



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 410

RIN 0970-AD16

Unaccompanied Children Program Foundational Rule; Update to Accord with Statutory Requirements

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Interim final rule with comment period (IFR).

SUMMARY: ORR is amending a regulation so that it comports with the express language of the governing legislation. That regulation relates to key aspects of the placement, care, and services provided to unaccompanied alien children (UACs) referred to ORR, pursuant to ORR's responsibilities for coordinating and implementing the care and placement of UACs who are in Federal custody by reason of their immigration status under the Homeland Security Act of 2002 (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

DATES: This IFR is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments on this IFR must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN *FEDERAL REGISTER*].

ADDRESSES: You may send comments, identified by docket number ACF-2025-0003 and/or RIN 0970-AD16, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: UCPolicy-RegulatoryAffairs@acf.hhs.gov. Include [docket number and/or RIN] in the subject line of the message.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” section of this document.

FOR FURTHER INFORMATION CONTACT: Toby Biswas, Director of Policy, Division of Unaccompanied Children Policy, Unaccompanied Children Bureau, Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, Washington, DC, (202) 205-4440 or UCPolicy-RegulatoryAffairs@acf.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This interim final rule (IFR) removes a specific provision of the Code of Federal Regulations introduced by the April 30, 2024 “Unaccompanied Children Program Foundational Rule” (Foundational Rule) at 45 CFR 410.1201(b). This provision precludes ORR from “shar[ing] any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time.” The regulatory provision conflicts with a federal statute, which provides, in part, as follows:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

8 U.S.C. 1373(a). Inasmuch as the regulation directly conflicts with federal law, it is “not in accordance with law,” 5 U.S.C. 706(2)(A), and is thus subject to invalidation. Accordingly, the information-sharing provision of the Foundational Rule must be removed.

II. Background and Scope of Regulatory Action

On April 30, 2024, ORR published the “Unaccompanied Children Program Foundational Rule,” which establishes regulations relating to key aspects of the placement, care, and services provided to unaccompanied alien children referred to the Office of Refugee Resettlement (ORR), pursuant to ORR’s responsibilities for coordinating and implementing the care and placement of

unaccompanied alien children who are in Federal custody by reason of their immigration status under the Homeland Security Act of 2002 (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). Consistent with its statutory responsibilities, ORR must, among other things, conduct safety and suitability assessments of potential sponsors for the child. *See generally* 8 U.S.C. 1232(c)(3). As explained in the preamble to the Foundational Rule, in the process of vetting potential sponsors for unaccompanied alien children, the potential sponsor's immigration status is one factor that bears on the potential sponsor's suitability to care for the child. *See* 89 FR at 34442 ("To the extent ORR does collect information on the immigration status of a potential sponsor, it would be only for the purposes of evaluating the potential sponsor's ability to provide care for the child."). And so ORR may collect information on the potential sponsor's immigration status, independent of a law enforcement or immigration enforcement purpose. *Id.*

In the Foundational Rule, ORR included a provision stating: "ORR shall not disqualify potential sponsors based solely on their immigration status and shall not collect information on immigration status of potential sponsors for law enforcement or immigration enforcement related purposes. ORR shall not share any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time." 45 CFR 410.1201(b). But this provision contravenes a federal statute: it contravenes existing statutory limitations on ORR's authority described at 8 U.S.C. 1373. And so, it must be excised from the Foundational Rule.

ORR's authority is limited by 8 U.S.C. 1373(a) and (b). Subsection (a) states: "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." Subsection (b) states: "Notwithstanding any other provision of Federal, State, or

local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service. (2) Maintaining such information. (3) Exchanging such information with any other Federal, State, or local government entity.”

The statute unambiguously limits ORR’s authority. Notably, nowhere in the preamble to the Foundational Rule was 8 U.S.C. 1373 even mentioned, even though the information-sharing provision of the Foundational Rule, 45 CFR § 410.1201(b), obviously and directly contravenes that statutory limit. Thus, ORR must update the Foundational Rule to strike 45 CFR 410.1201(b), effective immediately.¹ That is, ORR removes the prohibition on sharing immigration status information relating to potential sponsors with law enforcement and immigration enforcement entities.

III. Good Cause for Issuing this IFR

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), notice and public comment is not required when an agency, for good cause, finds it is impracticable, unnecessary, or contrary to the public interest. The agency must incorporate a statement of the finding and the agency’s reasons in the rule issued.

HHS finds there is good cause to dispense with notice and comment here and issue this as an IFR. As explained above, 45 CFR 410.1201(b) contravenes 8 U.S.C. 1373. ORR had no authority to promulgate such a rule; revoking it immediately is in the public interest; and notice and comment is unnecessary and contrary to the public interest because no amount of public input could give ORR the power to contravene a duly-enacted law of Congress via regulation.

¹ The Foundational Rule contains a severability provision. 45 CFR 410.1000. 45 CFR 410.1201(b)’s parts are inextricably linked and there was no indication in the Foundational Rule that it was intended to treat the information-sharing and the eligibility issues as distinct. In the alternative, as explained in the preamble of the Foundational Rule, 89 FR at 34389, that severability runs—at most—to provisions, not to portions of provisions. Thus, for this alternative reason as well, the entirety of 45 CFR 410.1201(b) must be removed due to the conflict with 8 U.S.C. 1373.

IV. Good Cause for Immediate Effect

Good cause exists for immediate effect, see 5 U.S.C. 553(d)(3), because this IFR brings an ORR regulation into compliance with a federal statute and regulated entities do not need time to adjust their behavior before this rule takes effect.

V. Public Participation

ORR encourages all interested parties to participate in this rulemaking by submitting written comments, views, and data on any or all aspects of this IFR. ORR also invites comments that relate to the economic, environmental, or federalism effects that might result from this IFR. ORR will review all comments received, but ORR will only post comments that address the topic of the IFR. All comments ORR posts to <https://www.regulations.gov> will include any personal or commercial information you provide.

Comments that will provide the most assistance to ORR will reference a specific portion of the IFR, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. If you submit comments, please indicate the specific section of this document to which each comment applies and provide a reason for each suggestion or recommendation. You may submit your comments and materials online or by e-mail, but please use only one of these means. If you submit a comment online via <https://www.regulations.gov>, it will be considered received when it is received at the Docket Management Facility.

Instructions: To submit your comments online, go to <https://www.regulations.gov> and insert “ACF-2025-0003” in the “Search” box. Click on the “Comment Now!” box and input your comment in the text box provided. Click the “Continue” box, and if you are satisfied with your comment, follow the prompts to submit it.

For additional information, please read the “Privacy and Security Notice” that is available via the link in the footer of <https://www.regulations.gov>.

ORR will consider all comments and materials received during the comment period.

Docket: To view posted comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert “ACF-2025-0003” in the “Search” box. Click on the “Open Docket Folder,” and you can click on “View Comment” or “View All” under the “Comments” section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ORR through the **FOR FURTHER INFORMATION CONTACT** section above. You may sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

As stated above, please be aware that anyone can search the electronic form of comments received into any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

V. Regulatory Analyses

This IFR meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

The Regulatory Flexibility Act (RFA) only applies in situations where an agency engages in notice-and-comment rulemaking. 5 U.S.C. 603(a). It does not apply here, because the agency is promulgating an IFR effective immediately without preceding notice and comment. The same is true for analysis pursuant to the Unfunded Mandates Reform Act (UMRA). 2 U.S.C. 1532(a). Moreover, the Foundational Rule explains the non-applicability of the UMRA. *See* 89 FR at 34582.

Under the Paperwork Reduction Act of 1995 (PRA), HHS is required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by OMB. The PRA does

not apply here because this IFR does not establish a collection of information; it removes a limitation in the Foundational Rule that conflicts with federal law.

In accordance with section 6 of Executive Order 13132, it is determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This comports with the same determination made in the Foundational Rule. *See* 89 FR at 34583.

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. This regulation will not have an impact on family well-being as defined in this legislation, which asks agencies to assess policies with respect to whether the policy: strengthens or erodes family stability and the authority and rights of parents in the education, nurture, and supervision of their children; helps the family perform its functions; and increases or decreases disposable income.

Dated: March 19, 2025.

Robert F. Kennedy, Jr.

Secretary,

Department of Health and Human Services.

For the reasons set forth in the preamble, ORR amends 45 CFR Part 410 to read as follows:

PART 410—CARE AND PLACEMENT OF UNACCOMPANIED CHILDREN

1. The authority citation for part 410 continues to read as follows:

Authority: 6 U.S.C. 279, 8 U.S.C. 1232.

§ 410.1201 [Amended]

2. Amend § 410.1201 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

[FR Doc. 2025-04971 Filed: 3/24/2025 8:45 am; Publication Date: 3/25/2025]