

Dated: December 19, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart XX—West Virginia**

■ 2. In § 52.2520, the table in paragraph (e) is amended by:

■ a. Revising the existing entry for Ozone Maintenance Plan & contingency measures (Greenbrier County).

■ b. Adding an entry for the 8-hour Ozone Maintenance plan for Greenbrier County, WV, at the end of the table.

The amendments read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Ozone Maintenance Plan & contingency measures.	Greenbrier County .....	9/9/94	8/4/95, 60 FR 39857 .....	52.2565(c)(36)
		11/29/06	1/8/08, [Insert page number where the document begins].	Action includes (a) removal of the obligation to submit a maintenance plan eight years after initial approval, and (b) removal of the obligation to implement contingency measures upon a violation of the NAAQS
8-Hour Ozone Maintenance Plan for Greenbrier County, WV.	Greenbrier County .....	11/29/06	1/8/08, [Insert page number where the document begins].	

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Parts 1304 and 1306**

**RIN 0970-AB90**

**Head Start Program**

**AGENCY:** Administration for Children and Families (ACF), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the addition of family child care as a Head Start and Early Head Start program option. Family child care is care and education provided to children in a private home or other family-like setting. In keeping with the goal of designing programs that meet family and community needs, some Head Start and Early Head Start agencies have

identified family child care as an effective Head Start service delivery model.

**DATES:** *Effective Dates:* This final rule is effective February 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Camille Loya, Office of Head Start, Administration on Children and Families, 1250 Maryland Avenue, SW., Washington, DC 20024; (202) 401-5964.

**SUPPLEMENTARY INFORMATION:**

- I. Program Purpose
- II. Background and Purpose of Rule
- III. Summary of Major Provisions of the Rule
- IV. Rulemaking History
- V. Section-by-Section Discussion of Comments
- VI. Impact Analysis

**SUPPLEMENTARY INFORMATION:**

**I. Program Purpose**

Head Start is authorized under the Head Start Act (the Act), Title VI, Subtitle A, Chapter 8 of the Public Law 97-35, the Omnibus Reconciliation Act of 1981 (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive child development

services primarily to low-income children from birth to five years of age, pregnant women, and their families. To help enrolled children achieve their full potential, Early Head Start and Head Start programs provide comprehensive health, nutritional, educational, social, and other services.

Additionally, programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 2005, Early Head Start and Head Start served 906,993 children and their families through over 2,000 local grantee and delegate agencies. More than 23 million children and families have been served since the 1965 initiation of the Head Start program.

While Early Head Start and Head Start are intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start regulations

permit up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. These children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive special educational and related services, as needed.

## II. Background and Purpose of the Rule

The authority for this final rule is found in sections 644(a) and 644(c) and section 645A(b)(9) of the Head Start Act (42 U.S.C. 9839(a), 9839(c), and 9840a(b)(9)). Sections 644(a) and (c) require the issuance of regulations setting standards for organization, management, and administration of Head Start programs. Section 645A(b)(9) requires that Early Head Start agencies comply with the requirements established by the Secretary concerning design and operation of such programs.

Since the program's inception, Head Start grantee and delegate agencies have been required to use data from a community assessment as required by 45 CFR 1305.3 to design programs that meet local community needs and support individual family goals. As a result, over the years, Head Start has implemented a variety of program options, including the provision of comprehensive child development services in centers (the center-based option), in the child's home (the home-based option), or through a combination of center and home-based services (the combination option). With the issuance of this final rule, regulations applicable to family child care, as a program option, are established. Family child care is care and education provided to children in a private home or other family-like setting not necessarily the child's home as in the home-based option. In keeping with the goal of designing programs that meet family and community needs, some Head Start and Early Head Start agencies have identified family child care as an effective Head Start service delivery model. Family child care may offer advantages in greater hours of service, flexibility, and smaller group size. Many families believe their children will benefit from a home-like setting and multi-age groupings that can include siblings.

The formal recognition of the family child care setting as a Head Start and Early Head Start program option is particularly relevant given the increased participation of many parents in the

workforce or education and training opportunities. This increase is largely due to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, which created the Temporary Assistance for Needy Families (TANF) program. To support parents as they pursue training opportunities and seek and maintain employment, Head Start will provide increased opportunities for full day and full year services. Partnerships with other community agencies will ensure quality, flexibility and cost effectiveness. Because family circumstances may vary and many low income wage earners are obligated to work non-traditional hours, full day services may include extended hours of care including evenings and weekends. The family child care option may be particularly appropriate in these and other situations as it will provide grantee and delegate agencies with more flexibility in designing services to meet individual family needs. Early Head Start programs may choose the home-like setting of family child care for serving infants and toddlers from families with parents who are working or in training as a result of TANF. Family child care also may be a particularly appropriate option in rural areas where families are widely dispersed or in any area where there is a shortage of facilities. Finally the family child care option may be ideal for some children whose temperaments and learning styles flourish in a smaller, less formal setting.

Family child care has long been considered a possible Head Start program option. Since 1970, Head Start has served as a catalyst for promoting discussions and collaborations among a variety of organizations and agencies interested in expanding Head Start's comprehensive services to family child care settings. With the intent of increasing the availability of family child care services, beginning in 1984 and continuing through 1997, a number of Head Start grantees established family child care homes through innovative demonstration grants and program expansions. In keeping with its role as a national laboratory for the field of child development and early education, the Office of Head Start funded these demonstration projects to provide resources and leadership in the implementation of Head Start comprehensive services in family child care settings. This effort helped agencies meet community and family needs and provided opportunities for exchanging information and experience among the participating agencies and establishing a

professional network among previously isolated providers.

To help raise the level of quality in the family child care community and to support agencies in delivering Head Start's comprehensive child development services within the family child care setting, the Office of Head Start has supported significant initiatives to promote the professional development of family child care staff, including establishing the Child Development Associate (CDA) credential for family child care providers. This nationally awarded credential is recognized in 47 States as meeting staff qualification requirements for child care licensing. To promote developmentally appropriate programming for infants, toddlers, and preschoolers in family child care, Head Start supported the development of a curriculum and corresponding staff training program titled, "The Creative Curriculum for Family Child Care." Head Start also engaged in extensive work with a satellite distance learning network and over 45 community colleges to offer child development courses and other classes relevant to the provision of family child care, leading to the award of the CDA credential. In 1988, Head Start collaborated with the State of Washington and local community colleges to support the Job Training Partnership Act (JTPA) and Welfare Reform by providing education and credentialing opportunities for family child care providers, including Head Start parents.

From 1992 to 1997, the Office of Head Start conducted an "Evaluation of the Head Start Family Child Care Homes Demonstration" to determine whether the services provided in family child care settings had the capacity to meet the Head Start Program Performance Standards and have impacts comparable to those resulting from enrollment in center based Head Start programs. Based on the data from this study, family child care was found to be a viable setting for providing comprehensive Head Start services at costs comparable to those for full-day center-based services. Although the study focused on programs serving four year old children, the findings show that services delivered in a family child care setting can meet Head Start standards of quality and can produce similar outcomes for children and families.

Based on these initiatives, accumulated experience, and research, the Office of Head Start identified indicators of quality family child care. These quality indicators include: use of licensed homes with very small groups of children, especially when infants and

toddlers are enrolled; qualified family child care providers with adequate training and experience; implementation of a curriculum based on sound child development principles; the integral involvement of parents; and the provision of strong support from the Head Start program to the family child care providers.

Through the demonstration efforts and through recent expansion of Head Start and Early Head Start enrollment, approximately five percent of programs currently provide family child care to some of their children and families under approved locally-designed models. Approximately 5,000 children are enrolled in these programs. We expect that this number will increase following publication of this final rule.

In the past several years, the Office of Head Start has convened several groups of representatives from a cross-section of for-profit and non-profit family child care programs, other organizations and agencies, experts, and parents to advise the Office of Head Start regarding various aspects of family child care programming. The family child care issues addressed by these groups included staff-child ratios, staff qualifications, oversight and support for the family child care provider and utilization of multiple funding sources. Informed by years of experience, and by a wide range of individuals and groups, as well as the findings of the evaluation study, the Office of Head Start is implementing regulations that will add family child care as a Head Start and Early Head Start program option.

All Head Start and Early Head Start grantees and delegate agencies must comply with the Head Start Performance Standards and other applicable regulations. Current Standards (45 CFR part 1304) were published in the **Federal Register** on November 5, 1996 (61 FR 57186) and were effective January 1, 1998. The Standards include requirements for Early Childhood Development and Health Services, Family and Community Partnerships and Program Design and Management. Early Childhood Development and Health includes child health and developmental services, education and early childhood development, child health and safety, child nutrition, and child mental health. Program Design and Management includes program governance, management systems and procedures, human resources, and facilities, materials and equipment. All Head Start and Early Head Start programs, regardless of program options offered, must comply with the Head Start Performance Standards and other

regulations including 45 CFR part 1304 (Program Performance Standards for the Operation of Head Start Programs by Grantee and Delegate Agencies), 45 CFR parts 1301 (Head Start Grants Administration), 1302 (Policies and Procedures for Selection, Initial Funding, and Refunding of Head Start Grantees and for Selection of Replacement Grantees), 1303 (Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies), 1305 (Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start), 1306 (Head Start Staffing Requirements and Program Options), 1308 (Head Start Program Performance Standards on Services to Children with Disabilities), 1309 (Facilities), and 1310 (Head Start Transportation Services).

Several program elements are unique to family child care and thus are not addressed specifically in the current Head Start Program Performance Standards. These elements include the hours and days of possible operation, differences in staff qualification, differences in indoor and outdoor facilities and space, group size and age composition variations, different health and safety issues, role of the Head Start Policy Council and the applicability of management policies and procedures.

Other program elements, such as child development and education, proportionate Policy Council, Committee or other governing group representation, and the conduct of home visits are addressed in the Head Start Performance Standards and are made applicable to the Head Start family child care program option. In addition to the Head Start Program Performance Standards and other Head Start regulations, Head Start and Early Head Start grantee and delegate agencies implementing the family child care program option must ensure the provisions, as specified in this revision, are met. Also, Early Head Start programs are required to "provide early, continuous, child development and family supportive services on a year-round basis (62 FR 18966). Therefore, grantee and delegate agencies providing Early Head Start through the family child care option must provide these services year round.

### III. Summary of the Major Provisions of the Rule

A summary of the major provisions of the final rule follows. The rule:

- Establishes requirements for including family child care settings as a Head Start and Early Head Start program option.

- Describes the minimum credentials, which must be held or obtained by providers of Head Start and Early Head Start family child care services.

- Describes the minimum knowledge and experience that must be possessed by family child care providers who enroll Head Start and Early Head Start children.

- Describes the minimum qualifications of the Head Start or Early Head Start child development specialist.

- Specifies training opportunities that must be made available to family child care providers.

- Requires that family child care homes establish schedules to meet the needs of Head Start and Early Head Start parents.

- Requires that Head Start and Early Head Start programs offering the family child care option ensure that homes are available that can accommodate the special needs of children with disabilities.

- Specifies minimum requirements for the indoor and outdoor space available to children enrolled in the Head Start or Early Head Start family child care option.

- Describes Policy Council role in program decision to offer family child care option and requires proportionate representation of family child care providers on Policy Council or Policy Committee.

- Establishes requirements to ensure the health and safety of Head Start and Early Head Start children enrolled in the family child care option.

- Establishes allowable adult to child ratios and group size limits for the family child care program option.

- Requires that agencies offering the family child care option employ a child development specialist to provide support and oversight to family child care providers.

- Requires that homes where family child care is provided as a Head Start or Early Head Start program option are licensed or otherwise certified by State, Tribal or local authority.

### IV. Rulemaking History

On August 29, 2000, the Department of Health and Human Services (Department) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 52394), proposing regulations establishing requirements for the provision of family child care as a Head Start and Early Head Start program option. Copies of the proposed regulation were mailed to all Head Start and Early Head Start grantee and delegate agencies. Interested individuals were given 60 days to comment on the proposed rule. During

the 60-day comment period, the Department received 1,166 individual comments from 217 respondents. The respondents included Head Start and Early Head Start grantee and delegate agencies, family child care providers, parents, people with college and university affiliations, and other public and private agencies and individuals interested in family child care and Head Start.

This final rule amends Head Start Regulation 45 CFR part 1306 to provide grantees authority to operate a family child care program option and specify what requirements will be imposed on Head Start programs implementing this option. We have amended the final rule in a judicious manner, and taken time to carefully consider the large number of comments in order to provide clarity to the family child care program option.

#### **V. Section-by-Section Discussion of Comments**

The comments were analyzed and categorized by regulatory section. Only those sections for which comments were made or which were changed in the final rule are discussed below.

##### *Section 1304.52(h)(1)—Human Resource Management*

This section described the qualifications required for family child care providers with Head Start or Early Head Start children enrolled.

*Comments.* This section elicited the largest number of comments from respondents. Three comments supported the proposed section as written. The remaining respondents made specific recommendations for changes. Several comments cautioned that the section implied an employer-employee relationship and other sections were inconsistent with this assumption. Three respondents objected to the requirement that providers have “previous child care experience.” Several respondents indicated that the Department should allow family child care providers to possess the Child Development Associate Credential (CDA) in preschool, home-based or infant-toddler services as more people have these and it gives them much of the necessary foundation in early learning. Many of the comments asked for clarification of the section’s stipulations. Ten respondents wrote that “child care experience” should be liberally interpreted to allow parents and others to become family child care providers. Two respondents questioned experience as a prerequisite given the lack of a commensurate requirement for Head Start and Early Head Start center based teachers.

Eighty comments were critical of the provision’s requirement that providers obtain at least a CDA within one year of hire. The majority indicated that one year is not a reasonable length of time to receive a degree. Some respondents suggested specific allowances including permitting longer time for non-English speakers. One respondent asked if the Office of Head Start would provide funds for providers to obtain a credential. Many respondents indicated that the allowable time period for obtaining a credential or degree is too short. Recommendations ranged from 18 to 60 months, but the majority of respondents, wrote that 24 months would be reasonable. A few respondents indicated that there should be no requirement at all for provider education. Finally, several respondents drew attention to the difficulty of obtaining a CDA in rural areas, while several others made the same statement about small cities or “disadvantaged” cities.

*Response.* Previous experience and the possession of a degree or CDA are critical indicators of the ability to provide high quality services for young children. In response to comments indicating that the specified time period was unreasonable, the final regulation allows up to two years to obtain a CDA. The final rule specifies that providers offering family child care as a Head Start or Early Head Start option must enroll in a CDA program within six months of beginning service provision. While it is true that access to the CDA program and colleges and universities varies across the country, distance learning opportunities via satellite and computer, are increasing access significantly regardless of geography. The requirement that providers have “early child care experience” was left essentially unchanged. The lack of specificity, in both duration and nature, related to the requirement permits considerable latitude in interpretation while still holding agencies responsible for ensuring that providers who they employ or with whom they contract are qualified.

The language in the final rule was clarified throughout to indicate that Head Start or Early Head Start and family child care program relationships may be contractual or employer-employee based on the nature of each situation.

##### *Section 1304.52(h)(3)*

Under the proposed rule, this section required that agencies offering the family child care program option ensure that alternative arrangements are made for enrolled children in the event a

provider or family child care facility is unavailable.

*Comments.* Five respondents indicated full support for this provision. One respondent suggested a minimum of three substitutes be available for each provider. One respondent indicated that alternative arrangements should be a recommendation, not a requirement. Several respondents indicated that the rule should be changed from requiring “alternative arrangements” to requiring “alternative plans” which would allow more flexibility. Several respondents indicated concern about the qualifications of substitute staff and the safety of alternative facilities. Writers also emphasized that young children should not be left in the care of strangers in the event the family child care provider is unavailable. Several respondents wrote that this provision was overly prescriptive, indicating that the responsibility for alternative arrangements should be borne by the family child care provider, not the Head Start or Early Head Start grantee. Many writers expressed concern that requiring substitute arrangements represents a prohibitive cost.

Finally, respondents pointed out that arrangement for alternative care, either when planned or in the event of an emergency, should be made by family child care providers with the parents of the enrolled children. A few comments indicated that the responsibility for finding alternative care should rest entirely with parents as such responsibility “promotes the parent’s self-sufficiency.” Several respondents requested that the Office of Head Start provide recommendations of appropriate alternative sites when the family child care home is not available.

*Response.* We agree with respondents that the proposed rule was unnecessarily stringent regarding this provision and did not fully account for the variety of issues surrounding alternate care arrangements. The final rule has been changed to specify that grantees offering the family child care option ensure that closures for emergency reasons are minimized and providers work with parents to establish emergency notification and alternative care arrangement plans. The rule further specifies that providers must notify parents of any planned closures well in advance.

##### *Section 1304.52(h)(4)*

This section of the proposed rule specified that when a grantee or delegate provides substitute or additional staff, such staff must have the knowledge and experience necessary to

implement the Head Start family child care option.

*Comments.* There were three comments on this section. One respondent recommended clarification of the requirements for a family child care assistant. The other two respondents stated that it is unreasonable to require substitutes to meet education criteria.

*Response.* The final rule was reworded slightly to require that substitutes and assistants have training and experience necessary to ensure the continuous provision of quality services. The change acknowledges that assistants and substitutes may not be equipped to single handedly “implement the Head Start family child care program,” but that they must be qualified to maintain services and contribute to a safe nurturing environment in the provider’s absence or as an assistant to the provider.

#### Section 1304.52(h)(5)

This section of the proposed rule required that at the time of hire, the child development specialist must have at least an Associate degree in child development or early childhood education.

*Comments.* One respondent suggested that any degree should be acceptable as long as a minimum amount of course work in child development or early childhood education is obtained.

*Response.* The provision was reworded from the NPRM to be consistent with the degree requirement specifications for teachers as written in the Head Start Act. The child development specialist will provide support and guidance for family child care providers and must have the academic background necessary to ensure sound Knowledge of child development and early learning.

#### Section 1304.52(l)(5)(i-viii)

This section of the proposed rule specified that grantee and delegate agencies offering family child care must provide specific training topics for family child care staff.

*Comments.* Eight respondents supported regulations requiring training for family child care staff. One respondent indicated that grantee and delegate agencies should determine the amount and type of training based on the needs of family child care providers. Another respondent recommended changing the wording to state that agencies shall make the specified training available, but not required, because providers may have different needs and resources. Several respondents objected to the requirement

that the Head Start or Early Head Start agency’s curriculum be implemented in the family child care home, stating that there should be flexibility to allow the selection of a curriculum that best fits an individual family child care home. One respondent suggested that the required certification in cardiopulmonary resuscitation (CPR) should include CPR for adults as well as infant and child CPR. Finally there were a number of comments suggesting additional training topics including, the Head Start Performance Standards, meeting the needs of children with disabilities, cultural competency, the importance of relationships, business training, observation skills and stress management.

*Response.* The language in the final rule is changed to specify that grantee and delegate agencies offering the family child care option must make opportunities available for providers to receive training in the following topics: Knowledge of child development; curriculum implementation; working with children with disabilities; effective communication with children and their families; knowledge of safety, hygiene and health, including infant and child CPR; identification and reporting of possible child abuse; information on the United States Department of Agriculture’s Child and Adult Care Food Program; and other training as necessary based on individual needs. The NPRM’s section 1304.52(i)(5)(vii), regarding appropriate sanitation and hygiene, was combined with paragraph (v) regarding safety and health issues because the requirements are closely related.

#### Section 1306.3(n)

This section of the proposed rule provided definitions of “family child care” and “Head Start family child care.” There were no significant comments specifically in response to this section. However, the word “comprehensive” was added to describe the Head Start and Early Head Start services provided to children enrolled in family child care. The addition was made to clarify the nature of the services to be provided.

#### Section 1306.3(o)

This section of the proposed rule provided the definition of “family child care program option” as the provision of Head Start and Early Head Start services to children receiving child care in the home of the provider or in a family-like setting, such as space in an apartment building which has been set aside for the provision of child care.

*Comments.* One respondent requested clarification on the definition of “family-like” setting. Other respondents questioned whether family child care would be permitted in public housing facilities because it would be a commercial venture.

*Response.* The definition remains essentially unchanged. The term “family-like setting” could include the myriad of households in which American families live, as long as there is conformance with applicable regulations. The phrase “under the auspices of an Early Head Start or Head Start grantee or delegate agency” was deleted as unnecessary.

#### Section 1306.3(p)

This section of the proposed rule defined the term “family child care teacher” as the provider of Head Start or Early Head Start services to children in their own residence or a family-like setting.

*Comments.* There were 28 comments submitted that addressed this section. Six respondents supported use of the term “family child care teacher” as they felt it would enhance the public perception of a professional role. Twenty-two respondents objected to the term “teacher” and some suggested alternatives. Several respondents indicated concern that the term “teacher” would too narrowly imply a home set up and operated like a child care or preschool center. Other respondents commented that the term “teacher” is not reflective of their myriad roles, including, small business owner, nurturer, and homemaker. Three respondents suggested that use of the word teacher may influence the ability to maintain a contractual rather than employer relationship. Alternative titles suggested by respondents included, “family child caregiver,” “early care and education provider,” “family child care professional” and “family child care learning professional.” One respondent indicated that “family child care provider” is the nationally recognized term for individuals who provide child care in a family-like setting. The writer noted the use of that term in National Association for Family Child Care materials and in the United States Department of Agriculture’s Child and Adult Care Food Program (CACFP).

*Response.* We agree with the respondents who suggest that the term “teacher” might not be the most appropriate title. While we believe teaching is a primary function when children are enrolled in the Head Start family child care option, we changed the term to “Family Child Care Provider” in the regulation to be

inclusive of the variety of relationships grantees may establish to offer family child care as a program option.

#### Section 1306.20(g)

This section of the proposed rule specified that when Head Start or Early Head Start children are enrolled, designated group size limits apply and the provider's own children under the age of six years must be counted in the group size.

*Comments.* There were seven respondents who indicated that inclusion of the provider's own children in the adult to child ratio would pose a significant financial burden. Several of these respondents included information about less restrictive State requirements.

*Response.* We added language to the final rule section 1306.20(g) to indicate the provider's children under the age of six must be included in the group count whenever present in the home. While we recognize this may reduce the capacity of the provider to enroll children, we believe that children under age six need considerable adult support and excluding them from the count could pose a danger to the safety and development of the group.

#### Section 1306.20(g)(1)

This section stated that when no more than two of the children are under three years of age, the maximum group size is six children.

#### Section 1306.20(g)(2)

This section of the proposed rule specified that when more than two children are under three years of age, the maximum group size is four children and in such cases, no more than two of the four children may be under the age of 24 months.

*Comments.* This section generated a substantial number of responses. Many responses were in favor of the provision, but several of these cautioned it might not be financially viable. A majority of respondents indicated criticism of the adult to child ratios proposed. Several respondents suggested that the allowable ratio and group size should be consistent with those established for Head Start center-based programs, one teacher for every eight three-to-five-year old children. Others suggested deferring to each State's family child care licensing regulations. Several respondents forwarded copies of various States' regulations.

Another category of comments elicited by this section suggested that the provisions governing group family child care include larger group size with a second adult assisting the family child care provider.

*Response.* We agree with respondents that Head Start family child care group size limits and adult-child ratios should generally reflect those established for Head Start and Early Head Start. The primary considerations in determining ratio and group size requirements are the safety, education, and well-being of enrolled children. We reviewed the family child care licensing regulations in all the States where they exist and found tremendous variability in allowable group size and adult-child ratios. We feel that simply deferring to States is not an acceptable option as it would not ensure the ratios and group sizes required for the delivery of high quality Head Start and Early Head Start services.

We changed the final rule to be more consistent with requirements for Head Start classrooms. A majority of States identify a ratio of approximately six children, with no more than two under two years of age, for a single provider and the final rule was changed to reflect this majority. This consistency with the Head Start requirement will reduce problems associated with variance from State regulations. In view of the many possible advantages and research supporting the quality of "family group" child care homes, we have included a provision allowing a family child care provider and an assistant to care for up to twelve children when no more than four of the children are under two years of age.

The ratio for teacher to infants and toddlers in Early Head Start classrooms is one to four. We maintain this ratio for the family child care option with the stipulation that no more than two of the four children may be under the age of 24 months. We believe this ratio and the associated age limits are necessary both in the event of an emergency and for the provision of high quality services.

#### Section 1306.20(g)(3)

In the proposed rule, this section specified that when children requiring additional care because of special needs are enrolled, " \* \* \* group sizes are smaller than the maximum allowed."

*Comments.* There were several comments on this section indicating concern that additional compensation would be required if the group size was reduced in order to cover the resulting lost revenue. Other respondents were concerned about how an appropriate "smaller" group size would be determined when special needs children were enrolled. One respondent recommended having a "special needs aide" to assist when a child with a disability is enrolled. Several responded that decisions about group size must be

made in accordance with individual needs.

*Response.* We agree that children's special needs are extremely diverse and decisions about group size must take into account the individual needs of children enrolled. Young children with disabilities are entitled to appropriate education and related services in the least restrictive environment where their needs can be met. If the family child care home is deemed the least restrictive environment, the local jurisdiction must provide any necessary services. The language in the final rule is modified slightly to indicate that it may be necessary to adjust group size or accommodate additional assistance to meet the needs of children with disabilities. Head Start and Early Head Start grantees must ensure that at least ten percent of enrollment opportunities are available to children with disabilities.

#### Section 1306.20(h)(1)

Under the proposed rule, this section specified that Head Start and Early Head Start programs offering the family child care option must provide support and oversight to providers through the employment of a child development specialist and through other staff with responsibilities related to the provision of comprehensive services. Included was the requirement that there are mechanisms in place for assuring communication with providers at all times when Head Start or Early Head Start children are present.

In the NPRM section 1306.20(h)(2) it was also specified that a full-time child development specialist be assigned no more than 12 family child care homes with part-time child development specialists being assigned a proportionate number. We have combined this section into a single section 1306.20(h)(1) in this final rule.

*Comments.* Respondents indicated concern that dictating the hours of service and requiring external oversight could jeopardize the capacity to maintain a contractual, as opposed to employee to employer, relationship. Several respondents indicated they currently provide Head Start services as specified in their contracts with the support, but not supervision of the grantee. One respondent recommended that support be specifically identified.

A number of respondents indicated support for the proposal that child development specialists be assigned a limited number of family child care homes, but some said they would require additional funding to meet the requirement. Other respondents questioned a prescribed ratio given the

potential variation in traveling distance between homes reflective of the region or area where the grantee or delegate agency operates. Many respondents indicated that the requirement as stated would influence the ability of providers to maintain a contractual, as opposed to employee, relationship with the grantee or delegate agency. Several respondents proposed different ratios ranging from one specialist to every six family child care homes to one specialist for every 15 family child care homes. One respondent suggested that the ratio should be based on the number of children enrolled rather than the number of homes as the number of children enrolled in each home may vary considerably. Finally a number of respondents objected to the prescription of a child development specialist, arguing it would limit program flexibility in providing staff to best meet the individual needs of family child care providers. Others argued the provision as written makes erroneous assumptions about a relative lack of child development qualifications on the part of family child care providers.

*Response:* We agree that the specific responsibilities of the child development specialist will depend on the nature of the relationship between the grantee or delegate agency and the family child care providers. The final rule was modified to broadly require that child development specialists and other Head Start staff with specific responsibilities for the provision of comprehensive services provide support for the family child care option homes.

We also agree that Head Start programs will need flexibility in designing their family child care option. We believe that a child development specialist is essential to connect the family child care homes with the Head Start and Early Head Start program and ensure effective communication. Based on these two conditions, we deleted section 1306.20(h)(2), as designated in the NPRM, and added language to section 1306.20(h)(1) to require that programs offering the family child care option employ and assign child development specialists or other Head Start or delegate agency staff to ensure the provision of high quality comprehensive services.

#### *Section 1306.20(h)(2)*

This section (section 1306.20(h)(3) in the NPRM) specified that the responsibilities assigned to child development specialists include unannounced and announced visits to family child care homes with at least one 90 minute visit per home per week.

*Comments.* A number of respondents supported the proposed standard speculating that providers would welcome the visits and that the child development specialist would positively influence family child care services. Several respondents indicated concern that the visits not be intrusive. The majority of respondents wrote that the provision should be modified. Many felt that the requirement was too prescriptive and not adequately flexible to ensure responsiveness to the needs of individual providers. One respondent suggested that the visits of various specialists during a single week could be combined to constitute the required 90 minute visit. Others suggested reducing the requirement to bi-weekly visits or permitting phone or e-mail communication in lieu of visits. There also were suggestions for including a monthly meeting of providers in the requirements.

*Response.* We agree with respondents that the need for child development specialist visits may vary considerably among providers. Veteran providers with early childhood degrees for example, may not need the same number and duration of visits as new providers who are enrolled in CDA or early childhood education classes for the first time. We believe, however, that the grantee agency must have a systematic approach to ensure that providers have regular access to the resources and specialists that the Head Start or Early Head Start agency offers. Whether its relationship with providers is contractual or employment based, grantees and delegates will need assurance that all applicable regulations are met. The final rule was re-worded to clarify that the grantee or delegate agency must assign responsibilities to the child development specialist to support and ensure the provision of high quality services at each family child care home. The duration and timing of such visits may vary, but there must be at least one visit to every provider every two weeks and some form of contact at least once per week. Visits must be both announced and unannounced.

#### *Section 1306.20(h)(3)*

This section (section 1306.20(h)(4) in the NPRM) of the proposed rule stated that the child development specialist must conduct health, nutrition and safety checks of the home, and must observe and assess curriculum implementation and child development services. The section also required that the specialist provide on-site feedback and training and technical assistance to the providers including support for the

development of collegial or mentoring relationships.

*Comments.* The responses applicable to this section were submitted under proposed section 1306.20(h)(2) and (3) and related to concern that the requirement is too stringent and doesn't reflect the wide variety of strengths and needs across family child care settings.

*Response.* The language in the final rule was modified to clarify that the role of the child development specialist includes: Verifying compliance with either contract requirements or agency policy depending on the nature of the relationship; facilitating communication between the family child care provider, Head Start and Early Head Start staff, enrolled families and other community services; making recommendations for training and technical assistance; and supporting providers in developing collegial or mentoring relationships.

#### *1306.20(i)*

This section of the proposed rule required that grantees or delegates formally assign family child care management functions to agency staff.

*Comments.* This provision elicited six comments, all of which were supportive. One respondent indicated that responsibilities should be assigned not only to existing staff, but that new staff should be hired as necessary.

*Response.* This section was considered unnecessary as provision for the assignment of management functions is currently required in 1304.52(a). Therefore, the section was deleted from the final rule.

#### *Section 1306.20(i)*

Under the proposed rule, this section (1306.20(j) in the NPRM) specified that to ensure that all program services are available to children enrolled in the family child care option, grantee and delegate agencies must ensure that providers are supported by agency staff with responsibilities related to the provision of comprehensive services as described by 45 CFR parts 1304 and 1308. There were no comments in response to this section. However, the provision was reworded to simply state that grantee and delegate agencies must ensure that children enrolled in the family child care option receive comprehensive Head Start or Early Head Start services as described by 45 CFR parts 1304 and 1308.

#### *Section 1306.31(a)*

This section of the proposed rule was amended to include Family Child Care in the list of Head Start program options that consists of a center-based option, a



home-based option, and a combination program option.

Sections 1306.35 and 1306.36 were revised and redesignated as sections 1306.36 and 1306.37 respectively and a new section 1306.35 was added.

*Section 1306.35(a)(1).*

This section of the proposed rule required that agencies implementing the family child care option must ensure that each family child care home operates year round, five or more days per week and at least six hours per day.

*Comments.* Many respondents stated confusion about this provision. Some respondents indicated that they interpreted “year round” to mean no vacation or holiday time would be permitted. Two respondents indicated that if the grantee or delegate sets required hours of operation, it would preclude a contractual relationship. Many people suggested modifying the provision to allow family child care providers to determine their schedules and keep enrolled families informed. Other respondents pointed out that they serve populations who, due to seasonal employment or school or college enrollment, only require part-year care. Several comments suggested that six hours per day would never be enough and the regulation should specify a minimum of nine or ten hours.

*Response.* We agree with respondents that family child care providers must establish hours and days of operation in accordance with the needs of enrolled families and their own needs. We do not wish to interfere with the ability of providers to remain independent contractors. We also recognize the large degree of variation in need for care according to individual community and family circumstances. The final rule was changed to allow greater flexibility while still emphasizing the need to meet community needs. It states that grantees and delegates must ensure that the family child care option, whether provided directly or via contractual arrangement, operates sufficient hours to meet the child care needs of the children enrolled and their families.

*Section 1306.35(a)(2)(i)(ii).*

In the proposed rule, paragraph (i) of section 1306.35(a)(2) specified that agencies offering the family child care option must ensure that family child care homes are available to serve children with disabilities and accommodate parents with disabilities. Paragraph (ii) stated that services must be provided as specified in children’s individual education plans (IEPs) or Individual Family Services Plans (IFSPs).

*Comments.* Respondent suggested that the Office of Head Start needs to make funds available to renovate homes to make them accessible and provide funds to offset revenue lost when a child with a disability requires a smaller group size. One respondent indicated concern that family child care providers are not certified in special education and therefore could not provide an appropriate placement for children with disabilities. Another respondent pointed out that accommodations in each home would need to be based on the needs of the individual children enrolled. Finally two respondents recommended requiring that Head Start and Early Head Start agency specialists be required to act as resources for children with disabilities and their families.

*Response.* Head Start and Early Head Start agencies must make ten percent of all enrollment opportunities available for children with disabilities. The final rule references the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and 45 CFR Part 1308, the Head Start Performance Standards for Services to Children with Disabilities which require that children’s special needs be met in the least restrictive possible environment. Grantees and delegates offering the family child care program option must ensure the availability of a setting among family child care homes as appropriate. The words “as appropriate” were added at section 1306.35(a)(2)(i) to indicate that a family child care home may be an appropriate setting for meeting the special education and related service needs of a child with a diagnosed disability.

*Section 1306.35(a)(3)*

In the proposed rule, this section required that Head Start family child care homes provide sufficient indoor and outdoor space for children to be supervised and participate in activities that foster physical, emotional, and cognitive growth and development.

*Comments.* This section generated a number of responses. Several recommended that clarification of the term “sufficient space” be provided in the final rule. Respondents indicated concern about providers who live in apartments being able to provide outdoor space and possible conflicts between the Head Start regulation for Family Child Care as a program option and State child care licensing requirements.

*Response.* The language in the final rule was clarified to include that at a minimum, Head Start Family Child Care option homes must meet State licensing requirements for usable space. In the

event the State does not include specifications regarding space, agencies offering the option must ensure that the available space is safe and adequate for child development. There must be sufficient indoor space for individual child and small group experiences to occur and the provider must have access to safe outdoor areas where children can play. The nature of outdoor space may vary considerably based on the child care home’s location, but agencies must ensure that children are protected from hazards, are supervised at all times, and age appropriate experiences are available.

*Section 1306.35(a)(4)*

Under the proposed rule, this section required that agencies include Policy Councils in decisions to “hire or terminate contracted Head Start family child care teachers.”

*Comments.* Respondents strongly objected to this provision, pointing out that the requirement would be inappropriate in contractual situations.

*Response.* The final rule indicates that the Policy Council’s decision making role must be exercised at the point of including family child care as a program option. Under the final rule, the Policy Council will participate in hiring and termination decisions consistent with 45 CFR 1304.50(d)(1)(xi). The section was also expanded to include the required proportionate representation of the family child care option on the Policy Council.

*Section 1306.35(b)(1)*

In the proposed rule, this section required that agencies offering the family child care option have a plan in place to ensure the health and safety of children and conduct at least one safety inspection of each home each year. Further requirements regarding frequent observations by the child development specialist policies and procedures to correct identified concerns also were included.

*Comments.* Some respondents agreed that a safety plan should be required, but recommended additional criteria for inspections. One respondent indicated concern that requiring a grantee safety plan applicable to family child care homes could compromise the capacity for a contractual relationship with a provider.

*Response.* The final rule specifies that agencies offering the family child care option must ensure the health and safety of children enrolled. When an agency employs family child care providers directly, it must establish written descriptions of health, safety, and emergency policies and procedures.



When the family child care option is offered through contractual arrangements with providers, the contracts must specify the provider's obligations for ensuring the health and safety of children enrolled in Head Start.

*Section 1306.35(b)(2)(i)*

This section of the proposed rule required that Head Start and Early Head Start children enrolled in the family child care program option be kept away from potentially hazardous situations, including, sources of heat and appliances. It also stated that premises must be free from health endangering pests.

*Comments.* Respondents strongly objected to what they read as a prohibition against children's participation in cooking activities. Several pointed out the value of kitchen experiences as related to science and math learning. Others emphasized the developmental benefits related to learning about good nutrition and health. One respondent observed that kitchen appliances are present in all households and banning all child access will fail to permit teaching about safety around such appliances. One person indicated concern that the provision contradicted what she is learning in her CDA classes. Finally, one respondent suggested that providers should have a safety plan that includes how children will safely participate in meal preparation.

*Response.* We agree that experiences in the kitchen can be significant contributors to child development. It also is true that virtually all children grow up with kitchen appliances in their homes. We modified the language in the final rule to state that children enrolled in the Head Start or Early Head Start Family Child Care Option must be protected from potential hazards, including those posed by appliances. We also specify that premises must be free of pests and that chemicals used to control pests are not to be used during hours of operation of the family child care home.

*Section 1306.35(b)(ii)*

This section required that smoke and carbon monoxide detectors be installed in spaces occupied by children.

*Comments.* One respondent objected that carbon monoxide detectors should not be required as they are too expensive. Another indicated that required detectors should be provided by the grantee or delegate agency at no charge to the provider. One respondent said the required detectors should reflect the year of the home's

construction. A company that manufactures alarms asserted the need for the proper installation and maintenance of alarms.

*Response.* While we appreciate concerns regarding cost, the safety advantages of smoke and carbon monoxide detectors are well documented. We continue to require the detectors under the final rule.

*Section 1306.35(b)(iii)*

Under the proposed rule, this section required radon detectors in family child care homes where basements are devoted to the program.

*Comments.* There were three respondents to this section. One objected on the grounds of cost, one objected because there is not a commensurate requirement for Head Start centers, and the third said that the grantee should have to pay for the detectors.

*Response.* The final rule was clarified to maintain the requirement that radon detectors are required when family child care sites have basements and the local health officials recommend the use of the detectors.

*Section 1306.35(b)(iv)*

Under the proposed rule, this section required that children be directly supervised at all times.

*Comments.* Respondents indicated that this provision would be problematic as often only one provider is present with children and may need to take care of a personal need which requires a temporary pause in direct supervision.

*Response.* We clarified the final rule to emphasize that children are supervised and kept safe at all times. Providers must be able to assure the safety of any child not within view for any period.

*Section 1306.35(b)(2)(v)*

In the proposed rule, this section required "enhanced supervision" when children are near a body of water or a source of heat or when they are being transported.

*Comments.* Respondents indicated a need for clarification regarding the meaning of this provision. For example, several respondents asked for more explanation of "enhanced supervision" and one respondent indicated that the term "heat source" is too vague.

*Response.* We clarified the final rule slightly to state that when family child care is offered as a Head Start or Early Head Start program option, providers must ensure the safety of children around any body of water, road or other

potential hazard, or if children are being transported.

*Section 1306.35(b)(vi)*

This provision in the proposed rule required that all water hazards be enclosed with a fence and safeguarded against access by children.

*Comments.* Respondents indicated varying amounts of agreement with this section. Several emphasized the value of water as a teaching tool and protested a complete prohibition to supervised access by children. Some indicated that supervision is the key to water safety; others recommended requiring locked gates and attendants trained in first aid and cardiopulmonary resuscitation (CPR).

*Response.* The final rule clarifies that unsupervised access by children to all water hazards are prevented by a fence.

*Section 1306.35(b)(2)(vii)*

This section stated in the proposed rule that no firearms or other weapons shall be kept in space occupied by or accessible to children.

*Comments.* Respondents requested clarification about whether this section would require removal of weapons from a child care home or whether locking up weapons could satisfy the requirement.

*Response.* The provision was left unchanged in the final rule. Providers must comply with State and local licensing regulations. If those regulations permit weapons in the home, providers must ensure that those weapons are kept out of areas occupied by children and that they are absolutely inaccessible to children by any means.

*Section 1306.35(b)(2)(viii)*

In the proposed rule, this section required that alcohol and other drugs not be consumed while children are present and are not accessible to children at any time.

*Comments.* One respondent indicated that the final rule should specify that smoking and prescription drugs are allowed. Others suggested requiring that alcohol and drugs of any kind be kept in locked cabinets or boxes.

*Response.* The final rule is unchanged. The statement that drugs and alcohol not be accessible to children requires that providers accomplish this through any necessary means, including keeping them in locked containers or removing them from the premises. Every effort should be made to avoid taking over the counter or prescription drugs while children are in care. If a provider must use a prescription drug while children are in care, the provider must prevent children from accessing that drug. It

should be noted that the limitations regarding smoking that apply when children are enrolled in center-based Head Start or Early Head Start also apply when children are enrolled in the Head Start or Early Head Start Family Child Care Option.

*Section 1306.35(b)(2)(ix)*

Under the program rules, this section required that domestic animals be disease free, immunized, appropriately restrained and kept from children.

*Comments.* A substantial number of respondents unanimously supported the first three conditions, properly immunized, disease free, and appropriately restrained animals, but opposed the requirement that animals be “kept from children.” Some respondents indicated concern that, as Head Start grantees, they would lose many of their family child care partners if they required them to “get rid of their family pets.” Many respondents stated the important role responsible interaction with pets can have in the development of young children. Others pointed out that pets reside in many early childhood classrooms. One respondent stated that many family child care homes are on farms and that animals can help withdrawn children. Another respondent stressed that parents make the decision about placement for their child, and if there is an objection to a pet at a home, another provider can be identified.

*Response.* We agree that pets can play important roles in the lives of young children. However, there are health and safety risks inherent in a close association between pets and young children. These risks vary according to the type of pet, the condition of its environment and the safeguards established by a provider. We clarified the final rule to state that providers must keep up to date health certificates signed by a veterinarian for any pets which have contact with children. The Head Start grantee or delegate agency must ensure that any pets residing with family child care providers are appropriately managed to ensure child safety at all times. The nature of pet safety measures will vary in accordance with the type of animal involved. For example, while some animals will need to be prevented from having any contact with children, others may require making sure children wash their hands after handling the animal. It should be noted that while child safety is our paramount concern, the health and well-being of animals must also be considered.

*Section 1306.35(c)*

In the proposed rule, this provision required that “emergency coverage plans” be in place to ensure that a qualified substitute provider is in place in the event the regular provider must leave due to an emergency.

*Comments.* Several respondents recommended no change to this section. Other respondents suggested it should be the grantee or delegate agency’s responsibility to provide coverage in the event of an emergency.

*Response.* We have re-worded the provision to indicate that grantee and delegate agencies offering the family child care program option must ensure that providers have made plans of how they will notify parents in the event of any emergency or unplanned interruption in service. Such plans may include the use of alternate sites or substitute providers. Parents must be informed that they may need to pick their child up and arrange care if the child is ill or if an emergency arises.

*Section 1306.35(d)*

This section of the proposed rule stated that grantees and delegates must ensure that homes where Head Start or Early Head Start family child care services are offered meet State, Tribal, and local licensing requirements. When State, Tribal, and local regulations vary from the Head Start Standards, the more stringent regulation shall apply.

*Comments.* This provision elicited several comments. Two respondents agreed unconditionally. One respondent suggested that grantees may need to provide initial funding to bring family child care homes up to licensable condition. One respondent pointed out that, if the relationship is contractual, the grantee can require a family child care license, but can’t actually secure the license for the provider. One respondent suggested that the Head Start requirement would increase the workload for State licensing officials and they should be notified in advance to begin preparation. The same respondent suggested that, in States where there are no family child care licensing regulations, Head Start grantees should perform inspections of family child care homes.

*Response.* The section remains unchanged in the final rule for consistency with Head Start licensing requirements.

*Section 1306.36*

This section in the proposed rule asserted the continued right of the Commissioner of the Administration on Children, Youth and Families to fund alternative program variations.

*Comments.* There were five comments to this section. One respondent indicated concern that the proposed regulations made no allowance for existing Head Start family child care relationships. The other respondents supported the idea of additional program variations to meet unique community needs.

*Response.* The final rule remains unchanged. It is expected that existing Head Start and Early Head Start family child care options will be modified as necessary to meet the requirements of this rule. If there are existing relationships that vary from the requirements of the rule due to specific community needs, those programs can apply to the Director of the Office of Head Start for approval as alternative program variations or local program options.

*Section 1306.37*

This section of the proposed rule stipulated that any exception to the requirements contained in sections 1306.32, 1306.33, 1306.34, and 1306.35 would only be granted if the Director of the Office of Head Start determines that the grantee made a reasonable effort to comply but was unable to do so because of limitations or circumstances of a specific community or communities served by the grantee. This section did not elicit any comments. The section remains unchanged in the final rule.

## V. Impact Analyses

### *Executive Order 12866*

Executive Order 12866 requires that regulations be drafted to ensure that there is consistency 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. This final rule establishes a program option, which will not require grantees to expend a significant amount of funds. Agencies choosing to operate this program option will not incur significant costs exceeding those costs incurred to deliver Head Start services in other program settings, such as in center-based or home-based settings and options.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that the Federal government anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a “significant economic impact on a substantial number of small entities” an analysis must be prepared describing

the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations and small governmental entities. This rule will affect small entities.

In keeping with the goal of designing programs to meet community and family needs, Head Start agencies have identified family child care as a preferred option for parents who believe their children will benefit from a home-like setting. Head Start agencies also have found that family child care is a suitable option for parents who are working or in training, or when families need care for more than one child. While we have no measure at this point to estimate the number of grantees that are small entities which will choose the family child care option, we believe the number which will choose it will not be significant at this time, given the newness of the option and diversity of needs across the country. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This final rule does not contain any information collection or recordkeeping requirements.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) 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. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 205 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule. We have determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly,

we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

#### *Congressional Review of Rulemaking*

This rule is not a “major” rule as defined in Chapter 8 of 5 U.S.C.

#### *The Family Impact Requirement*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277, Div. A, section 101(h)) requires a family impact assessment affecting family well-being.

#### *Family Impact*

Many parents, especially those from low-income families, work during nontraditional hours, and their work schedules often change from week to week. The Head Start family child care option will ensure the availability of quality child care during both traditional and nontraditional work hours. Head Start family child care also provides a network that ensures training to increase the competence of the family child care teacher as well as a system of back-up in the event that he or she is unavailable. Allowing parents to place their Early Head Start or Head Start children as well as school-age children in the care of one provider will decrease the number of stops they must make to drop children off prior to going to work. The availability of family child care increases the choices available to parents by ensuring that their children are well cared for, and ensures that parents are not distracted from their work by worrying about the dependability and quality of care being provided to their children. This will increase family financial stability by enabling parents to secure and keep jobs. Many low-income workers have minimal leave and little flexibility in their work schedules and are unable to take time off to compensate for unreliable care or to make numerous phone calls to ensure the safety and well-being of their children. Head Start ensures a level of quality care for children, as well as back-up systems, thereby promoting family stability.

#### *Executive Order 13132*

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distribution of powers and responsibilities among the various

levels of government.” This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

#### **List of Subjects**

##### *45 CFR Part 1304*

Dental health, Education of disadvantaged, Grant program—social programs, Health care, Mental health programs, Nutrition, Reporting and recordkeeping requirements.

##### *45 CFR Part 1306*

Education of disadvantaged, Grant program—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: January 26, 2007.

**Daniel C. Schneider,**

*Acting Assistant Secretary for Children and Families.*

Dated: September 20, 2007.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

■ For the reasons set forth in the preamble, 45 CFR parts 1304 and 1306 are amended to read as follows:

#### **PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEE AND DELEGATE AGENCIES**

■ 1. The authority citation for part 1304 continues to read as follows:

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

■ 2. Amend § 1304.52 by redesignating paragraphs (h) through (k) as (i) through (l), and adding new paragraphs (h) and (l)(5) to read as follows:

##### **§ 1304.52 Human resource management.**

\* \* \* \* \*

(h) *Family child care providers.* (1) Head Start and Early Head Start grantee and delegate agencies must ensure that family child care providers have previous early child care experience and, at a minimum, enroll in a Child Development Associate (CDA) program or an Associates or Bachelor's degree program in child development or early childhood education within six months of beginning service provision. In addition, such grantee and delegate agencies must ensure that family child care providers acquire the CDA credential or Associate's or Bachelor's degree within two years of February 7, 2008 or, thereafter, within two years of beginning service provision.

(2) Family child care providers who enroll Head Start children must have the knowledge and skill necessary to

develop consistent, stable, and supportive relationships with young children and their families, and sufficient knowledge to implement the Head Start Performance Standards and other applicable regulations.

(3) Grantee and delegate agencies offering the family child care option must ensure that closures of the family child care setting for reasons of emergency are minimized and that providers work with parents to establish alternate plans when emergencies do occur. Grantees and delegates must also ensure that the family child care home advises parents of planned closures due to vacation, routine maintenance, or other reason well in advance.

(4) Substitute staff and assistant providers used in family child care must have necessary training and experience to ensure the continuous provision of quality services to children.

(5) At the time of hire, the child development specialist must have, at a minimum, an Associate degree in child development or early childhood education.

(6) Child development specialists must have knowledge and experience in areas that include the theories and principles of child growth and development, early childhood education (birth to age five), and family support. Child development specialists must have previous early childhood experience, familiarity with the Child Development Associate (CDA) competency standards and knowledge and understanding of the Head Start Program Performance Standards and other applicable regulations.

\* \* \* \* \*

(1) \* \* \*

(5) In addition, grantee and delegate agencies offering the family child care program option must make available to family child care providers training on:

(i) Infant, toddler, and preschool age child development;

(ii) Implementation of curriculum (see § 1304.3(a)(5) for the definition of curriculum);

(iii) Skill development for working with children with disabilities;

(iv) Effective communication with infants, toddlers, and preschoolers and with their families;

(v) Safety, sanitation, hygiene, health practices and certification in, at minimum, infant and child cardiopulmonary resuscitation (CPR);

(vi) Identifying and reporting suspected child abuse or neglect;

(vii) United States Department of Agriculture's Child and Adult Care Food Program; and

(viii) Other areas necessary to increase the knowledge and skills of the family child care providers.

\* \* \* \* \*

#### **PART 1306—HEAD START STAFFING REQUIREMENTS AND PROGRAM OPTIONS**

■ 1. The authority citation for part 1306 continues to read as follows:

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

■ 2. Amend § 1306.3 by adding new paragraphs (n), (o), and (p) to read as follows:

##### **§ 1306.3 Definitions.**

\* \* \* \* \*

(n) *Family child care* is care and education provided to children in a private home or other family-like setting. *Head Start family child care* means Head Start and Early Head Start comprehensive services provided to a small group of children through their enrollment in family child care.

(o) *Family child care program option* means Head Start and Early Head Start and child care services provided to children receiving child care primarily in the home of a family child care provider or other family-like setting, such as space in a public housing complex which has been licensed by the state and set aside specifically for the provision of or purpose of providing family child care.

(p) *Family child care provider* means the provider of Early Head Start or Head Start services in his or her place of residence or in another family-like setting.

■ 3. Amend § 1306.20 by adding new paragraphs (g), (h), and (i), to read as follows:

##### **§ 1306.20 Program staffing patterns.**

\* \* \* \* \*

(g) Grantee and delegate agencies offering the family child care program option must ensure that in each family child care home where Head Start children are enrolled, the group size does not exceed the limits specified in this paragraph. Whenever present, not at school or with another care provider, the family child care provider's own children under the age of six years must be included in the count.

(1) When there is one family child care provider, the maximum group size is six children and no more than two of the six may be under two years of age. When there is a provider and an assistant, the maximum group size is twelve children with no more than four of the twelve children under two years of age.

(2) One family child care provider may care for up to four infants and toddlers, with no more than two of the four children under the age of 18 months.

(3) Additional assistance or smaller group size may be necessary when serving children with special needs who require additional care.

(h)(1) Grantee and delegate agencies offering the family child care program option must provide support for family child care providers through a child development specialist or other Head Start or delegate agency staff member with responsibilities related to the provision of comprehensive Head Start and Early Head Start services.

(2) The grantee or delegate agency will assign responsibilities to the child development specialist and other agency staff to support and ensure the provision of quality Head Start services at each family child care home. These responsibilities must include both regular announced and unannounced visits to each home. The duration and timing of such visits will be planned in accordance with the needs of each home but shall occur not less than once every two weeks.

(3) During visits to family child care homes the child development specialist will periodically verify compliance with either contract requirements or agency policy depending on the nature of the relationship; facilitate ongoing communication between grantee or delegate agency staff, family child care providers, and Head Start and Early Head Start families; provide recommendations for technical assistance; and support the family child care provider in developing collegial or mentoring relationships with other child care professionals.

(i) Head Start, Early Head Start and delegate agencies must ensure that children in the Head Start family child care option receive comprehensive services as specified in 45 CFR Parts 1304 and 1308.

■ 4. Amend § 1306.31 by revising paragraph (a) to read as follows:

##### **§ 1306.31 Choosing a Head Start program option.**

(a) Grantees may choose to implement one or more than one of four program options: a center-based option, a home-based program option, a combination program option, or a family child care option.

\* \* \* \* \*

■ 5. Sections 1306.35 and 1306.36 are redesignated as § 1306.36 and § 1306.37, respectively, and revised, and a new § 1306.35 is added to read as follows:

**§ 1306.35 Family child care program option.**

(a) *Grantee and delegate agency implementation.* Grantee and delegate agencies offering the family child care program option must:

(1) *Hours of operation.* Ensure that the family child care option, whether provided directly or via contractual arrangement, operates sufficient hours to meet the child care needs of families.

(2) *Serving children with disabilities.* (i) Ensure the availability of family child care homes capable of serving children and families with disabilities affecting mobility as appropriate; and

(ii) Ensure that children with disabilities enrolled in family child care are provided services which support their participation in the early intervention, special education, and related services required by their individual family service plan (IFSP) or individual education plan (IEP) and that the child's teacher has appropriate knowledge, training, and support.

(3) *Program Space-indoor and outdoor.* Ensure that each family child care home has sufficient indoor and outdoor space which is usable and available to children. This space must be adequate to allow children to be supervised and safely participate in developmentally appropriate activities and routines that foster their cognitive, socio-emotional, and physical development, including both gross and fine motor. Family child care settings must meet State family child care regulations.

(4) *Policy Council role.* The Policy Council must approve or disapprove the addition of family child care as a Head Start or Early Head Start program option. When families are enrolled in the Head Start or Early Head Start family child care program option, they must have proportionate representation on the Policy Council or policy committee.

(b) *Facilities.* (1) *Safety Plan.* Grantees and delegate agencies offering the family child care program option must ensure the health and safety of children enrolled. The family child care home must have a written description of its health, safety, and emergency policies and procedures, and a system for routine inspection to ensure ongoing safety.

(2) *Injury prevention.* Grantee and delegate agencies must ensure that:

(i) Children enrolled in the Head Start family child care program option are protected from potentially hazardous situations. Providers must ensure that children are safe from the potential hazards posed by appliances (stove, refrigerator, microwave, etc). Premises

must be free from pests and the use of chemicals or other potentially harmful materials for controlling pests must not occur while children are on premises.

(ii) Grantee and delegate agencies must ensure that all sites attended by children enrolled in Head Start and Early Head Start are equipped with functioning and properly located smoke and carbon monoxide detectors.

(iii) Radon detectors are installed in family child care homes where there is a basement and such detectors are recommended by local health officials;

(iv) Children are supervised at all times. Providers must have systems for assuring the safety of any child not within view for any period (e.g. the provider needs to use the bathroom or an infant is napping in one room while toddlers play in another room);

(v) Providers ensure the safety of children whenever any body of water, road, or other potential hazard is present and when children are being transported;

(vi) Unsupervised access by children to all water hazards, such as pools or other bodies of water, are prevented by a fence;

(vii) There are no firearms or other weapons kept in areas occupied or accessible to children;

(viii) Alcohol and other drugs are not consumed while children are present or accessible to children at any time; and

(ix) Providers secure health certificates for pets to document up to date immunizations and freedom from any disease or condition that poses a threat to children's health. Family child care providers must ensure that pets are appropriately managed to ensure child safety at all times.

(c) *Emergency plans.* Grantee and delegate agencies offering the family child care option must ensure that providers have made plans to notify parents in the event of any emergency or unplanned interruption of service. The provider and parent together must develop contingency plans for emergencies. Such plans may include, but are not limited to, the use of alternate providers or the availability of substitute providers. Parents must be informed that they may need to pick the child up and arrange care if the child becomes ill or if an emergency arises.

(d) *Licensing requirements.* Head Start programs offering the family child care option must ensure that family child care providers meet State, Tribal, and local licensing requirements and possess a license or other document certifying that those requirements have been met. When State, Tribal, or local requirements vary from Head Start

requirements, the most stringent provision takes precedence.

**§ 1306.36 Additional Head Start program option variations.**

In addition to the center-based, home-based, combination programs, and family child care options defined in this part, the Director of the Office of Head Start retains the right to fund alternative program variations to meet the unique needs of communities or to demonstrate or test alternative approaches for providing Head Start services.

**§ 1306.37 Compliance waiver.**

An exception to one or more of the requirements contained in §§ 1306.32, 1306.33, 1306.34, and 1306.35 will be granted only if the Director of the Office of Head Start determines, on the basis of supporting evidence, that the grantee made a reasonable effort to comply with the requirement but was unable to do so because of limitations or circumstances of a specific community or communities served by the grantee.

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 64**

[CG Docket No. 02-386; FCC 07-221]

**Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission declines to adopt rules and regulations implementing minimum customer account record exchange obligations on all local carriers. This action is necessary because the Commission does not believe mandating the exchange of customer account information between LECs is appropriate at this time.

**DATES:** Effective December 21, 2007.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** David Marks, Consumer and Governmental Affairs Bureau at (202) 418-0347 (voice), or e-mail [David.Marks@fcc.gov](mailto:David.Marks@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Rules and Regulations Implementing*