

this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: November 12, 1993.

Barbara J. Goetz,

Acting Regional Administrator of Region 6.

40 CFR Part 228 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. In § 228.12, paragraph (b) (79) is amended by revising the "Location" discussion to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(79) * * *

Location: 28°23'48" N, 96°18'00" W;
28°23'21" N, 96°18'31" W; 28°22'43" N,
96°17'52" W; 28°23'11" N, 96°17'22" W.

* * * * *

[FR Doc. 93-29891 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7012

[AZ-930-4210-06; AZA-28027]

Partial Revocation of Secretarial Order Dated November 18, 1907; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects 30 acres of National Forest System land withdrawn for use as an administrative site. The land is no longer needed for this purpose, and the revocation is needed to accommodate a proposed land exchange under the General Exchange Act of 1922. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT:

John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-650-0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated November 18, 1907, which withdrew National Forest System land for use as an administrative site, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

Apache National Forest

T. 7 N., R. 27 E.,

Sec. 12, E½NE¼NW¼, and
NW¼NE¼NW¼.

The area described contains 30 acres in Apache County.

2. At 10 a.m. on January 7, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29874 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-32-M

43 CFR Public Land Order 7014

[WY-930-4210-06; WYW 71191, WYW 128399]

Opening of Land, Under Section 24 of the Federal Power Act, and Partial Revocation, in Secretarial Order Dated July 16, 1934, Which Established Powersite Classification No. 286; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens 40 acres, subject to the provisions of section 24 of the Federal Power Act, and revokes 22.60 acres of a Secretarial order involving National Forest System lands, which established the Bureau of Land Management's Powersite Classification No. 286. The order will allow future land exchanges of Forest Service administered lands. The lands have been and continue to be open to mineral leasing, and under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6127.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988); and section 204 of Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVWY-188, it is ordered as follows:

1. At 9 a.m. on December 8, 1993, the following described National Forest System land withdrawn by Secretarial Order dated July 16, 1934, which established Powersite Classification No. 286, will be opened to disposal by sale or exchange subject to the provisions of section 24 of the Federal Energy Regulatory Commission determination DVWY-188, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 40 N., R. 117 W.,

Sec. 15, SE¼SE¼.

The area described contains 40 acres in Teton County.

2. Secretarial Order dated July 16, 1934, which established Powersite

Classification No. 286, is hereby revoked insofar as it affects the following described National Forest System land:

Sixth Principal Meridian

Brigade-Teton National Forest

T. 40 N., R. 117 W.,
Sec. 15, lot 1.

The area described contains 22.60 acres in Teton County.

3. At 9 a.m. on December 7, 1993, the land described in paragraph 2 above shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29866 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-22-M

1933, which withdrew National Forest System land for the Bureau of Land Management's Powersite Classification Nos. 50 and 280, are hereby revoked insofar as they affect the following described land:

Boise Meridian

T. 24 N., R. 8 E.,
sec. 32, tract 37.

The area described contains 6.28 acres in Idaho County.

2. At 9 a.m. on January 7, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29867 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-GG-M

Sec. 24, NW¼SW¼;

Sec. 26, N¼SW¼;

Sec. 27, N¼SW¼.

The areas described aggregate 320 acres in Big Horn County.

2. The management of the above described surface and mineral estates will be in accordance with the Memorandum of Agreement between the Northern Cheyenne Tribe, the Bureau of Indian Affairs, and the Bureau of Land Management, dated July 16, 1993.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29868 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Final rule.

SUMMARY: The Department anticipates that adjustments in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) will continue to be necessary in future fiscal years to accommodate changing appropriation levels and changing refugee flows. Therefore, the Department is amending current regulations to establish both a methodology by which the Office of Refugee Resettlement (ORR) will determine each year the duration of eligibility for RCA and RMA, based on available appropriated funds for the year, and a procedure by which a final notice will be published in the *Federal Register* in lieu of publishing a regulation each time a change in the RCA/RMA eligibility period is necessitated by the amount of funds appropriated.

A proposed rule was published in the *Federal Register* on July 22, 1993 (58 FR 39181). Some clarifications have been provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: January 7, 1994.

ADDRESSES: Office of Refugee Resettlement, Administration for

43 CFR Public Land Order 7015

[ID-943-4210-06; IDI-15704-02, IDI-15701-02]

Partial Revocation of Secretarial Orders Dated September 29, 1922, and December 19, 1933, Which Established Powersite Classification Nos. 50 and 280; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders insofar as they affect 6.28 acres of National Forest System land withdrawn for the Bureau of Land Management's Powersite Classification Nos. 50 and 280 within the Payette National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and will permit the disposal of the land by exchange. The land has been and will remain open to mineral leasing but will remain closed to mining due to overlapping withdrawals.

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT:

Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706-2500, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders dated September 29, 1922, and December 19,

43 CFR Public Land Order 7016

[MT-930-4210-05; MTM 81816]

Jurisdiction Transfer, Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers exclusive jurisdiction and administration of the surface and mineral estates of 320 acres of public lands from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs in trust for the Northern Cheyenne Tribe.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dee L. Baxter, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59101, 406-255-2943.

By virtue of the authority vested in the Secretary of the Interior by section 10(e) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Public Law 102-374 (106 Stat. 1192), it is ordered as follows:

1. Subject to valid existing rights and the terms of the Memorandum of Agreement dated July 16, 1993, jurisdiction of the surface and mineral estates for the following described lands are hereby transferred to the Bureau of Indian Affairs in trust for the Northern Cheyenne Tribe:

Principal Meridian

T. 8 S., R. 40 E.,
Sec. 23, SW¼NE¼, N¼SE¼;

Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT:
Toyo A. Biddle, (202) 401-9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), for the State-administered special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) as set forth in 45 CFR part 400 subparts E and G. RCA, which provides monthly cash assistance payments to refugees, and RMA, which provides payment of hospital and medical bills, were established to assist needy refugees who do not meet the categorical eligibility requirements for the programs of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) for the aged, blind, and disabled, and Medicaid.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final rule, published March 12, 1982 (47 FR 10841), reduced the period to 18 months, and a final rule, published August 24, 1988 (53 FR 32222), further reduced the eligibility period to 12 months. Due to limited funds appropriated for these programs in FY 1992, an emergency final rule was published on January 10, 1992 (57 FR 1114), further reducing the RCA/RMA eligibility period to 8 months in FY 1992. On September 17, 1992 (57 FR 42896), an emergency final rule was published maintaining the eligibility period at 8 months for FY 1993. Finally, due to the limited amount of appropriated funds available for the remainder of the fiscal year, an emergency final rule was published on March 1, 1993 (58 FR 11793), reducing the RCA/RMA eligibility period for the remainder of FY 1993 to 5 months. Subsequently, on March 31, 1993, based on the Department's intent to seek supplemental funding during FY 1993 to enable the RCA/RMA eligibility period to be maintained at 8 months for the remainder of FY 1993, the regulation establishing a 5-month RCA/RMA eligibility period was withdrawn (58 FR 16777). An emergency final rule was published simultaneously to reduce the RCA/RMA eligibility period from 8 months to 3 months, effective June 1, 1993, in the event that the Department was not successful in obtaining

supplemental funding. Subsequently, a rule delaying the effective date of the 3-month rule to August 1, 1993, was published on May 25, 1993 (58 FR 29981), based on the availability of additional funds for the RCA/RMA program due to a lower level of FY 1993 funding needed for the matching grant program than was first estimated and the fact that more recent RCA/RMA data indicated a lower per capita cost than originally estimated. Finally the 3-month rule was withdrawn on July 30, 1993 (58 FR 40754), based on the Department's determination that sufficient funds were available to continue the 8-month RCA/RMA eligibility period for the remainder of FY 1993 due to the enactment of Public Law No. 103-50 on July 2, 1993, which allows refugee funds for FY 1992 to be used for costs of assistance and services in FY 1993.

On September 1, 1993, an emergency final rule was published (58 FR 46089) to maintain the RCA/RMA eligibility period at 8 months in FY 1994. This regulatory action was taken in anticipation that FY 1994 appropriations for the refugee program will not be sufficient to sustain an eligibility period greater than 8 months. In the absence of this emergency rule, the RCA/RMA eligibility period would have reverted to a 12-month period as of October 1, 1993.

Discussion of Changes

No substantive changes have been made in this final rule, as compared with the proposed rule published on July 22, 1993. Clarification is provided on various aspects of the methodology and process to be used in making determination of the time-eligibility period for RCA and RMA. These clarifications are provided in the Discussion of Comments section, and some clarifying changes have been made to the rule itself.

Description of the Regulation

This rule removes from 45 CFR part 400 all references to a specific duration of eligibility for RCA and RMA and establishes a methodology by which the Office of Refugee Resettlement will determine the duration of eligibility for RCA and RMA, based on available appropriated funds. The Director of ORR will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, only if necessary, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The eligibility period in

effect at the close of FY 1993 will continue to remain in effect until the Director determines that the eligibility period needs to be changed based on the methodology described in this regulation to accommodate the level of funds appropriated by Congress. Currently, cash and medical assistance are provided under the line item for Transitional and Medical Services (TAMS), which also provides funds for State administrative costs, the unaccompanied minors program, and the voluntary agency matching grant program. In making a determination, the Director will first subtract from the amount available for TAMS under the appropriation, the anticipated costs of the unaccompanied minors program, the matching grant program, and any other program component that is designated by Congress in the TAMS line item in the future, other than the RCA/RMA program and State administration. If, in the future, the TAMS line item is replaced by another line item that includes the RCA/RMA program and State administration, the Director will subtract from the amount available for that line item the anticipated costs of other program components that are designated by Congress in the line item, other than the RCA/RMA program and State administration. The Director then will apply the methodology to determine the duration of RCA/RMA eligibility to be provided based on the balance of appropriated funds available. If the Director determines that the period of \$ eligibility needs to be changed from the eligibility period in effect at the time, ORR will publish a notice in the *Federal Register*, announcing the new period of RCA/RMA eligibility and the effective date for implementing the new eligibility period. States will be given as much notice as available funds will allow without resulting in a further reduction in the eligibility period. At a minimum, States will be given 30 days' notice.

Methodology for Determining RCA/RMA Eligibility Period

The methodology described below applies only to the determination of the RCA/RMA eligibility period. The methodology will be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which provides the most number of months within the funds appropriated for the fiscal year. The Federal government is prohibited from obligating more funds than are appropriated.

The method to be used to determine the RCA/RMA eligibility period will include the following steps:

1. The time-eligible population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best historical and current refugee flow information that will most accurately forecast the refugee flow for the fiscal year. These arrival figures then will be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

2. The average annual number of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in step 1 by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. The appropriate participation rates for various RCA/RMA time-eligibility periods are derived from recipient data from quarterly performance reports submitted by States for the most recent 4 quarters for which reports are available.

3. The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year, using available data, and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

4. The expected average annual number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

5. State administrative costs for the projected fiscal year for all States in the aggregate will be estimated based on total actual allowable expenditures for State administration for the most recent fiscal year. The variable portion of administrative costs will be adjusted for anticipated changes in program participation and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). The fixed portion of administrative costs will be adjusted by the CPI inflator only.

6. The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA,

RMA, and State administration as calculated in steps 1 through 5.

ORR will notify States of the duration of the eligibility period through a notice published in the *Federal Register* if the RCA/RMA eligibility period for the fiscal year must be changed from the RCA/RMA eligibility period in effect at that time.

The following example, using hypothetical data, illustrates how the methodology will work:

1. Suppose that the refugee admissions ceiling for FY 1994 is established at 1,000 and, based on available data, it is determined that an additional 200 persons eligible for refugee assistance are expected to arrive, resulting in a total expected arrival population of 1,200. Suppose that the same number, 1,200, arrived in the previous fiscal year (FY 1993). Based on an examination of the refugee flow from the previous year, suppose it is determined that the monthly flow in the projected fiscal year will be the same as in the previous fiscal year, with the monthly arrivals for both years as follows:

	Arrivals	FY 1994 8-month time-eligible population
MAR93	107	
APR93	87	
MAY93	87	
JUN93	92	
JUL93	93	
AUG93	110	
SEP93	158	
	734	
OCT93	65	799
NOV93	92	784
DEC93	124	821
JAN94	90	824
FEB94	95	827
MAR94	107	841
APR94	87	818
MAY94	87	747
JUN94	92	774
JUL94	93	775
AUG94	110	761
SEP94	158	829
Total	1,200	9,600

Average time-eligible: 800.

Assuming that the RCA/RMA time-eligibility period is 8 months, the time-eligible population in October would be the arrivals in October, plus refugees who arrived in the previous 7 months (March–September). The time-eligible population in October would be 799 refugees. The time-eligible population for each month in the fiscal year would be determined in the same manner as for October and then averaged across all

months, for an average of 800 in this example.

2. Based on an examination of RCA and RMA participation rates in the most recent 4 quarters for which State performance reports are available, suppose it is estimated that for an 8-month eligibility period, 35% of the time-eligible population will receive RCA benefits and 50% will receive RMA benefits. (The RMA participation rate includes refugees receiving both RCA and RMA and refugees receiving RMA only.) The figure of 800 determined in Step 1 is then multiplied by the RCA participation rate of 35% for a total of 280 RCA recipients and by the RMA participation rate of 50% for a total of 400 RMA recipients. These figures reflect the average annual number of RCA and RMA recipients.

3. If, in the previous fiscal year, the average annual RCA cost per recipient was \$1,000 and the average annual RMA cost per recipient was \$1,500, we would expect the average RCA cost per recipient to be \$1,020 for the projected year (assuming a 2% increase in per capita AFDC costs), while the average RMA cost per recipient would be expected to be \$1,680 (assuming a 12% increase in per capita AFDC Medicaid costs).

4. Total RCA costs would equal the number of recipients (280) multiplied by the per recipient cost (\$1,020), equaling \$285,600. Total RMA costs would equal the number of recipients (400) multiplied by the per recipient cost (\$1,680), equaling \$672,000.

5. State administrative costs for all States in the aggregate would be projected from the most recent fiscal year, adjusted for inflation, assuming there were no changes in the number of RCA/RMA recipients which could be expected to affect the variable portion of administrative costs. Suppose that last year actual allowable administrative costs were \$250,000. Also suppose that OMB's CPI rate is 4%. Therefore, we would expect administrative costs to equal \$250,000 times 1.04, totalling \$260,000.

6. Total costs would equal the sum of \$285,600 for RCA, \$672,000 for RMA, and \$260,000 for administrative costs, equaling \$1,217,600.

Suppose the appropriation level for TAMS is \$1,955,000, the anticipated costs of the unaccompanied minors program are \$290,000, and the costs of the matching grant program are expected to be \$390,000. Therefore, appropriated funds available for RCA, RMA, and State administrative costs would equal \$1,275,000, after the costs of the unaccompanied minors program and the matching grant program are

deducted from the amount available for TAMS under the appropriation. Suppose, using the methodology described above, the cost of a 9-month RCA/RMA eligibility period was estimated to be \$1,290,000, thus exceeding the level of available appropriated funds for RCA, RMA, and State administrative costs. Based on these estimates, the Director would determine that an 8-month time-eligibility period would provide the most number of months of benefits without incurring a shortfall in funds for the fiscal year.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), and subject J are amended.

Discussion of Comments Received

Forty-six letters of comment were received in response to the notice of proposed rulemaking published in the Federal Register on July 22, 1993. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance associations, advocacy organizations, and refugee service providers. These comments were taken into consideration in the development of this final rule.

Forty-five of the commenters expressed opposition to the proposed rule; one commenter commended ORR for trying to improve the process. Eighteen commenters recommended withdrawal or postponement of the rule to allow more time to consider the issues.

The comments are summarized below and are followed in each case by the Department's response.

General Comments

Comment: Nine commenters felt that ORR should play a strong leadership role in advocating for a reasonable period of eligibility for cash and medical assistance to refugees instead of simply establishing a process for making automatic adjustments to the eligibility period to accommodate budget constraints. One commenter expressed concern that this rule will send the message that there is no minimum period required to help refugees become self-sufficient in this country and that this message will diminish the Department's ability to advocate for an adequate period of support.

Response: This regulation in no way is intended to suggest that ORR will not advocate for a reasonable period of eligibility for refugee cash and medical assistance. We are committed to paying an active leadership role in ensuring that refugees who are not categorically eligible for other public assistance

programs are provided an adequate period of support that allows sufficient time for these refugees to become employed and self-supporting. It is important to make the distinction, however, that the appropriate and crucial time to advocate for sufficient resources for the refugee program is during the annual appropriations process, before Congress makes decisions on appropriation levels for the coming fiscal year. ORR will continue to seek adequate resources for the refugee program in general and specifically to ensure that a stable RCA/RMA eligibility period is maintained. ORR's efforts during the annual appropriations process will not be diminished or affected in any way by this regulation. Once the appropriations process is completed, however, and Congress has made its decision regarding appropriations for the refugee program, then ORR's task changes from advocacy to managing the program as effectively as possible within the resource level provided by Congress. An essential part of this task is to determine as quickly and as accurately as possible what is the maximum period of RCA/RMA eligibility that the appropriated funds will bear, to determine whether a change in the eligibility period is necessary, and to communicate this determination to States and other participants in the refugee program with as much advance notice as possible. It is this task that this regulation addresses.

We do not agree that by removing references to a specific RCA/RMA time-eligibility period in the regulation, ORR will be sending a message that there is no minimum time required by most refugees. We will use the budget process each year to convey the message that a reasonable minimum duration of assistance needs to be maintained for refugees.

Comment: Several commenters expressed concern that use of the proposed methodology would result in a lessened interest in seeking alternative solutions to a reduced eligibility period, such as supplemental funding or a reprogramming of funds. Two commenters felt that an automatic adjustment process should not take the place of thoughtful planning and management. Two commenters were concerned that this regulation would institutionalize a preference for benefit reductions. One commenter felt that other changes such as a reduction in the Federal reimbursement rate to States, rather than a reduction in eligibility period, should be made to accommodate decreasing appropriations in order to avoid placing the burden on refugees.

Another commenter suggested that ORR should consider the alternative of awarding funds for cash, medical, and administrative (CMA) costs to States on a formula grant basis, based on a 12-month eligible population. The commenter suggested that this approach would enable States to have the flexibility to utilize available funds in a manner most appropriate and cost-effective for each State. It would allow States to engage in innovative programming and would reward programs that successfully leverage mainstream resources and/or achieve the goal of early self-sufficiency.

One commenter recommended that ORR form a workgroup that includes State Coordinators, voluntary agencies, MAAs, and local governments to explore alternative methods for dealing with changes in funding.

Response: The process presented in this regulation is not meant to, and will not, replace thoughtful planning and management on the part of ORR. If the level of appropriated funds is not sufficient to maintain the eligibility period in effect at the time, ORR will explore possible alternatives before reducing the eligibility period. We wish to assure commenters that this regulation will not institutionalize a preference for benefit reductions.

Regarding the issue of changing the reimbursement rate, the law governing the refugee program would have to be amended to allow a change in the reimbursement rate to States for refugee cash and medical assistance. See 8 U.S.C. 1522(e)(1).

The idea of CMA formula grants to States in lieu of the current reimbursement arrangement is an idea that ORR preliminarily explored with a workgroup of States a few years ago. This concept, as well as other ideas, are worth exploring further. This regulation does not preclude continued consideration by ORR of these kinds of options. The idea of forming a workgroup to discuss alternative ways of handling changes in funding is one of many options that we may consider in the coming year.

Comment: Two commenters stressed the importance of tying refugee funding to the number of refugee admissions approved for the U.S. instead of trying the time-eligibility period to the appropriation level.

Response: We agree that appropriation levels should be related to the anticipated number of refugee admissions. The Department's budget request for FY 1994 proposed funding estimated to be sufficient to maintain an 8-month RCA/RMA eligibility period for

a projected 122,000 in refugee admissions.

Comment: One commenter considered the proposed regulation to constitute a major departure from Congressional intent and recommended as such that the proposal be considered during the reauthorizing process in 1995.

Response: This regulation does not represent a departure from Congressional intent. The procedure described in this regulation is simply a change in mechanics, only changing the notification procedure from a regulation to a Federal Register notice based on a regulation. The process to be used to determine the maximum eligibility period that appropriated funds can cover is similar to the process that ORR has previously used whether issuing an emergency final rule to announce a change in eligibility period or publishing a notice in the Federal Register. The only change is that the methodology that will be used is a more refined and, therefore, more accurate, version of the methodology that ORR has used in the past. In addition, this regulation makes public the methodology to be used. Heretofore, the methodology was not available to the public.

Comment: Two commenters felt that by allowing ORR to determine the duration of RCA/RMA, the decision making process would be taken away from Congress.

Response: The Congressional decision making process would in no way be affected by the methodology. Decisions on appropriation levels for the refugee program will continue to be made by Congress. ORR would simply continue to determine the eligibility period that the appropriated funds would be able to support.

Comment: Two commenters felt that the proposed regulation would provide ORR with the mechanism for phasing out the RCA/RMA program.

Response: This regulation does not give ORR the means to phase out the RCA/RMA program. The procedure established by this regulation can only be used when ORR changes the duration of RCA/RMA to accommodate the appropriation level set by Congress. If ORR decides to reduce RCA/RMA coverage as a matter of policy, rather than as an accommodation to available appropriated funds, ORR would be required to publish a notice of proposed rulemaking for public comment, followed by publication of a final rule, in accordance with the requirements of the Administrative Procedure Act (APA). Similarly, in order to phase out or terminate the RCA/RMA program, ORR would be required to publish a

notice of proposed rulemaking for public comment, in accordance with APA requirements, before issuing a final rule.

Comment: Four commenters expressed concern that this regulation allows ORR to further shift the burden of cash and medical assistance from the Federal government to States, local governments, and voluntary agencies.

Response: This regulation does not give ORR authority to shift costs to the State and local level. Such shifts are a function of the level of Congressional appropriations.

Comment: Nine commenters expressed concern about losing the opportunity for public comment whenever the eligibility period is decreased. The commenters felt that it is important to retain the public comment period to assure that changes in the program will not occur routinely. Sixteen commenters expressed the view that the proposed methodology would circumvent the notice and public comment requirements of the Administrative Procedure Act (APA). Two commenters argued that the eligibility period is a substantive rule which must be promulgated in accordance with APA requirements.

Response: Whenever appropriated funds have been insufficient to support the RCA/RMA eligibility period in effect at the time, the Department has published an emergency final rule, without opportunity for public comment, to put into effect the new eligibility period as quickly as possible in order to avoid a further reduction in duration. The use of this procedure under these circumstances is in compliance with APA requirements. See 5 U.S.C. 553(b)(B). An opportunity for public comment was not available, therefore, when the RCA/RMA eligibility period was either reduced or maintained at the same level by final regulation on January 10, 1992, September 17, 1992, March 1, 1993, March 31, 1993, and September 1, 1993. The recent notice of proposed rulemaking published on July 22, 1993, however, did provide an opportunity for public comment on the proposed methodology. This opportunity is not provided under the emergency final rule process. Thus the public gained an opportunity for public comment rather than losing it. We believe that the proposed regulation is a more desirable method to use because it allows the public to comment on the methodology to be used in determining eligibility periods.

With respect to whether the eligibility period is a substantive rule, while the Administrative Procedure Act requires

that an agency publish substantive rules for notice and comment, an agency is not required to publish "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" for notice and comment. See 5 U.S.C. 553(b)(A). The methodology contained in the regulation that the Department published for public comment is a substantive rule which will determine the eligibility period for RCA/RMA based on the level of funds appropriated by Congress. Because the Department has agreed to be bound by this methodology, the actual determination of the eligibility period pursuant to that methodology is an interpretative rule, which need not be published for notice and comment.

Comment: Thirteen commenters recommended withdrawal of the notice of proposed rulemaking or postponement of a final rule until the findings of the General Accounting Office (GAO) study regarding the validity of ORR's methodology for determining the RCA/RMA eligibility period are published and reviewed. Seven commenters felt that it is premature to issue a final rule before the GAO report is made final and before efforts initiated by the Department and ORR to work with States and other key parties regarding a forecasting model are completed.

Response: We have not yet received the GAO report. When we do receive the report, we will take into consideration any recommendations that GAO makes for improving the methodology. We have no reason to believe, however, based on a preliminary briefing by GAO of its findings several months ago, that this report will necessitate any major revisions of the proposed methodology.

Comment: Twenty commenters expressed concern regarding the possibility of frequent changes in the eligibility period. Six commenters felt that the potential for frequent changes in the eligibility period would affect the ability of States and voluntary agencies to assist refugees to become self-sufficient. Ten commenters felt that fluctuations in eligibility would place refugees at risk and would cause confusion and a bureaucratic nightmare for States and service providers. Two commenters suggested that fluctuations in the eligibility period could discourage small and medium States from continued participation in the refugee program.

Four commenters recommended that changes in the RCA/RMA eligibility period necessitated by the level of appropriated funds should be limited to no more than one change per year, at the

beginning of the fiscal year. One commenter questioned the need for redeterminations during the year. One commenter recommended that the language authorizing the Director to make determinations at subsequent points during the fiscal year be deleted.

Response: We also wish to avoid frequent changes in the RCA/RMA eligibility period. We agree with the commenters that constant fluctuations in the eligibility period will result in an untenable situation for all concerned. We are interested in maintaining a stable eligibility period. When a change is necessary, we anticipate making only one determination at or near the beginning of the fiscal year as soon as the appropriation level is known. If the determination indicates sufficient funds to maintain the current eligibility period, we will make no change. If the determination indicates insufficient funds, but alternatives are found to cover the additional cost, no change will be made. Once the Director determines, however, that a change must be made, the appropriate notification will be made quickly. We do not expect to have to make other determinations and changes during the fiscal year unless they are clearly necessary to enable States to avoid shortfalls. As an example, an emergency resettlement of a substantial number of unexpected refugees, which could not be predicted in advance, might occur which would necessitate a change in eligibility period in order to avoid a shortfall, if additional funding is not available.

Comment: Six commenters questioned how ORR would deal with unexpected arrivals during the year. One commenter pointed out that a redetermination of the eligibility period would not provide the necessary resources to accommodate the extra arrivals. Two commenters suggested that ORR consider establishing a domestic emergency fund, similar to the Department of State's emergency fund, as a way to accommodate emergency arrivals.

Response: ORR will explore possible alternatives before reducing the eligibility period as a result of additional arrivals. The Administration always has the discretion to seek additional funds or to pursue other solutions in response to an emergency situation. The concept of a domestic emergency fund is certainly an idea worth considering, but would require new legislation to authorize it.

Comment: Five commenters noted that the methodology does not include or mention reimbursement of the States' share of the costs for refugees in the categorical public assistance programs

such as Aid to Families with Dependent Children (AFDC). The commenters expressed concern that the absence of any reference to the categorical programs in the proposed regulation implied that ORR intends to officially eliminate the possibility of reimbursement for these programs.

Response: The lack of reference in the regulation to reimbursement for categorical program costs is not meant to imply that ORR intends to eliminate the possibility of reimbursement for these programs. We did not include these program costs in the methodology because we believe it is highly unlikely that the refugee program will enjoy a funding level in the foreseeable future that will enable ORR to reimburse States for their share of categorical public assistance costs for refugees. ORR has not had sufficient funds to reimburse States for any portion of their categorical program costs since FY 1990.

Comments on the Methodology

Comment: Eight commenters questioned the accuracy of the proposed methodology. Three of the commenters noted that a similar methodology was used to prepare materials for submission to the Federal District Court in Seattle in the case of *Nguyen versus Shalala*, No. C92-1867WD, in December 1992 and that these calculations proved incorrect, indicating that the methodology used was not reliable. Five of the commenters questioned whether the proposed methodology is the same as the methodology used in FY 1990 which failed to predict a shortfall, in FY 1992 when a surplus resulted, or in FY 1993 when various time-eligibility periods were established and withdrawn. Five commenters felt that it was not clear whether the proposed methodology is a new methodology whose accuracy has been tested on past data or whether the methodology is the same one that ORR has used in past years. One commenter suggested that an example that uses actual figures would be more credible than the hypothetical example used in the NPRM. One commenter indicated that if the methodology is the same one used in past years, the commenter applauds ORR for making it public.

Response: The methodology is a more refined version of the methodology used in the past. The methodology includes Cuban/Haitian entrants in the projected time-eligible population; the old methodology did not include Cuban/Haitian entrants. In addition, we are now able to monitor the number of RMA-only cases as a result of the availability of more data on these cases and are including these cases in a

determination of the RMA participation rate. The methodology used in past years was not able to factor in a precise count of RMA-only cases.

Regarding the methodology used throughout FY 1993 and in the *Nguyen versus Shalala* case, the methodology did not result in incorrect calculations. The change in calculations resulted from the continued use of more current State expenditure data as they became available. In addition, the agency's actions to withdraw the 5-month eligibility period rule which was to go into effect on April 1, 1993, and to maintain the 8-month eligibility period for the duration of FY 1993 resulted from the Secretary's determination to seek alternative funding, an action that ultimately was successful as recounted in detail in the Background section of this preamble.

We have tested the model on FY 1992, using data which would have been available in October, 1991. We assumed that the FY 1992 RCA/RMA program was as it was implemented: part of the year limited to 12 months and the balance limited to 8 months. The objective of the test was to determine whether the costs estimated by the model are close to the actual costs of States. The model estimates costs at \$190.4 million for RCA/RMA and State administration in FY 1992, as compared to \$192.7 million in actual experienced FY 1992 costs. This represents an error of only 1.2%. We, therefore, have a high degree of confidence in the model.

We are committed to a validation process over time. To accomplish this goal, we plan to determine the accuracy of our methods against actual data each year.

Comment: Three commenters felt that a clearer time frame should be established for determining the eligibility period each year than the phrase " * * * as soon as possible after funds are appropriated * * *" suggests. The commenters felt that the vagueness of the wording might result in a less than timely determination. One commenter suggested that since ORR will have all the figures needed for the methodology with the exception of the appropriation level, ORR ought to be able to make a determination within 24 hours after the appropriation level is known.

Response: We are committed to making a determination of the eligibility period within the shortest time possible. However, it is not possible to state a precise time frame for making a determination. If an initial determination indicates the need to reduce the eligibility period, we reserve the right to take the time to explore

alternative solutions to try to maintain the eligibility period in effect at the time before making a final determination.

Comment: Twenty-three commenters felt that a minimum of 30 days' notice does not allow sufficient time to make the necessary policy, procedural, and data changes that are required at the State and local level to accommodate a change in the eligibility period. One commenter pointed out that time is needed to issue translated notices to refugees and to make determinations of eligibility for other benefit programs for refugees terminating RCA/RMA. Two commenters expressed concern that sudden termination of benefits, without adequate advance notice, does not allow refugees enough time to find an alternative means of income. Comments varied on the amount of notice needed: 4 commenters felt that States would need a minimum of 60 days lead time; 7 commenters indicated that 90 days are needed to implement a time-eligibility change; and 2 commenters felt that up to 120 or 180 days would be necessary.

One commenter warned that 30 days' notice might result in the State having to provide an unreimbursed month of RCA/RMA to refugees. Another commenter stated that implementation within such a short period of time will result in a financial burden on the States. One commenter wondered if ORR would reimburse these costs.

Response: We understand the need to provide adequate advance notice in order to provide sufficient time to States to implement the change and to recipients to find an alternative means of living. We are committed to providing as much notice as available funds will allow as long as the longer period of notice will not require the eligibility period to be further reduced. For example, if a determination is made that the level of appropriated funds is sufficient for only a 7-month eligibility period and thus a notice to States is necessary, if sufficient funds are available to give 60 days' notice without necessitating a further reduction in the eligibility period to 6 months, ORR will give 60 days' notice. If available funds are not sufficient to give a full 60 days' notice, ORR will consider other alternatives such as a phased implementation similar to the procedure used in early FY 1992, in which a 30-day effective date was used for new applicants and a 60-day effective date was used for refugees already receiving RCA/RMA.

In deciding the amount of notice to be given, however, we reserve the right to take the time needed to explore possible alternatives to reducing the eligibility period.

With regard to ORR reimbursement of costs associated with implementation of a time-eligibility change, we will reimburse States for allowable administrative costs incurred as a result of implementation. However, we will not reimburse for additional RCA/RMA costs resulting from late implementation beyond the effective date.

Comment: Seventeen commenters questioned the rationale for giving funding priority to the unaccompanied minors program, the matching grant program, and any other program component included in the future in the TAMS line item over the RCA/RMA program. Two commenters found it troubling that funding for the matching grant program appears to be held harmless. Two commenters noted that the methodology does not indicate how the funding level for the unaccompanied minors program and matching grant program would be determined. One commenter questioned how ORR will determine the appropriate level of funding for the matching grant program, absent Congressional direction. Five commenters felt that giving higher priority to the unaccompanied minors and matching grant programs will result in inequitable treatment of refugees on RCA and RMA. One commenter stressed the need to share the effects of reduced funding equally across all refugees.

Six commenters questioned ORR's intent in placing a priority on any other program component that is included in the future in the TAMS line item over the RCA/RMA program. Two commenters stated that ORR needs to clarify what is meant by "any other program" and needs to explain why an unidentified program would warrant funding priority over the RCA/RMA program. One commenter felt that ORR's efforts to privatize the program could be revisited through such vague wording. Another commenter found the wording particularly upsetting in light of the animosity recently engendered by the attempted implementation of the private resettlement program (PRP).

Response: We plan to continue to give priority to the unaccompanied minors program. Funding will be based on estimates of individuals who leave the program because they have reached the age of majority and on new arrivals. Unaccompanied minors are a vulnerable population which requires continued support. With respect to the matching grant program, unless we are otherwise instructed by Congress, we expect, under the President's budget, to keep the program at the FY 1993 program level, or at a lower level if participant numbers go down. If, however, the level

of appropriated funds requires a reduction in the RCA/RMA eligibility period, we will revisit the issue of the funding level for all components in the TAMS line item. It is important, however, to note that if funding for the matching grant program were reduced for reasons other than declining numbers of participants, there would be a disproportionate increase in costs in the RCA/RMA program. This would result because the Federal cost of providing RCA to refugees who otherwise would have been in the matching grant program would be higher than the Federal cost of their participation in the matching grant program. The matching grant program is financed through a combination of Federal funding and private funding, while the RCA/RMA program is financed wholly by the Federal government.

Regarding the question of equity, refugees in the matching grant program would be eligible to receive no more than the same period of assistance as refugees receiving RCA: Assistance through the fourth month would be provided under the matching grant program and, for refugees who are not self-sufficient after the first 4 months, a second 4 months of assistance would be available to former matching grant clients under the RCA program, totaling 8 months, the same period of eligibility available to RCA clients. If the RCA eligibility period were to be reduced to 7 months, matching grant clients would be eligible to be assisted under the matching grant program through their fourth month and then for 3 months under RCA. Therefore, we do not believe equity is at issue.

The phrase, "any other program component," refers to other programs that Congress might decide to include in the same line item as the RCA/RMA program in the future. Funding priority would not necessarily be given to these unknown program components unless Congress required that priority be given. We did not have any particular programs in mind; we simply included this language because we cannot predict future Congressional action. This language was not included as a mechanism for revisiting the PRP program. As the result of the recent court case, *Nguyen v. Shalala* in the United States District Court, Western District of Washington, clearly indicates, any future effort to privatize the program or to make any other substantive program change would require publication of a notice of proposed rulemaking with a public comment period.

Comment: Seventeen commenters expressed concern about the methodology for estimating State administrative costs. Eight commenters felt that the methodology would restructure the way State administrative costs are reimbursed. Thirteen of the commenters felt that the linking of State administrative costs to increases and decreases in RCA/RMA participation does not take into account the need to keep core administrative services associated with the overall management of State refugee programs at a stable level. Five commenters felt that this link would punish State resettlement programs that have low public assistance utilization by reducing core administrative costs. One commenter speculated that the methodology was an attempt to capitate State administrative costs.

Response: We wish to clarify that the methodology for estimating State administrative costs is not designed to develop estimates of the administrative costs of individual States and will not be used to determine the level of reimbursements to States. ORR provides 100% reimbursement to States for actual allowable expenditures for State administration. This regulation will not change the method of reimbursement. The methodology is designed to develop a national estimate of State administrative costs in the aggregate solely for the purpose of factoring these costs into a determination of the RCA/RMA eligibility period.

With respect to using changes in program participation as an estimating factor, we wish to emphasize that changes in program participation would be taken into account in projecting aggregate estimates of State administrative costs only with respect to the variable portion of administrative costs. We recognize that States have certain fixed administrative costs associated with the overall management of the refugee program which would remain constant regardless of changes in program participation.

Comment: One commenter asked for clarification on the period of time from which quarterly performance reports from States would be used to determine RCA/RMA participation rates.

Response: We have clarified in the rule that we would derive participation rates from quarterly performance reports for the most recent 4 quarters for which reports are available.

Comment: Two commenters wondered whether ORR took into account that shorter time-eligibility periods will result in higher participation rates.

Response: Yes, the formula is adjusted for higher participation rates during shorter eligibility periods and lower participation rates during longer eligibility periods.

Comment: Three commenters pointed out that another factor affecting participation rates is the demographic characteristics of different refugee populations and wondered how the formula will deal with this factor. One commenter questioned how the formula will deal with sudden shifts in arrival demographics. Another commenter felt that participation rates are also affected by the destination of arrivals and by variations in local destination economies.

Response: We believe the year-to-year variations in demographic factors are not sufficiently large to make a significant difference that will affect the estimate. If a sudden shift occurs of significant magnitude, we will make a redetermination based on the best available information. Variables such as the geographic placement of arrivals and local economies are not factored into the formula; we believe these kinds of variables balance out in national aggregates.

Comment: Three commenters asked whether the methodology will be used to adjust the time-eligibility period upward as well as downward. One commenter wondered whether a periodic review will be used to revise the time-eligibility period upward if participation rates, cost, and other factors indicate a possible surplus.

Response: Yes, if the appropriation level allows an increase in the RCA/RMA eligibility period, we would adjust the eligibility period upward.

Comment: One commenter wondered whether the formula will deal with shifts in arrivals between States with differing cash and medical costs.

Response: The formula assumes that the population distribution does not contain radical shifts from low benefit States to high benefit States. We expect the arrival distribution to continue to be influenced primarily by family reunifications.

Comment: One commenter noted that the methodology does not provide a timely adjustment for refugees designated for one State but settling in another.

Response: The commenter is correct; the methodology does not take this issue into account. We do not believe this is a significant factor since the methodology is not meant to note changes in individual States, but is intended to develop national estimates and is not intended to be used to

determine the distribution of funds to individual States.

Comment: Two commenters questioned how the formula will be adjusted to account for matching grant activities. One commenter wondered how changes in the use of AFDC and Medicaid will be accounted for in the formula.

Response: Matching grant participants are factored out of the RCA participation rate but included in the RMA participation rate. However, their later possible entry into the RCA program after their fourth month in the U.S. is reflected in the RCA participation rate. If major shifts in the use of AFDC and Medicaid occur in which significant numbers of refugees shift from AFDC/Medicaid to RCA/RMA or from RCA/RMA to AFDC/Medicaid, these shifts will be reflected in the RCA and RMA participation rates and will be taken into account in the next year's RCA/RMA projected estimates.

Comment: One commenter indicated that the methodology does not appear to include the factors that States discussed with ORR.

Response: The methodology has included the factors discussed with the States. Cuban/Haitian entrant numbers have been added to the formula and matching grant participants have been accounted for as described above. A third factor that was discussed was whether to factor out RCA costs for refugees' first month in the U.S. on the assumption that most refugees do not access RCA during their first month since they are receiving assistance through the reception and placement (R&P) program funded by the State Department. To validate this assumption, we asked States to provide us with supporting data. In the absence of these data, we will continue to include the first month in our RCA estimates. The last factor discussed with States was the possibility of developing a refugee-specific medical care inflation index. Information, however, is not currently available to develop such an index since there is only partial reporting in title XIX of the Social Security Act on refugee Medicaid utilization.

Comment: One commenter wondered whether the lag time between the end of one fiscal year and ORR receipt of State reports on total fiscal year costs affects estimates of current-year costs.

Response: The lag time has the potential for making the estimate less accurate. It is, however, the best information available.

Comment: One commenter wondered how the formula for determining the

RCA/RMA eligibility period is linked to the allocation of funds among States.

Response: There is no link. The methodology is not used for the purpose of allocating funds to the States.

Comment: Three commenters noted that State quarterly expenditure reports are subject to considerable variation since States are allowed to adjust expenditure reports for one year following the end of the fiscal year in which expenditures are incurred. This raises a question about the reports' reliability.

Response: We have not experienced a problem with substantial revisions to earlier State quarterly expenditure reports. Only a few States have submitted revised expenditure reports for earlier quarters. Most States have not had to revise earlier reports; thus the reports' reliability is not in question. However, expenditures reported in State quarterly reports vary considerably from quarter to quarter. For this reason, we base our estimates of projected RCA and RMA costs on the previous fiscal year as a whole instead of looking at individual quarters.

Regulatory Procedures

Executive Order 12866

Executive order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

This rule will establish a more efficient and timely procedure for notifying States whenever changes in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) are necessary to contain refugee cash and medical assistance costs within the operating fiscal year appropriation level.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to

individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

[Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs]

List of Subjects in 45 CFR Part 400

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

Dated: October 13, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: November 28, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

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

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

§ 400.2 [Amended]

2. Section 400.2 is amended by amending the definition of "Refugee cash assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1994, less than an 8-month period) from their initial entry into the country" after the word "SSI", by amending the definition of "Refugee medical assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1994, less than an 8-month period) from their initial entry into the country" after the words "Medicaid program", and by amending the definition of "Time-eligibility" by removing the (a) after §§ 400.203 and 400.204.

§ 400.60 [Amended]

3. Section 400.60(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United

States" after the word "during" and adding in their place the words "a period to be determined by the Director in accordance with § 400.211".

§ 400.100 [Amended]

4. Section 400.100(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.203 [Amended]

5. Section 400.203(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.204 [Amended]

6. Section 400.204(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.209 [Amended]

7. Section 400.209(b) is amended by removing the words "12 months (except during Federal FY 1994, 8 months)" after the word "than" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

8. Subpart J is amended by adding a new § 400.211, that reads as follows:

§ 400.211 Methodology to be used to determine time-eligibility of refugees.

(a) The time-eligibility period for refugee cash assistance and refugee medical assistance will be determined by the Director each year, based on appropriated funds available for the fiscal year. The Director will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, only if necessary, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The method to be used to determine the RCA/RMA eligibility period will include the following steps and will be applied to various RCA/RMA time-eligibility periods in order to determine

the time-eligibility period which will provide the most number of months without incurring a shortfall in funds for the fiscal year.

(1) The time-eligibility population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best available historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures will then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

(2) The average annual member of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in paragraph (a)(1) of this section by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also

eligible for RMA, and RMA-only recipients. Recipient data from quarterly performance reports submitted by States for the most recent 4 quarters for which reports are available will be used to determine the appropriate participation rates for various RCA/RMA time-eligibility periods.

(3) The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year, using available data, and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

(4) The expected average number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

(5) State administrative costs for the projected fiscal year for all States in the aggregate will be estimated based on total actual allowable expenditures for State administration for the most recent fiscal year. The variable portion of

administrative costs will be adjusted for changes in program participation and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). The fixed portion of administrative costs will be adjusted by the CPI inflator only.

(6) The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA, RMA, and State administration as calculated in paragraphs (a)(1) through (5) of this section.

(b) If, as the Director determines, the period of eligibility needs to be changed from the eligibility period in effect at the time, the Director will publish a final notice in the *Federal Register*, announcing the new period of eligibility for refugee cash assistance and refugee medical assistance and the effective date for implementing the new eligibility period. States will be given as much notice as available funds will allow without resulting in a further reduction in the eligibility period. At a minimum, States will be given 30 days' notice.

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