

lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: August 28, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

2. Section 141.35 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 141.35 Reporting of unregulated contaminant monitoring results.

* * * * *

(c) * * * Exception: Reporting of monitoring results to EPA is not required until EPA's electronic reporting system is operational; EPA will provide notice of applicable reporting deadlines in a future rulemaking.

* * * * *

3. Section 141.40 is amended by adding a sentence to the end of paragraph (a)(5)(ii)(G)(1) to read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) * * *

(5) * * *

(ii) * * *

(G) * * *

(1) * * * Laboratories certified under

§ 141.28 for compliance analysis using EPA Method 515.3 are automatically approved to conduct UCMR analysis using EPA Method 515.4.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 96

Tobacco Regulation and Maintenance of Effort Reporting Requirements for Substance Abuse Prevention and Treatment Block Grant Applicants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule clarifies that States may no longer obtain extensions to submit the maintenance of effort (MOE) information required under section 1930(c) of the Public Health Service (PHS) Act; separates the annual report required under section 1926(b)(2)(B) (hereinafter referred to as the Synar report), of that Act, from the Substance Abuse Prevention and Treatment (SAPT) Block Grant application; and establishes a deadline for submission of the Synar report of no later than December 31 of the fiscal year for which a State is applying for a grant.

DATES: *Effective Date:* September 4, 2001.

Comment Date: The Secretary is requesting written comments which must be received on or before November 5, 2001.

ADDRESSES: Written comments on this interim final rule must be sent to David Robbins, Acting Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David Robbins, telephone no. (301) 443-0369.

SUPPLEMENTARY INFORMATION: States are required under sections 1930(c) and 1932(a)(5) of the PHS Act and 45 CFR 96.122(d) to submit to the Secretary maintenance of effort information regarding State expenditures. The required MOE information must be sufficient to make a determination of whether the principal agency for substance abuse services maintained aggregate State expenditures for these activities at a level not less than the average level of such State expenditures for the two year period preceding the fiscal year for which the State is applying for a grant. The MOE information is required, by statute, to be submitted as a part of the SAPT Block Grant application.

In SAMHSA's recent reauthorization, Pub. L. 106-310 (Oct. 17, 2000), Congress established a receipt date for the SAPT Block Grant application of October 1 of the fiscal year for which a State is seeking Federal funds. Previously, the SAPT Block Grant application due date was established by regulation and the States were permitted by regulation to receive an extension allowing them to submit the MOE information no later than December 31. See former 45 CFR 96.122(d). However, because the statute now requires States to submit their SAPT Block Grant applications by October 1 and there is

no authority for the Secretary to extend the deadline for submission of the MOE information, this rule clarifies that States must submit such information by October 1 and may no longer obtain extensions of that deadline. This clarification is merely a technical change to make the regulation consistent with what is explicitly required by statute.

With regard to the Synar report, States are required under section 1926(b)(2)(B) of the PHS Act and 45 CFR 96.130(e) to annually submit to the Secretary a report describing, among other things, their efforts to enforce youth tobacco access laws and success during the previous fiscal year for which the State is applying for a grant. The Synar report is currently required, by regulation only, to be submitted as part of the SAPT Block Grant application.

As mentioned above, in SAMHSA's recent reauthorization, Congress established a receipt date for the SAPT Block Grant application of October 1 of the fiscal year for which a State is seeking Federal funds. Previously, by regulation, the States were permitted to receive an extension allowing them to submit the Synar report by no later than December 31. See 45 CFR 96.122(d).

A number of States informed SAMHSA that they required additional time beyond October 1 to complete their Synar reports and would not be able to meet the statutory due date of October 1; thus would be in jeopardy of losing their SAPT Block Grant funding.

Many States need the later due date for the Synar report because they rely on youth to perform a central function in the work required for compliance with the program; that is, these youth attempt to buy, under adult supervision, tobacco products from tobacco outlets to determine retailer compliance with State laws. These youth inspectors are only available to many of the States during the summer school recess. Without a rule change, States have essentially one month to collate data, complete data analysis and report on the results by the new October 1 SAPT Block Grant application deadline. Providing States the opportunity to continue to submit their Synar reports as late as December 31 ensures that all States will have the necessary time to meet the Synar reporting requirements, thus enabling them to receive their SAPT Block Grant funds.

Because of the burden on States, the Department is changing the rule to separate the Synar report from the SAPT Block Grant application and to require that the Synar report be submitted no later than December 31 of the Federal

fiscal year for which a State is seeking funds.

Although the annual report is not required as a matter of law to be part of the SAPT Block Grant application (see section 1932 of the PHS Act), the statute does require that the SAPT Block Grant application contain each funding agreement required by the law. Further, before making a grant to a State, the Secretary must make a determination of compliance with section 1926 of the PHS Act. See sections 1926(c) and 1932(a)(2) of the PHS Act. Therefore, the rule is also being changed, first, to require an assurance, as part of the SAPT Block Grant application, that the State will submit the annual Synar report as required by the rule. Second, it is being changed to make it clear that an award will not be made without the Synar report, since the rule requires that retailer noncompliance rates be considered in determining State compliance with section 1926 of the PHS Act and its implementing regulations. See 45 CFR 96.130(h).

As to issuing an interim final rule, it is the Department's view that good cause exists to show that notice and comment are impracticable, unnecessary, and contrary to the public interest, 5 U.S.C. 553(b)(B). There is insufficient time before the SAPT Block Grant applications are due for fiscal year 2002 (October 1, 2001) to solicit public comment and to respond to such comment prior to that date. Not only is seeking comment prior to finalizing the rule impracticable in light of the time constraints, but States are in jeopardy of not being awarded their SAPT Block Grants if they do not submit by October 1 the required application which, without this rule change, must include the Synar report. Given that the SAPT Block Grant is the largest source of Federal funds for substance abuse prevention and treatment services, jeopardizing these funds to allow for public comment is contrary to the public interest.

Further, at this time, public comment is not necessary given the technical nature of this rule change. As indicated above, the clarification regarding the MOE report simply makes the regulation consistent with the recent change in statute. With respect to the Synar report, requiring that report to be submitted by December 31 of the fiscal year for which the State is applying for a grant does not substantively change the previous requirement on the States regarding the due date for the Synar report. In fact, public comment was solicited last year when SAMHSA changed the rule to require that the States submit their SAPT Block Grant applications

(including the Synar report) by October 1 and provide the States the opportunity for extensions to December 31 to submit the Synar reports. See 65 FR 5474 (Feb. 4, 2000); 65 FR 45305 (July 21, 2000). Also, more recently, SAMHSA has received comments from the States about the impact of the October 1 deadline on their ability to complete and report on the Synar requirements through numerous sources (e.g., the annual conference of the National Association of State Alcohol and Drug Abuse Directors, June 2001). All commenters supported allowing the States additional time to submit their Synar reports.

For similar reasons, this regulation is effective immediately. Delaying the effective date for a period of thirty days is impracticable, unnecessary and contrary to the public interest.

Although the rule is being published as an interim final rule and is effective immediately, the Secretary is providing an opportunity for public comment. The Secretary will consider any comments and, after such consideration, make any necessary amendments in a final rule.

Economic Impact

This rule does not have cost implications for the economy of \$100 million, nor does this interim final rule otherwise meet the criteria for a major rule under Executive Order 12866. Therefore, this interim final rule does not require a regulation impact analysis. Further, this regulation will not have a significant impact on substantial numbers of small entities, and consequently does not require regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Federalism Impact

The Secretary has analyzed this interim final rule in accordance with Executive Order 13132, which requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that pre-empt State law. Because this interim final rule simply separates out the Synar report, while continuing its previous due date, it does not preempt any State law and there should be little, if any, impact on federalism concerns.

Regulatory Evaluation

This interim final rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order and thus has been exempted from

review by the Office of Management and Budget under that Order.

Paperwork Reduction Act of 1995

The changes to the annual "Synar report" and the annual Substance Abuse Prevention and Treatment Block Grant (SAPT BG) application for Fiscal Years 2002-2004 have been approved by the Office of Management and Budget (OMB) under control number 0930-0222 (for the Synar report) and 0930-0080 (for the SAPT BG application). The information collection language and the recordkeeping requirements associated with the regulations for the SAPT BG are approved by OMB under control number 0930-0163.

The changed forms for both the Synar report and the SAPT BG application for FY 2002-2004, as approved by OMB, have already been sent to the States prior to publication of this rule in order to allow sufficient time for proper reporting.

Lists of Subjects in 45 CFR Part 96

Alcohol abuse, Alcoholism, Drug abuse, Tobacco.

Approved: August 27, 2001.

Tommy G. Thompson,
Secretary.

For the reasons set out in the preamble, Part 96 of Title 45 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart L of Part 96 continues to read as follows:

Authority: 42 U.S.C. 330x-21 to 330x-35 and 300x-51 to 330x-64.

2. Section 96.122 is amended as follows:

- a. By revising paragraphs (d) and (f)(6) to read as set forth below; and
- b. By removing paragraph (g)(21) and redesignating paragraphs (g)(22) and (g)(23) as paragraphs (g)(21) and (g)(22).

The revised text reads as follows:

§ 96.122 Application content and procedures.

* * * * *

(d) The State shall submit the application for a block grant by the date prescribed by law. The annual report required under § 96.130(e) is not required to be submitted as part of the application, but must be submitted no later than December 31 of the fiscal year for which the State is seeking a grant. Grant awards will not be made without the report required under § 96.130(e).

* * * * *

(f) * * *

(6) For the first applicable fiscal year for which the State is applying for a grant, a copy of the statute enacting the

law as described in § 96.130(b) and, for subsequent fiscal years for which the State is applying for a grant, any amendment to the law described in § 96.130(b).

* * * * *

3. Section 96.123(a)(5) is revised to read as follows:

§ 96.123 Assurances.

(a) * * *

(5) The State has a law in effect making it illegal to sell or distribute

tobacco products to minors as provided in § 96.130(b), will conduct annual, unannounced inspections as prescribed in § 96.130, will enforce such law in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18, and will submit an annual report as required under § 96.122(d) and § 96.130(e);

* * * * *

4. Section 96.130(e), introductory text is revised to read as follows:

§ 96.130(e) State law regarding sale of tobacco products to individuals under age of 18.

* * * * *

(e) As provided by § 96.122(d), the State shall annually submit to the Secretary a report which shall include the following:

* * * * *

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