



## Administration for Children and Families

### 45 CFR Part 1302

**RIN:** 0970-AD17

### **COVID-19 Mitigation Policy Requirement in Head Start Programs; Recission**

**AGENCY:** Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This direct final rule (DFR) removes the requirement that Head Start programs have a COVID-19 mitigation policy. This requirement was included in the final rule titled “Mitigating the Spread of COVID-19 in Head Start Programs,” which ACF published on January 6, 2023. Specifically, this rescission removes the requirement from the Head Start Program Performance Standards (Performance Standards) that Head Start programs have a COVID-19 mitigation policy developed in consultation with their Health and Mental Health Services Advisory Committee (HMHSAC), formerly the Health Services Advisory Committee (HSAC). This DFR meets the deregulatory requirements of Executive Order 14192, *Unleashing Prosperity Through Deregulation*, and is aligned with Executive Order 14148, *Initial Rescissions of Harmful Executive Orders and Actions*.

**DATES:** This DFR is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] unless significant adverse comments are received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comments are received, notice will be published in the Federal Register before the effective date either withdrawing the rule or issuing a new final rule that responds to significant adverse comments.

**ADDRESSES:** You may submit comments, identified by [docket number and/or RIN number] by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail*: Office of Head Start, Attention: Director of Policy and Planning, 330 C Street SW, 4th Floor, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Shawna Pinckney, Office of Head Start, 1-866-763-6481, [OHS\\_Policy@acf.hhs.gov](mailto:OHS_Policy@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

Since its inception in 1965, Head Start has been a leader in supporting children from low-income families to enter kindergarten healthy, prepared, and ready to thrive in school and life. Decades of evidence continue to affirm the positive outcomes for children and families who participate in and graduate from Head Start programs.<sup>1</sup> The program was founded on research

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<sup>1</sup> Deming, D. (2009). Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start. *American Economic Journal: Applied Economics*, 1:3, 111-134.; Lipscomb, S. T., Pratt, M. E., Schmitt, S. A., Pears, K. C., & Kim, H. K. (2013). School readiness is children living in non-parental care: Impacts of Head Start. *Journal of Applied Developmental Psychology*, 31 (1), 28-37.

demonstrating that health and well-being are essential prerequisites for optimal learning and improved short- and long-term outcomes. OHS recognizes health as the cornerstone of school readiness, underscoring its critical role in the program's mission.

To ensure the safety and well-being of all children, families, and staff, the Head Start program prioritizes creating environments that are safe and conducive to learning. Section 1302.47 of the Performance Standards establishes comprehensive health and safety requirements for Head Start programs (45 CFR § 1302.47). This section sets forth expectations for programs to implement policies and practices that safeguard children during program hours and maintain facilities and equipment in safe and sanitary conditions. Importantly, the requirements within §1302.47 are designed with flexibility, enabling programs to address a wide range of health and safety considerations – including communicable disease prevention – tailored to their community's specific needs.

In response to the Biden Administration's COVID-19 Action Plan, "Path out of the Pandemic," ACF published an interim final rule with comment period (IFC), *Vaccine and Mask Requirements to Mitigate the Spread of COVID-19 in Head Start Programs*, on November 30, 2021.<sup>2</sup> The IFC required (1) universal masking for individuals 2 years of age and older, subject to some exceptions; and (2) vaccination by January 31, 2022 for Head Start staff, contractors whose activities involve contact with or providing direct services to children and families, and volunteers working in classrooms or directly with children. Soon after the publication of the IFC, several court decisions placed a preliminary injunction on the IFC, meaning Head Start grant recipients in those states were not required to comply with the requirements in the IFC. Specifically, on December 31, 2021, the court placed a preliminary injunction on the IFC in Texas, and on January 1, 2022, the court placed a preliminary injunction on 24 other states.<sup>3</sup> On

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<sup>2</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start. "Vaccine and Mask Requirements To Mitigate the Spread of COVID-19 in Head Start Programs." Interim Final Rule with Comment Period. *Federal Register* 86, no. 228 (November 30, 2021): 68052-68101.

<sup>3</sup> *Texas et al. v. Becerra, et al.*, No. 21-cv-00300, 2021 WL 6198109 (N.D. Tex. Dec. 31, 2021) and *Louisiana, et al. v. Becerra, et al.*, 21-cv-04370, 2022 WL 16571 (Jan. 1, 2022 W.D. La.).

January 6, 2023, ACF published a final rule in the Federal Register removing the universal masking requirement, and instead requiring Head Start programs to adopt an evidence-based COVID-19 mitigation policy, developed in consultation with their HMHSAC, formerly Health Services Advisory Committee (HSAC). On March 31, 2023, the court vacated the IFC, which took effect April 7, 2023, removing the requirement for vaccination and testing.<sup>4</sup>

On April 10, 2023, President Biden signed legislation ending the COVID-19 national emergency declared under the National Emergencies Act.<sup>5</sup> Subsequently, on May 11, 2023, the COVID-19 public health emergency expired. In response to the court vacating the IFC and the end to the public health emergency, on June 26, 2023, ACF issued a final rule to remove the vaccine and testing requirements, rescinding those requirements from the IFC issued on November 30, 2021, and removing them from the Performance Standards.<sup>6</sup>

## **II. Statutory Authority to Issue DFR**

We publish this direct final rule (DFR) under the authority granted to the Secretary of Health and Human Services by sections 641A of the Act (42 U.S.C. 9836a), as amended by the Improving Head Start for School Readiness Act of 2007 (Public Law 110-134). Under these sections, the Secretary is required to establish performance standards and other regulations for Head Start and Early Head Start programs. Specifically, sections 641A(a)(1) and (2) of the Act requires the Secretary to “modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs.”<sup>7</sup> This rule meets the statutory requirements Congress put forth in its 2007 bipartisan reauthorization of the Head Start program and addresses Congress’s mandate that called for the Secretary to review and revise the Performance Standards.<sup>8</sup> The Secretary has determined that the removal of this

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<sup>4</sup> State of Texas v. Becerra, 577 F. Supp. 3d 527 (N.D. Tex. 2021).

<sup>5</sup> H.J. Res. 7, 118th Cong. (2023), Public Law No. 118-3 (Apr. 10, 2023).

<sup>6</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start. "Removal of the Vaccine Requirements for Head Start Programs." Final Rule. *Federal Register* 86, no. 41326 (June 26, 2023): 41326-41334.

<sup>7</sup> See section 641A(a)(1) and (2) of the Act.

<sup>8</sup> See section 641(A)(a)(2)(C)(i) of the Act.

requirement in the Performance Standards contained in this regulation is necessary, given there is no longer a COVID-19 pandemic, and the associated Public Health Emergency ended.

### **III. Discussion of Change**

#### *Rescinding the Requirement for a COVID-19 Mitigation Policy (§1302.47(b)(9))*

Section 1302.47 establishes expectations for Head Start programs to ensure basic health and safety measures are taken for the protection of all children. We propose to remove § 1302.47(b)(9), which requires programs specifically to have an evidence-based COVID-19 mitigation policy developed in consultation with their HMHSAC, formerly HSAC.

ACF's proposal to rescind these requirements is informed by three key factors: (1) the termination of the national emergency concerning COVID-19 on April 10, 2023, following the enactment of Public Law 118-3, and the subsequent expiration of the COVID-19 Public Health Emergency on May 11, 2023, as declared by the Secretary of Health and Human Services under the Public Health Service Act;<sup>9</sup> (2) the determination that this requirement is duplicative of existing safety practice provisions outlined in §1302.47(b)(7)(iii); and (3) alignment with the Administration's policies, as articulated in Executive Order 14148.

First, the termination of the national emergency concerning COVID-19 and expiration of the COVID-19 Public Health Emergency reflect a significant shift in the federal government's approach to managing the pandemic, signaling that the acute phase of the public health crisis has passed. Since January 2021, the United States has seen a sustained and substantial decline in COVID-19 transmission and severe outcomes.<sup>10</sup> We are no longer in a pandemic. With these emergency declarations no longer in effect, there is no reason to require specific COVID-19 mitigation requirements of Head Start grant recipients.

Second, §1302.47(b)(7)(iii) of the Performance Standards requires programs to establish, follow, and practice procedures for "protection from contagious disease, including appropriate

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<sup>9</sup> U.S. Department of Health and Human Services (2023). Retrieved at: <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html>

<sup>10</sup> Centers for Disease Control and Prevention. COVID Data Tracker. Atlanta, GA: U.S. Department of Health and Human Services, CDC; 2025, July 09. Retrieved from: [https://covid.cdc.gov/covid-data-tracker/#trends\\_weeklydeaths\\_testpositivity\\_00](https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_testpositivity_00)

inclusion and exclusion policies for when a child is ill, and from an infectious disease outbreak, including appropriate notifications of any reportable illness.” This provision establishes the longstanding and comprehensive expectation that Head Start programs implement policies and procedures to prevent and control the spread of communicable diseases. These procedures are intended to be evidence-based, responsive to public health guidance, and adaptable to the specific conditions within a program and its community.

With the expiration of the COVID-19 public health emergency and the significant reduction in COVID-19-related risks, this standalone requirement has become duplicative of the broader health and safety provisions already required under §1302.47(b)(7)(iii). Programs continue to be responsible for developing and implementing communicable disease policies, including measures to address COVID-19, when necessary, but the specific regulatory requirement is no longer needed to achieve that objective. Moreover, the requirement in §1302.47(b)(7)(iii) provides programs with the necessary flexibility to tailor communicable disease policies to their unique circumstances, taking into account current public health conditions, local health department guidance, and the needs of their enrolled children and families. Retaining a COVID-19-specific mitigation policy requirement in regulation is therefore redundant. Maintaining the separate regulatory requirement may also create confusion or suggest a regulatory distinction between COVID-19 and other communicable diseases that no longer reflects current public health guidance. The removal of §1302.47(b)(9) aligns the standards with ACF’s efforts to provide flexibility and reduces unnecessary regulatory burden on programs while maintaining critical protections for child health and safety.

Third, the rescission of this requirement aligns with the Administration’s policies, as articulated in Executive Order 14148. Specifically, the proposal to remove this requirement specific to COVID-19 is consistent with the revocation of Executive Order 13987, Organizing and Mobilizing the United States Government to Combat COVID-19 and To Provide United States Leadership on Global Health and Security, issued on January 20, 2021.

## *Waiver of Notice and Comment Process*

When engaging in rulemaking, HHS will ordinarily publish a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553(b).<sup>11</sup> Under the APA,<sup>12</sup> an agency is not required to provide notice and public comment prior to issuing a direct final rule when it determines, for good cause, that such procedures are impracticable, unnecessary, or contrary to the public interest. In such instances, the agency must include in the rule a statement of its findings and the reasons supporting its determination that the notice and public comment procedure generally required under the APA are impracticable, unnecessary, or contrary to the public interest.

At this point in time, when the pandemic is over, ACF finds that it is unnecessary to provide a public comment period before issuing this DFR. Courts have found “good cause” that notice and comment is unnecessary when changes are considered “a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.” *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012) (*quoting Utility Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001)); *accord Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 114 (2d Cir. 2018); *N.C. Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 766-67 (4th Cir. 2012); see Attorney General’s APA MANUAL 31 (“‘Unnecessary’ refers to the issuance of a minor rule in which the public is not particularly interested.”); APA LEGISLATIVE HISTORY 200 (“‘Unnecessary’ means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.”).

The rescission of the requirement to have an evidence-based COVID-19 mitigation plan is a minor rule change that is not of interest to the public to provide comment on because the

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<sup>11</sup> <https://www.govinfo.gov/link/uscode/5/553>

<sup>12</sup> 5 U.S.C. 553(b)(B).

COVID-19 pandemic is no longer a public health emergency and because the Performance Standards already have broad health and safety provisions in effect under § 1302.47(b)(7)(iii) that relate to implementing communicable disease policies. Duplicating other requirements in the Performance Standards creates additional regulatory burden for Head Start programs, and rescinding the outdated requirement specific to COVID-19 poses no harm or burden to programs or the public.

*Compliance with Sec 641A(a)(2) of the Act*

ACF will consider comments on the changes in this DFR from the public, including experts in the fields of child development, early childhood education, child health care, family services, administration, and financial management, and from persons with experience in the operation of Head Start programs. We also welcome feedback from Indian Tribes. Note that a DFR will become permanent unless we receive adverse comments on this proposed rescission that requires us to withdraw the DFR, but, regardless, OHS values input from programs regarding service delivery.

#### **IV. Regulatory Process Matters**

We have examined the impacts of the direct final rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601-612), the Congressional Review Act (5 U.S.C. 801, Pub. L. 104-121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. This rule was determined to be significant under Section 3(f) of Executive Order 12866 and is subject to review by the Office of Management and Budget (OMB). Executive Order 14192 requires that any new incremental costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.” Our analysis indicates, and the

Office of Information and Regulatory Affairs (OIRA) has determined, that this direct final rule does not meet the criteria set forth in 5 U.S.C. 804(2) under the Congressional Review Act.

This direct final rule is considered an E.O. 14192 deregulatory action. We estimate that this action will generate about \$17,312 in savings per year. This estimate is consistent with the planned discontinuation of an OMB-approved information collection with control number 0970-0148, associated with the recordkeeping requirement of updating program policies and procedures. We pair the existing 320-hour annual time-burden estimate with a fully loaded wage rate of \$54.10 based on the median wage of Education and Childcare Administrators, Preschool and Daycare.<sup>13</sup> The present value of these cost savings is \$0.23 million, or \$0.02 million in annualized terms, reported in constant 2024 dollars at a 7 percent discount rate, discounted relative to year 2024, over a perpetual time horizon.

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their regulatory proposals on small entities. The impacts to small entities attributable to the final rule are cost savings from eliminating a recordkeeping requirement. We certify that the direct final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis; identify and consider a reasonable number of regulatory alternatives; and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation) in at least one year by State, local, and tribal governments, in the aggregate, or by the private sector. Each agency issuing a rule with relevant effects over that threshold must also seek input from State, local, and tribal governments. The current threshold after adjustment for inflation is \$187 million, using the most current (2024) Implicit Price Deflator for the Gross

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<sup>13</sup> Bureau of Labor Statistics. May 2024 Occupational Employment and Wage Statistics. <https://data.bls.gov/oes/#/industry/000000>. Median wage for Education and Childcare Administrators, Preschool and Daycare (11-9031) of \$27.05 doubled to account for costs associated with labor other than wages.

Domestic Product. This direct final rule will not result in an unfunded mandate that exceeds this monetary threshold in any year. *Federalism Assessment* [Executive Order 13132](#)

[Executive Order 13132](#) requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule would not have substantial direct impact on the 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Public Law 105-277) because the action it takes in this rule would not have any impact on the autonomy or integrity of the family as an institution.

*Paperwork Reduction Act of 1995*

The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.*, minimizes government-imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The PRA requires that agencies obtain OMB approval, which includes issuing an OMB number and expiration date, before requesting most types of information from the public.

Regulations at 5 CFR part 1320 implemented the provisions of the PRA and § 1320.3 defines a “collection of information,” “information,” and “burden.” PRA defines “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the Government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). “Burden” means the total time, effort, or financial resources expended by persons to collect, maintain, or disclose information.

When this requirement was first established, OHS modified the OMB-approved information collection with control number 0970-0148, associated with the recordkeeping requirement of updating program policies and procedures. At that time, OHS assumed 320 burden hours and this was approved as part of modifications to OMB 0970-0148. With the publication of this rule, OHS will remove the estimated burden from OMB 0970-0148 upon renewal.

## **List of Subjects**

### *45 CFR Part 1302*

Early education, Grant programs, Head Start, COVID-19, Safety practices, Evidence-based COVID-19 mitigation policy

For the reasons stated in the preamble, ACF amends 45 CFR part 1302 as follows:

## **PART 1302 – PROGRAM OPERATIONS**

1. The authority for part 1302 continues to read as follows:

**Authority:** 42 U.S.C. 9801 *et seq.*

### **§ 1302.47 [Amended]**

2. Amend § 1302.47 by removing paragraph (b)(9) and redesignating paragraph (b)(10) as paragraph (b)(9).

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Robert F. Kennedy, Jr.,

Secretary

Department of Health and Human Services

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