)

Comment: A number of commenters objected to the proposals in §§ 400.146 and 400.147 to continue the current policy of generally requiring States to

use 85 percent of their refugee social service funds for employability services, to prescribe the amount of funds to be used for serving new and recently arrived refugees, and to restrict the use of social service funds to refugees who have been in the U.S. less than 36 months.

Commenters felt that the 85-percent requirement is inappropriate for States in which refugee use of cash assistance is relatively low and employment high and that ORR's existing policy for granting waivers is cumbersome. One recommendation was that the 85-percent requirement be retained only for States with above-average dependency rates.

With reference to the proposed 36-month limitation, the commenters felt that the proposal would prevent the provision of necessary services to refugees with longer term needs such as some Hmong refugees and refugee women who need services but may not be ready for them initially when principal attention is focused on the male head of household.

Response: In response to the comments, we have revised the 85-percent requirement (in § 400.146) so that it applies only to States whose cash assistance dependency rate of time-eligible refugees exceeds 55 percent—approximately the national mean average. (The national mean average is calculated by dividing the total number of time-eligible refugees receiving cash assistance by the total time-eligible refugee population of the U.S. and multiplying by 100.) We believe that, in these States, the importance of effective employment-related services for time-eligible refugees receiving cash assistance, for which 100 percent of the cost is being paid from Federal funds, is so great that available resources must be focused on this group in order to try to meet the statutory intent of early employment. When a State succeeds in reducing its dependency rate, these requirements will no longer apply.

We have removed the proposal which, with certain exceptions, would have prohibited the use of social service funds for refugees who have been in the U.S. more than 36 months (in § 400.147(c)). If a State intends to provide services to this population, the regulation requires that the State must specify and justify the portion of its social service funds proposed to be used to meet the needs of these refugees as part of its annual social services plan under § 400.11(b)(2).

With respect to the proposed priority on serving new and recently arrived refugees (in § 400.147(a)), we have revised the wording slightly to make clear that the State determines how to

meet this need, taking into account both the size of this population and the estimated needs for services.

Comment: Several commenters objected to the prohibition on provision of orientation services which was contained in § 400.156(a) of the proposed regulations. The commenters said that the prohibition, which was intended to avoid duplication of the efforts of voluntary resettlement agencies, did not take into account the many specific types of local orientation needed which went beyond the responsibilities of the resettlement agencies or the needs of secondary migrants who have left their localities of initial resettlement and need orientation to their new communities.

Response: We have deleted the proposed paragraph since the question of duplication is more generally addressed in § 400.156(b) of this regulation (previously designated § 400.158(c) in the proposed rule).

Comment: Section 400.156(b) of the proposed rules required English language and vocational training to be provided to the fullest extent feasible outside normal working hours. Many commenters objected to this proposal, especially since it was combined with proposed provisions requiring the interruption of weekday services and the avoidance of conflict with a continuing program of job search. Commenters pointed to a number of problems with scheduling services at night—among them, the fear of refugees in some neighborhoods of going out at night, inability of refugees to provide for child care at night, and the inability of service providers to retain staff for night and weekend schedules. The recommendation of most commenters was to allow greater flexibility and permit hours which would allow the widest participation of new and recently arrived refugees.

Response: We have retained the working of the proposed § 400.156(b) (redesignated as § 400.156(a)). However, as discussed previously, we have made extensive changes in related provisions regarding job search and the noninterruption of certain services provided on weekdays. We believe that these changes provide the flexibility recommended by the commenters while retaining the concept that services be offered outside normal working hours in order to promote the early employment of refugees and to provide the opportunity for employed refugees to benefit from services they need and want.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and Record keeping requirements.

Dated: June 29, 1987.

Wayne A. Stanton,
Administrator, Family Support
Administration.

Approved: June 6, 1988.

Otis R. Bowen,
Secretary of the Department of Health and
Human Services.

Editorial Note: This document was received at the Office of the Federal Register on January 26, 1989.

45 CFR Part 400 is amended as follows:

1. The authority citation for Part 400 continues to read as follows:

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

2. The table of contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

- Sec.
- 400.1 Basis and purpose of the program.
- 400.2 Definitions.
- 400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

The State Plan

- 400.4 Purpose of the plan.
- 400.5 Content of the plan.
- 400.6 [Reserved]
- 400.7 Submittal of the State plan and plan amendments for Governor's review.
- 400.8 Approval of State plans and plan amendments.
- 400.9 Administrative review of decisions on approval of State plans and plan amendments.
- 400.10 [Reserved]

Award of Grants to States

- 400.11 Award of grants to States.
- 400.12 Adverse determinations concerning State grants.
- 400.13 Cost allocation.

Subpart C—General Administration

- 400.20 [Reserved]
- 400.21 [Reserved]
- 400.22 Responsibility of the State agency.
- 400.23 Fair hearings.
- 400.24 [Reserved]
- 400.25 Residency requirements.
- 400.26 [Reserved]
- 400.27 Safeguarding and sharing of information.
- 400.28 Maintenance of records and reports.

Subpart D—Immigration Status and Identification of Refugees

- 400.40 Scope.
400.41 Definitions.

Documentation of Refugee Status

- 400.43 Requirements for documentation of refugee status.
400.44 Restriction.

Subpart E—Refugee Cash Assistance

- 400.50 Basis and scope.
400.51 Definitions.
400.52 Recovery of overpayments and correction of underpayments.

Applications, Determinations of Eligibility, and Furnishing Assistance

- 400.55 Opportunity to apply for cash assistance.
400.56 Determination of eligibility under other programs.
400.57 Emergency cash assistance to refugees.

Conditions of Eligibility for Refugee Cash Assistance

- 400.60 General eligibility requirements.
400.61 Consideration of income and resources.
400.62 Need standards and payment levels.
400.63 Proration of shelter, utilities, and similar needs.
400.64 Other AFDC requirements applicable to refugee cash assistance.

Subpart F—Requirements for Employability Services, Job Search, and Employment

- 400.70 Basis and scope.
400.71 Definitions.
400.72 Arrangements for employability services.

General Requirements

- 400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.
400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.
400.77 Effect of quitting employment or failing or refusing to participate in required services.
400.78 Service requirements for employed recipients or refugee cash assistance.
400.79 Development of an employability plan.

Job Search Requirements

- 400.80 Job search requirements.

Criteria for Appropriate Employability Services and Employment

- 400.81 Criteria for appropriate employability services and employment.

Failure or Refusal to Carry Out Job Search or to Accept Employability Services or Employment

- 400.82 Failure or refusal to carry out job search or to accept employability services or employment.
400.83 Hearings.

Subpart G—Refugee Medical Assistance

- 400.90 Basis and scope.
400.91 Definitions.

Applications, Determinations of Eligibility, and Furnishing Assistance

- 400.93 Opportunity to apply for medical assistance.
400.94 Determination of eligibility for Medicaid.

Conditions of Eligibility for Refugee Medical Assistance

- 400.100 General eligibility requirements.
400.101 Financial eligibility standards.
400.102 Consideration of income and resources.
400.103 Coverage of refugees who spend down to AFDC need standard.
400.104 Transitional coverage of recipients who receive increased earnings from employment.

Scope of Medical Services

- 400.105 Mandatory services.
400.106 Additional services.
400.107 Health assessments.

Subpart H—Child Welfare Services

- 400.110 Basis and scope.
400.111 Definitions.
400.112 Child welfare services for refugee children.
400.113 Duration of eligibility.
400.114 [Reserved]
400.115 Establishing legal responsibility.
400.116 Services for unaccompanied minors.
400.117 Provision of care and services.
400.118 Case planning.
400.119 Interstate movement.
400.120 Reporting requirements.

Subpart I—Refugee Social Services

- 400.140 Basis and scope.
400.141 Definitions.

Applications, Determinations of Eligibility, and Provision of Services

- 400.145 Opportunity to apply for services.

Funding and Service Priorities

- 400.146 Use of funds.
400.147 Priority in provision of services.

Purchase of Services

- 400.148 Purchase of services.

Conditions of Eligibility for Refugee Social Services

- 400.150 General eligibility requirements.
400.152 Limitations on eligibility for specific services.

Scope of Refugee Social Services

- 400.153 Title XX social services.
400.154 Employability services.
400.155 Other services.
400.156 Limitations and restrictions.

Subpart J—Federal Funding

- 400.200 Scope.

Federal Funding in Expenditures for Determining Eligibility and Providing Assistance and Services

- 400.202 Extent of Federal Funding.
400.203 Federal Funding for cash assistance.
400.204 Federal Funding for medical assistance.
400.205 Federal Funding for assistance and services for unaccompanied minors.
400.206 Federal Funding for social services.
400.207 Federal Funding for administrative costs.
400.208 Claims involving filing units which include both refugees and nonrefugees.
400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.
400.210 Time limit for filing of State claims.
400.220 Counting time-eligibility of refugees.

Subpart K—Waivers

- 400.300 Waivers.

§ 400.2 [Amended]

3. Section 400.2 is amended by alphabetically adding the definitions for the terms "case management services" and "time-eligibility" and by revising paragraph (b) of the definition of the term "Refugee medical assistance" to read as follows:

"Case management services" means the determination of which service(s) to refer to a refugee to, referral to such service(s), and tracking of the refugee's participation in such service(s).

* * * * *

"Refugee medical assistance" * * * (b) services provided in accordance with §§ 400.106 and 400.107 of this part.

* * * * *

"Time-eligibility" means the period for which FF (Federal funding) is provided under §§ 400.203(a) and 400.204(a) of this part, after applying the limitation "[s]ubject to the availability of funds" in accordance with § 400.202.

4. Section 400.11 is amended by revising paragraphs (a) and (b)(1), by redesignating existing paragraph (b)(2) as (b)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 400.11 [Amended]

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs ("CMA grants"),* for the following purposes: Cash assistance provided by a State or local public agency under the program of aid to families with dependent children

(AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of the Pub. L. 93-66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) *Grants for social services, as set forth in this part.* ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award—(1) CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative costs, including assistance and services to unaccompanied minors ("CMA grants"), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Grants for refugee social services.* For quarterly grants for refugee social services, a State must submit to the Director, or designee, an annual plan no later than 45 days prior to the beginning of the State's annual planning cycle for social services on a form prescribed by the Director.

5. A new § 400.13 is added in Subpart B, to read as follows:

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the RRP and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately among its CMA grant, social services grant, and any other RRP grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated among the CMA grant, social services grant, and any other RRP grants.

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where all of the following criteria are met:

(1) The case management activities are targeted to time-eligible cash/medical assistance recipients and applicants for the purpose of assisting such recipients and applicants to obtain or retain employment;

(2) Such case management activities are provided under formal and functional linkages with the appropriate local welfare agency and employment service providers; and

(3) Such linkages include required reporting to the welfare agency when a refugee is offered a job, is placed in a job, or fails to participate in the required employability services.

Subpart C—General Administration

6. A new paragraph (c) is added to existing § 400.27, to read as follows:

§ 400.27 Safeguarding and sharing of information.

* * * * *

(c) The disclosure of information for any purpose set forth in § 205.50(a) of this title shall be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program.

7. Subpart E is revised and new Subparts F, G, and I are added to read as follows:

Subpart E—Refugee Cash Assistance

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Definitions.

For purposes of this subpart—
"Filing unit" means the individual or individuals whose needs are considered in determining eligibility for, and the amount of, an assistance payment for which FF [Federal funding] is claimed under this part.

"Household" means the individual or individuals living in a housing unit.

§ 400.52 Recovery of overpayments and correction of underpayments.

The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.55 Opportunity to apply for cash assistance.

(a) A State must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State must—

(1) Comply with regulations at Part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(2) Determine eligibility for other cash assistance programs in accordance with § 400.56 of this part;

(3) Verify with the applicant's sponsor or the resettlement agency the amount of financial assistance which the sponsor or resettlement agency is actually providing to the applicant and count any such assistance, provided in cash and, if the State counts in-kind assistance in its AFDC program, in kind, in considering income and resources of applicants under § 400.61 of this part; and

(4) Contact the applicant's sponsor or the resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77(a) of this part.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for cash assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee cash assistance and other programs such as AFDC and GA. For example, if a refugee applies for assistance, is determined ineligible for AFDC but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to AFDC and to

refugee cash assistance. Similarly, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, and the State reviews the case file to determine possible eligibility for AFDC or GA, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.56 Determination of eligibility under other programs.

(a) *AFDC.* (1) The State must determine eligibility under the AFDC program for refugees who apply for cash assistance.

(2) A State must provide cash assistance under the AFDC program to all refugees who apply for and are eligible under that program.

(3) If the appropriate State agency determines that the refugee applicant is not eligible for cash assistance under the AFDC program, the State must determine eligibility for refugee cash assistance in accordance with § 400.60.

(b) *Cash assistance to the aged, blind, and disabled—(1) SSI.* (i) The State agency must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration, HHS, to apply for cash assistance under the SSI program.

(ii) If the State agency determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD, or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years of age or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.57 Emergency cash assistance to refugees.

If the State agency determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as

quickly as possible and issue the initial payment to the refugee on an emergency basis.

Conditions of Eligibility for Refugee Cash Assistance

§ 400.60 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are ineligible for cash assistance under the AFDC, SSI, OAA, AB, APTD, and AABD programs but meet refugee cash assistance need standards;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Meet the requirements contained in Subpart F of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part.

(b) A refugee may be eligible for refugee cash assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

§ 400.61 Consideration of income and resources.

(a) In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply the regulations at § 233.20(a)(3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency may not apply the earned income disregard of \$30 plus one-third of the remainder of the earnings or the disregard of \$30 set out in § 233.20(a)(11)(ii)(B) of this title.

(b) The State agency may not consider any resources remaining in the applicant's country of origin to be accessible to an applicant for or recipient of refugee cash assistance.

(c) The State agency may not consider a sponsor's income and resources to be accessible to a refugee solely because the person is serving as a sponsor.

§ 400.62 Need standards and payment levels.

(a) In determining need for refugee

cash assistance, a State agency must use the State's AFDC need standards established under § 233.20(a)(1) and (2) of this title.

(b) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (a) of this section and applying the consideration of income and resources in § 400.61, a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

§ 400.63 Proration of shelter, utilities, and similar needs.

If a State prorates allowances for shelter, utilities, and similar needs in its AFDC program under § 233.20(a)(5) of this title, it must prorate such allowances in the same manner in its refugee cash assistance programs.

§ 400.64 Other AFDC requirements applicable to refugee cash assistance.

In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

- 233.31 Budgeting methods for AFDC.
- 233.32 Payment and budget months (AFDC).
- 233.33 Determining eligibility prospectively for all payment months (AFDC).
- 233.34 Computing the assistance payment in the initial one or two months (AFDC).
- 233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
- 233.36 Monthly reporting (AFDC)—which shall apply to recipients of refugee cash assistance who have been in the United States more than 6 months.
- 233.37 How monthly reports are treated and what notices are required (AFDC).
- 235.110 Fraud.

Subpart F—Requirements for Employability Services, Job Search, and Employment

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart. (A refugee who is an applicant for or recipient of AFDC must meet the requirements of the AFDC program instead of the requirements in this subpart; a refugee who is an applicant for or recipient of

GA must meet the requirements of the GA program instead of the requirements in this subpart.)

§ 400.71 Definitions.

For purposes of this subpart and Subpart I—

"Appropriate agency providing employment services" means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

"Designee," when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of § 400.72(a) of this subpart.

"Employability plan" means an individualized written plan for a refugee registered for employment services that sets forth a program of services intended to result in the earliest possible employment of the refugee.

"Employability services" means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

"Employable" means not exempt from registration for employment services under § 400.76 of this part.

"Employment services" means the services specified in § 400.154(a) of this part.

"Registrant" means an individual who has registered for employment services under § 400.75 of this part.

§ 400.72 Arrangements for employability services.

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specified in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

General Requirements

§ 400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, a refugee who is not exempt under § 400.76 of this subpart must, except for good cause shown—

(1) Register with an "appropriate agency providing employment services," as defined in § 400.71, and participate in the employment services provided by such agency, as defined in § 400.154(a) of this part.

(2) Carry out job search, as provided for in § 400.80.

(3) Go to a job interview which is arranged by the State agency or its designee.

(4) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(5) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section 412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(6) Participate in any targeted assistance program in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee.

(7)(i) Accept an offer of employment which is determined to be appropriate by the resettlement agency which was responsible for the initial resettlement of the refugee or by the appropriate State or local employment service;

(ii) Go to a job interview which is arranged through such agency or service; and

(iii) Participate in a social service or targeted assistance program which such agency or service determines to be available or appropriate.

(b) The State agency must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) The State agency must consider an applicant for or recipient of refugee cash assistance to be employable and require him or her to meet the requirements of § 400.75(a) unless the applicant or recipient is—

(1) Under age 16.

(2) Under age 18 and a full-time student (as defined by the State for its AFDC program); or (if the State's AFDC program extends coverage to this group) age 18 and a full-time student in secondary school or in the equivalent level of vocational or technical training (as defined by the State for its AFDC program) and reasonably expected to complete the program before reaching age 19.

(3) Ill, when determined by the State agency on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training.

(4) Incapacitated, when determined by a physician or licensed or certified psychologist and verified by the State agency, that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training.

(5) 65 years of age or older.

(6) Caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the State agency, care in the home on a substantially continuous basis, and no other appropriate member of the household is available.

(7) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child.

(8) Working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 workdays. Or

(9) Pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the next 3 months.

(b) Inability to communicate in English does not exempt a refugee from registration for employment services, participation in employability service programs, carrying out job search, and

acceptance of appropriate offers of employment.

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable applicant may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(b)(3)(ii), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81.

(b) As a condition of continued receipt of refugee cash assistance, an employable recipient may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

§ 400.78 Service requirements for employed recipients of refugee cash assistance.

(a) As a condition of continued receipt of refugee cash assistance, a recipient who is not exempt under § 400.76 of this part and who is employed less than 30 hours a week must accept part-time employability services, as available and as determined to be appropriate, using criteria set forth in § 400.81 of this part, provided that such services must not interfere with the recipient's job.

(b) A State agency may, but is not required to, require part-time employability services if a recipient of refugee cash assistance is employed at least 30 hours a week, provided that such services must not interfere with the recipient's job.

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed for each recipient of refugee cash assistance who is not exempt under § 400.76 of this part.

(b) If such a plan has been developed by the resettlement agency which sponsored the refugee, or its designee, the State agency, or its designee, may accept this plan if it determines that the plan is appropriate for the refugee and meets the requirements of this subpart.

(c) The employability plan must—

(1) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking;

(2) Contain a definite employment goal, attainable in the shortest time period consistent with the employability

of the refugee in relation to job openings in the area; and

(3) Enable the individual to meet the job search requirements of § 400.80 of this part.

Job Search Requirements

§ 400.80 Job search requirements.

(a) An employable recipient of refugee cash assistance must carry out a job search program beginning at any time required by the State. The State agency shall require such job search program to begin:

(1) No later than 6 months after the refugee entered the United States or

(2) At the time the refugee is determined eligible for refugee cash assistance if the refugee has completed at least 6 months in the United States at the time of such determination.

(b) Such job search program shall continue for at least 8 consecutive weeks and shall meet such requirements as the State agency determines appropriate, including the amount of time to be devoted to employer contacts per week or the number of employer contacts required per week.

(c) The State agency must determine and carry out the procedures it considers necessary to ensure that requirements for participation in job search are met.

Criteria for Appropriate Employability Services and Employment

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the following criteria, or, if approved by the Director, the comparable criteria applied by the State in an alternative program for AFDC recipients:

(1) All assignments must be within the scope of the individual's employability plan. The plan may be modified to reflect changed services or employment conditions.

(2) The services or employment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health.

(3) The total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the

transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards.

(4) When child care is required, the care must meet the standards normally required by the State in its work and training programs for AFDC recipients.

(5) The service or work site to which the individual is assigned must not be in violation of applicable Federal, State, or local health and safety standards.

(6) Assignments must not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin.

(7) Appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of this section.

(8) The wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

(9) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation. And

(10) No individual may be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate.

(11) In addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, provided that such training: Is approved as part of the individual's employability plan by the State agency, or its designee; does not exceed one year's duration (including

any time enrolled in such program in the United States prior to the refugee's application for assistance); is specifically intended to assist the professional in becoming relicensed in his or her profession; and, if completed, can realistically be expected to result in such relicensing.

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless:

(1) The refugee is currently participating in a program *in progress* of on-the-job training (as described in § 400.154(c)) or vocational training (as described in § 400.154(e)) which meets the requirements of this part and which is being carried out as part of an approved employability plan; or

(2) The refugee is enrolled full-time in a professional recertification program which meets the requirements of paragraph (b) of this section.

Failure or Refusal To Carry Out Job Search or to Accept Employability Services or Employment

§ 400.82 Failure or refusal to carry out job search or to accept employability services or employment.

(a) *Voluntary registrant.* When a voluntary registrant—i.e., a recipient of refugee cash assistance who is exempt from registration under § 400.76 of this part—has failed or refused to participate in appropriate employability services, to carry out job search, or to accept an appropriate offer of employment, the State agency, or its designee, may deregister the individual for up to 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

(b) *Mandatory registrant—(1) Termination of assistance.* When, without good cause, a mandatory registrant—i.e., an employable recipient of refugee cash assistance who is not exempt from registration under § 400.76 of this part—has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State must terminate assistance, in accordance with paragraphs (b)(2) and (3) of this section.

(2) *Notice of intended termination.* (i) In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the State agency must give timely and adequate notice, following the same procedures as those used in its AFDC program under § 206.10(a)(7) of this title.

(ii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the registrant's right to a hearing under § 400.83 of this part.

(3) *Sanctions.* (i) If the sanctioned individual is the only member of the filing unit, the assistance shall be terminated. If the filing unit includes other members, the State shall not take into account the sanctioned individual's needs in determining the filing unit's need for assistance.

(ii) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

(iii) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

§ 400.83 Hearings.

The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 205.10(a) of this title, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

Subpart G—Refugee Medical Assistance

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—
 "Medically needy" means individuals who are eligible for medical assistance under a State's approved Medicaid State plan in accordance with section 1902(a)(10)(C) of the Social Security Act.
 "Spend down" means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or,

as applicable to Guam, the Virgin Islands, and Puerto Rico, 42 CFR 436.831).

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR Part 435, Subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436, Subpart J, and 42 CFR Part 431 Subpart E.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid. For example, if a refugee applies for assistance, is determined ineligible for Medicaid but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid and to refugee medical assistance.

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine Medicaid eligibility under its Medicaid State plan for refugees who apply for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid program to all refugees eligible under its State plan.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid under its State plan, the State must determine the applicant's eligibility for refugee medical assistance.

Conditions of Eligibility for Refugee Medical Assistance

§ 400.100 General eligibility requirements.

(a) Eligibility for refugee medical assistance is limited to those refugees who—

(1) Are ineligible for Medicaid but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Have not been denied, or terminated from, refugee cash assistance under § 400.82 of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

(b) A refugee may be eligible for refugee medical assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance are eligible for refugee medical assistance.

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

(a) In States with medically needy programs under 42 CFR Part 435, Subpart D, the State's medically needy financial eligibility standards established under 42 CFR Part 435, Subpart I, and as reflected in the State's approved title XIX State Medicaid plan; and

(b) In States without a medically needy program, the State's AFDC need standards established under § 233.20(a)(2) of this title.

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraph (b) of this section, in considering

financial eligibility of applicants for refugee medical assistance, the State agency must use—

(1) In States with medically needy programs, the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan; and

(2) In States without medically needy programs, the standards governing consideration of income and resources of AFDC applicants in § 233.20(a)(3) through (11) of this title, except as specified in § 400.61(a) of this part.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

§ 400.103 Coverage of refugees who spend down to AFDC need standard.

In States without a medically needy program, if an applicant for refugee medical assistance does not meet the appropriate AFDC need standard, the State agency must allow that individual to spend down to the AFDC need standard using the methods for deducting incurred medical expenses set forth in 42 CFR 435.831(c).

§ 400.104 Transitional coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving refugee medical assistance becomes ineligible solely by reason of increased earnings from employment, the refugee's medical assistance eligibility shall be extended by a period of four months or until the refugee reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b), whichever comes first.

Scope of Medical Services

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under §§ 400.94 or 400.100 of this part the same services through public facilities.

§ 400.107 Health assessments.

(a) As part of its refugee medical assistance program, a State may provide a health assessment to a refugee provided—

(1) The assessment is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the assessment program or project has been provided to the State by the Director, or designee.

(b) If such assessment is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under §§ 400.94 or 400.100 of this part.

Subpart I—Refugee Social Services

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(c) of the Act for refugee social services.

§ 400.141 Definitions.

For purposes of this subpart—

"Refugee social services" means any title XX social service as defined below or any service set forth in §§ 400.154 or 400.155 of this subpart.

"Title XX social services" means any service which is permissible in the State under the State's annual pre-expenditure report under title XX of the Social Security Act.

Applications, Determinations of Eligibility, and Provision of Services

§ 400.145 Opportunity to apply for services.

(a) A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee social services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

Funding and Service Priorities

§ 400.146 Use of funds.

(a) If a State's dependency rate, as defined in paragraph (b) of this section, is 55 percent or more, as determined by the Director, the State must use at least 85 percent of its social service grants to

provide employability services as set forth in § 400.154 of this subpart. This limitation shall not apply if the annual social services plan which the Director receives from the State, in accordance with § 400.11(b)(2) of this part, was established by or in consultation with local governments, and the Director determines that the plan provides for the maximum appropriate provision of employability services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

(b) "Dependency rate" means the result of the following calculation:

(1) The number of refugees receiving cash assistance funded in whole or in part under this part,

(2) Divided by the Director's estimate of the State's population of refugees who have been in the United States less than the number of months for which funding for cash assistance is provided under this part, and

(3) Multiplied by 100.

§ 400.147 Priority in provision of services.

(a) A State must plan its social service program and allocate its social service funds in such a manner that an appropriate portion of funds, based on population and service needs, as determined by the State, is used to provide services to newly arriving refugees and to other refugees who have been in the United States less than one year. The portion proposed for such use must be specified and justified as part of the State's plan under § 400.11(b)(2) of Subpart B.

(b) In providing employability services, a State must give priority to a refugee who is receiving cash assistance which is funded, in whole or in part, under this part.

(c) If a State intends to provide services to refugees who have been in the United States for more than 36 months, the State must specify and justify, as part of its plan under § 400.11(b)(2) of Subpart B, the portion of service funds which it proposes to use to provide services to those refugees.

Purchase of Services

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

Conditions of Eligibility for Refugee Social Services

§ 400.150 General eligibility requirements.

Eligibility for refugee social services is limited to those refugees who—

(a) Meet immigration status and identification requirements in Subpart D of this part;

(b) Meet the other eligibility requirements and conditions in this subpart.

§ 400.152 Limitations on eligibility for specific services.

(a) A State may provide the social services defined in § 400.154 to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A State may provide the social services defined in § 400.155 to refugees without eligibility limitations, except for such limitations as may apply to title XX services provided under § 400.155(h).

Scope of Refugee Social Services

§ 400.153 Title XX social services.

A State may provide the same services in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.154 Employability services.

A State may provide the following employability services—

(a) *Employment services*, including development of an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search, and job placement and followup.

(b) *Employability assessment services*, including aptitude and skills testing.

(c) *On-the-job training*, when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer who is providing the training.

(d) *English language instruction*, with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training*, including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification*, when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care*, when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation*, when necessary for participation in an employability service.

(i) *Translation and interpreter services*, when necessary in connection with employment or participation in an employability service.

(j) *Case management services*, as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76 and for recipients of AFDC and GA who are considered employable, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

Note: Under circumstances specified in § 400.13(d), a State may, but is not required to, charge certain case management services to its CMA grant rather than its social services grant.)

§ 400.155 Other services.

A State may provide the following other services—

(a) *Information and referral services*.

(b) *Outreach services*, including activities designed to familiarize refugees with available services.

(c) *Social adjustment services*, including:

(1) *Emergency services*, as follows: Assessment and short-term counseling to persons in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services*, as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services*, as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care*, when necessary for

participation in a service other than an employability service.

(e) *Transportation*, when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services*, when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services*, when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Title XX social services*, which may be provided in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.156 Limitations and restrictions.

(a) In order to avoid interference with refugee job search and employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(b) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency is required to provide for a refugee whom it sponsors and not duplicate the provision of such services to such refugee.

8. Section 400.206 is added in Subpart J to read as follows:

§ 400.206 Federal funding for social services.

Federal funding is available for refugee social services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations determined by the Director.

9. A new § 400.220 is added in Subpart J to read as follows:

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways: (a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or (b) on the basis of the actual date of arrival, in which case each month will be counted from that specific date.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 88-359]

Modification of Space Station Authorizations of GE American Communications, Inc.; Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; policy statement.

SUMMARY: This action disposes of a modification request made by GE American Communications, Inc. (GE) seeking authority to operate its 12/14 GHz K-3 satellite from 85° W.L. with transponders capable of operating either with 27 MHz or 54 MHz of usable bandwidth with 60 watt instead of 45 watt traveling wave tube amplifiers. This Order establishes the creation of a bifurcated orbital arc segment to which higher power density satellite such as the K-3 satellite may be assigned. Specifically, the 75-79 W.L. and 132-136° W.L. Segments are designated as the high power density arc segments. However, because GE asserts it will not operate outside of the 85-106° W.L. orbital arc, the FCC also denies GE's modification request to operate a high power density satellite at 85° W.L.

EFFECTIVE DATE: December 29, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon Jr. at (202) 634-1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in the matter of the applications of GE American Communications, Inc., File Nos. 1970-1971-DSS-MP/ML-86 and 1972-DSS-MP-86, adopted November 3, 1988 and released November 29, 1988.

The full text of this document is available for inspection and copying during normal business hours in the Domestic Facilities Division Public Reference Room (Room 6220), 2025 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum and Opinion and Order

1. This order addresses responses to the Commission's *Tentative Decision*, 53 FR 3056 (February 3, 1988) concerning the modification request of GE

American Communications, Inc. (GE) to redesign and operate its K-3 satellite at 85° W.L. and redesign its K-4 ground spare satellite with 60 watt traveling wave tube amplifiers. This proceeding had its origins in 1986 when GE filed its modification request. Several satellite operators objected to the GE request, asserting that K-3's proposed operation would cause unacceptable interference into neighboring lower power density satellites. Because the affected operators and GE could not reach agreement, the Commission developed the proposal in the *Tentative Decision* which entailed establishing an orbital arc segment from 87-93° W.L. to which high power density satellites could be assigned. Consequently, this meant that Satellite Transponder Leasing Corporation's SBS-4 was to be relocated from 91° W.L. to 85° W.L. The Commission also proposed to require adjacent satellite cross-polarization and to space the 1 1/4 GHz satellites in the high power density arc with 1.5° separations to increase the number of satellites that could be accommodated.

2. Generally, the *Tentative Decision* commenters expressed reservations regarding the tentative proposal. The comments can be grouped into three categories: (1) Those that oppose the proposal because it requires relocating SBS-4, (2) those that specifically oppose the use of the 87-93° W.L. arc because they believe that it precludes the operation of traditional lower power density satellites and services from a prime orbital arc segment, and (3) those that support the concept or arc segmentation but not the Commission's proposal to impose 1.5° separation within the high power density segment.

3. In light of these comments and a change in circumstances since the *Tentative Decision*—i.e., the relinquishment of several domestic satellite licenses in the past several months—the Commission adopts an approach suggested by several of the commenters. Specifically, in this order, we designate an eastern segment at 75-79° W.L. and a western segment at 132-136° W.L. as the high power density arcs. Because GE asserts it will not operate its K-3 satellite outside of the 85-106° W.L. orbital arc, we deny GE's modification request to operate a high power density satellite at 85° W.L. SBS-4 can therefore remain at its current 91° W.L. location. Finally, the Commission maintains 2° separations in the high power density arc segment and therefore will not require adjacent high power density 1 1/4 GHz satellites to be cross-polarized.

Order Clauses

4. Accordingly, it is ordered that GE American Communication, Inc.'s request to modify the technical parameters of its Satcom K-3 and K-4 satellites, Application File No. 1970-DSS-MP/ML-86, is denied.

5. It is further ordered that Application File No. 1971-DSS-MP/ML-86 is granted and GE American Communications, Inc. is authorized to offer all the transponders on its Satcom K-3 satellite on a non common carrier basis.

6. It is further ordered that Application File No. 1979-DSS-MP-86 is granted and the schedule for implementation of the Satcom K-3 satellite specified in RCA American Communications, Inc., 94 FCC 2d 441 (1983), is modified as follows:

SATCOM K-3—

Construction completed, April 1989.
Launch no later than October 1989.

7. It is further ordered that Assignment of Orbital Locations, 50 FR 35228 (August 30, 1985), as modified in Comsat General Corporation, 2 FCC Rcd 4570 (1987) and Comsat General Corporation, 3 FCC Rcd 4071 (1988), is modified to reassign the GSTAR III satellite from 136° W.L. to 124° W.L. effective 30 days from the release of this Order.

8. It is further ordered that the orbital assignment policies regarding the establishment of a bifurcated high power density arc described herein are adopted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-2454 Filed 2-2-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 219

Department of Defense Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program; Correction

AGENCY: Department of Defense.

ACTION: Interim rule and request for comments; correction.

SUMMARY: This document corrects an interim rule on Small Business Competitiveness Demonstration Program which was published in the Federal Register on Friday, January 27, 1989 (54 FR 4246). The action is necessary to make technical corrections to reporting requirements contained in the rule.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 204 as follows:

PART 204—ADMINISTRATIVE MATTERS

1. On page 4246, section 204.671-5 is corrected by designating in paragraph (e) the introductory text in unlettered paragraph "Item E2" as paragraph (i), adding a sentence to the designated paragraph (i) and adding paragraphs (ii) through (iv); by revising in paragraph (e) the unlettered paragraph "Code Y" of the unlettered paragraph "Item E2"; by changing in paragraph (e) in the table of Codes following the text in the unlettered paragraph "Item E3" Code F between Code F and Code M to read "Code G"; by adding in paragraph (e) in the first sentence of the unlettered paragraph "Item E4" between the word "the" and the word "designated" the word "four"; and by adding in paragraph (e) in the unlettered paragraph "Code Y" in the unlettered paragraph "Item E4" between the word "contractor" and the word "is" the words "represents that it"; to read as follows:

204.671-5 Instructions for Completion of DD Form 350.

* * * * *

Item E2, Small Business Competitiveness Demonstration Program Test.

(i) The Small Business Competitiveness Demonstration Program is set forth in FAR 19.10. Supplies and services subject to the program are set forth in FAR 19.1005, as supplemented (see 219.1005(b)).

(ii) If Item B-13 is coded 1 through 4, or A, code this item in accordance with the instructions below.

(iii) If Item B-13 is coded 5 or B through G, code this item with the same code used to report the original contract governing this action.

(iv) If Item B-13 is coded 6, 7, or 8, use Code N.

Code Y—Enter this code for any action awarded to a U.S. business concern under the Small Business Competitiveness Demonstration Program for either the four designated industry groups or the ten targeted industry categories.

204.672-5 (Corrected)

2. On page 4247, the amendatory language in paragraph 5 is corrected by substituting at the end of the text the words "most appropriate subtitle," in lieu of the words "code which is appropriate for the set-aside methods used."

3. On page 4247, section 204.675-3 is corrected by revising the first sentence of paragraph (b) to read as follows:

204.675-3 Instructions for Completion of the DD Form 350.

* * * * *

(b) Leave Items B4, B5B, B5E, B5F, B5G, B10, B11, B12B, B12C, C4, C6, C11, C12, D2, D3, D4E, D5, D7, D8, and E1 blank. * * *

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

4. On page 4247, section 219.1071 is corrected by substituting in the first sentence of paragraph (a) between the word "the" and the word "at" the word "provision" in lieu of the word "clause"; by substituting in paragraph (b)(1) between the word "the" and the word "at" the word "provision" in lieu of the word "clause".

[FR Doc. 89-2505 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-98, Amdt. 192-60A]

[RIN 2137-AB19]

Exception From Pressure Testing; Non-Welded Tie-In Joints

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: RSPA has received 16 petitions for reconsideration of a final rule requiring leak testing of welded joints that tie in pressure-tested segments of pipeline. RSPA is persuaded by the petitions that because these joints are generally subject to nondestructive testing and because the need for leak testing has not been adequately demonstrated, the requirement lacks an adequate safety basis. Therefore, RSPA is deleting the requirement from the rule.