

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration for Children and Families****45 CFR Part 98**

[RIN 0970-AC18]

**Child Care and Development Fund State Match Provisions****AGENCY:** Administration for Children and Families (ACF), HHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule revises the Child Care and Development Fund (CCDF) regulations to permit States to designate multiple public and/or private entities as eligible to receive private donations that may be certified as child care expenditures for purposes of receiving Federal CCDF matching funds. This proposed rule also allows States to use public pre-kindergarten expenditures for up to 30 percent of the State match expenditures required to claim their full allotment of Federal CCDF matching funds.

**DATES: Comment Period:** You may submit comments through January 10, 2005. We will not consider comments received after this date.

**ADDRESSES:** You may mail comments to the Administration for Children and Families, Child Care Bureau, 330 C Street, SW., Room 2046, Washington, DC 20447. Attention: Shannon Christian, Associate Commissioner.

Commenters may also provide comments on the ACF website. To transmit comments electronically, or to download an electronic version of the proposed rule, please go to <http://regulations.acf.hhs.gov>. We will have comments available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. at the above address.

**FOR FURTHER INFORMATION CONTACT:** Karen Tvedt, Policy Director, Child Care Bureau, at (202) 401-5130.

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**I. Background***A. Child Care and Development Fund*

Administered by the Child Care Bureau, CCDF assists low-income families, including families receiving or transitioning from Temporary Assistance for Needy Families (TANF), in the purchase of child care services, thereby allowing parents to work or attend training or education. States must spend a portion of their CCDF allotment on expenditures to improve the quality and availability of child care.

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

CCDF is comprised of three funding streams, discretionary funds subject to annual appropriation by Congress as authorized under Section 658B of the CCDBG Act, 42 U.S.C. 9858, and mandatory and matching funds appropriated under Section 418 of the Social Security Act ("SSA"), 42 U.S.C. 618. Pursuant to Section 418(a)(2) of the SSA, the Federal CCDF matching funds are the funds remaining after the mandatory funds have been distributed to the States. Matching funds are allocated to the States on the basis of the number of children under age 13 in the State compared with the number of children under age 13 in the Nation. These funds must be matched by States at the State's Federal medical assistance percentage (FMAP) rate.

*C. State Match Requirement Regulations*

The current CCDF regulations (the "current regulations") are codified at 45 CFR part 98. The relevant matching fund requirements of the current regulations provide that donated funds from private sources may be qualified as State expenditures for purposes of receiving Federal CCDF matching funds, provided that such funds are transferred to or under the control of the State CCDF Lead Agency or given to the single entity designated by the State to receive donated funds. 45 CFR 98.53(e) and (f). The relevant matching fund requirements also provide that States

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

We propose to revise current regulations to implement a provision of the President's Good Start, Grow Smart Initiative and give States more flexibility in making the necessary State expenditures on child care to earn their full allotment of Federal CCDF matching funds. Specifically, the President's Good Start, Grow Smart Initiative provides that the amount of State pre-kindergarten expenditures that may be used for Federal match will be increased to give States more flexibility in funding quality activities in support of early learning. Further, in FY 2001 and FY 2002, five States failed to earn their full allotment of Federal CCDF matching funds. In recent months, ACF Regions and the Child Care Bureau have received requests from additional states for increased flexibility in the use of donated funds and public pre-kindergarten expenditures to meet CCDF matching requirements.

*D. Statutory Authority*

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

**II. Provisions of Proposed Rule***A. Certifying Private Donations as State Expenditures*

1. Summary of the Regulations Regarding Certifying Private Donations as State Expenditures in the Current Regulations

In order to certify funds donated from private sources that are not transferred to or under State control as expenditures for the purpose of receiving Federal CCDF matching funds, the current regulations provide that States must designate a single entity to receive such privately donated funds and all such privately donated funds must be transferred to this single

designated entity. The specific provisions setting forth this requirement appear at § 98.53(f) of the current regulations and provide that funds donated from private sources “may be given to the entity designated by the State to receive donated funds” in the State Plan.

## 2. Consultation with States and Other Organizations

Requests have been made by State officials at the Child Care Bureau’s annual meeting of State Administrators and through numerous written, e-mail, and telephonic correspondence for increased flexibility in meeting the States’ CCDF matching requirements. The Child Care Bureau has also heard that States find the current regulations too restrictive when States seek to encourage coordination among early childhood education programs or to implement the President’s Good Start, Grow Smart Initiative.

## 3. Changes Made in This Proposed Rule

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

### B. Public Pre-Kindergarten Expenditures

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

The current regulations provide that, once States have met their maintenance-of-effort requirement, they may use public pre-kindergarten expenditures for up to 20 percent of their child care expenditures designated toward meeting CCDF matching requirements. States seeking to use the full 20 percent of pre-kindergarten expenditures to meet the matching requirements must provide a description of the efforts they will

undertake to ensure that pre-kindergarten programs meet the needs of working families. They must also demonstrate how they will coordinate their pre-kindergarten and child care services to expand the availability of child care. The specific provisions setting forth this requirement appear at Section 98.53(h)(3) of the current regulations and provide that “[i]n any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State’s matching funds under this subsection.”

## 2. Consultation With States and Other Organizations

Requests have been made by State officials at the Child Care Bureau’s annual meeting of State Administrators and through numerous written, e-mail, and telephonic correspondence for increased flexibility in meeting the States’ CCDF matching requirements. The Child Care Bureau has also been informed that States are finding the current regulations to be too restrictive when States seek to encourage coordination among early childhood education programs or to implement the President’s Good Start, Grow Smart Initiative.

## 3. Changes Made in This Proposed Rule

In order to grant States greater flexibility in meeting the matching requirements for Federal CCDF matching funds, this proposed rule provides that once States have met their maintenance-of-effort requirement, they may designate a portion of their public pre-kindergarten expenditures as their expenditures toward Federal CCDF matching funds; provided that the portion of public pre-kindergarten expenditures designated as State matching funds may not exceed 30 percent of the amount of expenditures required by States to earn their full allotment of Federal CCDF matching funds. We propose to revise Section 98.53(h)(3) to provide that, “[i]n any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State’s expenditures required to earn the State’s full allotment of Federal matching funds available under this subsection.” Additionally, conforming changes would be made to Sections 98.53(h)(4) to provide that the CCDF Plan “shall reflect the State’s intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year.”

## III. Regulatory Impact Analyses

### A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in Executive Order 12866. The Department has determined that this proposed rule is consistent with these priorities and principles.

Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier, the Child Care Bureau and ACF regional offices have been contacted by numerous States expressing their desire for greater flexibility in meeting their matching requirement for Federal CCDF matching funds. This rule addresses these concerns. In addition, we are providing a 60-day public comment period.

This rule is considered a “significant regulatory action” under Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget.

### B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) (RFA) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the RFA to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States and the District of Columbia. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

### C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this proposed rule’s impact on the well-being of families, as required under Section 654 of the Treasury and General Appropriations Act of 1999. This proposed rule will make it easier for States to receive their full allotment of Federal matching funds through CCDF. These funds are to be used by States to assist low-income families in purchasing child care services, to provide comprehensive consumer education to parents and the public, and to improve the quality and availability of child care.

### D. Paperwork Reduction Act

In order for States to use the increased flexibility provided by the proposed rule, Lead Agencies must amend their Lead Agency Plans, the information

requirements of which are set forth in Section 98.16 of the current regulations. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of this section, together with a copy of this notice of proposed rulemaking to the Office of Management and Budget (OMB) for its review.

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

*Description:* The legislatively-mandated plans serve as the agreement between the Lead Agency and the Federal Government as to how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information is used for Federal oversight of the Child Care and Development Fund. Because the State Plans must accurately reflect the manner in which a State meets the matching requirements for Federal CCDF matching funds, in order for a State to use the increased flexibility provided by this proposed rule, it must submit an amendment to its plan reflecting the change in the manner in which it meets the matching requirement for Federal CCDF matching funds. Because the information required to take advantage of the provisions of this proposed regulation are already collected in the ACF-118, a new information collection document will not be necessary. ACF expects to publish proposed revisions to the ACF-118 in the **Federal Register** in October. These proposed changes should reach OMB in January 2005.

*Respondents:* State and territorial governments.

*Burden Estimates:*

*Estimated Number of Likely*

*Respondents:* 22\*.

*Number of Responses Per*

*Respondent:* 1.

*Average Burden Hours Per Response:*

2.

*Estimated Total Burden Hours:* 44.

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

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

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

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

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

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

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Washington DC, [katherine\\_t.\\_astrich@omb.eop.gov](mailto:katherine_t._astrich@omb.eop.gov).

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Expenditures made to meet the requirements for Federal CCDF matching funds are made entirely at the option of the State or Tribal government seeking the Federal CCDF matching funds.

#### *F. Congressional Review*

This proposed rule is not a major rule as defined in 5 U.S.C. 804.

#### *G. Executive Order 13132*

Executive Order 13132 guarantees "the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act."

The Secretary certifies that this proposed rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not preempt State law and does not impose unfunded mandates.

This proposed rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials.

#### **List of Subjects in 45 CFR Part 98**

Child Care, Grant programs—social programs.

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

Dated: March 16, 2004.

**Wade F. Horn,**

*Assistant Secretary for Children and Families.*

Approved: July 21, 2004.

**Tommy G. Thompson,**

*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, the Administration for Children and Families proposes to amend part 98 of title 45 of the Code of Federal Regulations as follows:

#### **PART 98—CHILD CARE AND DEVELOPMENT FUND**

1. The authority for part 98 continues to read:

**Authority:** 42 U.S.C. 618, 9858.

2. Amend § 98.16 by revising paragraph (c)(2) as follows:

#### **§ 98.16 Plan provisions.**

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

3. Amend §98.53 by revising paragraphs (f), (h)(3), and (h)(4) to read as follows:

§ 98.53 Matching fund requirements.

\* \* \* \* \*

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

\* \* \* \* \*

(h) \* \* \*

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

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

\* \* \* \* \*

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List Cymopterus deserticola (desert cymopterus) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list Cymopterus deserticola (desert

cymopterus) as endangered under the Endangered Species Act of 1973, as amended (Act). After reviewing the available scientific and commercial information, we find that listing the species as threatened or endangered throughout all or a significant portion of its range is not warranted at this time. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to the species. This information will help us monitor the status of this species.

DATES: The finding announced in this document was made on November 9, 2004. Although no further action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species, whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Please submit any new information, materials, comments, or questions concerning this species to the above address.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office (see ADDRESSES section above) (telephone at 805/644-1766; facsimile 805/644-3958).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition. We may find that the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the Federal Register.

On April 15, 2002, we received a petition, dated March 29, 2002, from the California Native Plant Society and the Center for Biological Diversity, requesting us to list Cymopterus deserticola (desert cymopterus) as an endangered species and designate critical habitat. On June 12, 2002, we sent a letter to the petitioners explaining that we would not be able to address their petition in the current fiscal year because court orders and settlement agreements required nearly all of our listing funding. On April 25, 2003, the

California Native Plant Society and the Center for Biological Diversity filed a complaint against the Service for failure to make the mandatory 90-day and 12-month petition findings (California Native Plant Society and the Center for Biological Diversity v. U.S. Fish and Wildlife Service, C-03-1881-JCS). Settlement due dates were agreed to of February 1, 2004, for the 90-day finding, and, if the 90-day finding was found to be substantial, November 1, 2004, for the 12-month finding. The Director signed the 90-day finding on January 29, 2004. On February 10, 2004, we published a notice in the Federal Register announcing our initial petition finding that the petitioned action may be warranted (69 FR 6240) and initiated a status review at that time. We have now completed our status review of the best available scientific and commercial information on Cymopterus deserticola, and have reached a determination regarding the petitioned action.

Species Information

Cymopterus deserticola, an herbaceous perennial plant, is a member of the carrot family (Apiaceae). Individual plants generally reach 6 inches (in) (15 centimeters (cm)) in height when in flower. Cymopterus deserticola is unusual in having herbaceous above-ground leaves and inflorescences (flowering parts of plant) that die back at the end of the growing season, leaving only the perennial taproot to overwinter. The plant may only produce the leaves and inflorescences in years when favorable climatic conditions, including sufficient rainfall, are present. In some years, individuals may produce leaves but not inflorescences. In years when flowering does occur, the inflorescences emerge in early spring. During unfavorable climatic conditions, such as severe drought, the plant may persist solely as a dormant taproot; the length of time the perennial taproot of C. deserticola can survive is unknown.

Cymopterus deserticola grows on loose, sandy soils in Joshua tree woodland, saltbush scrub, and Mojavean desert scrub communities in the western Mojave Desert, at elevations between 2,000 and 3,000 feet (610 and 915 meters) (Bagley 1998). The sandy soils that C. deserticola requires can be found on alluvial fans and basins, stabilized sand fields, and occasionally sandy slopes of desert dry lake basins. This species typically grows in the cool, moist conditions of winter and early spring, and goes dormant as the warmer weather progresses in April and May (Bagley 1998). Very little is known