

(3) The Department is improperly exempting a guidance document from the requirements set forth in this part.

(b) As part of a petition under this section, an interested party may ask that the Department modify or withdraw any guidance document in effect at the time of the petition.

(c) Petitions under this section must be addressed to the Department in writing. The Department's guidance repository must include clear instructions to members of the public regarding how to petition for review of guidance, including how such petition can be submitted, and an office at the Department responsible for coordinating such requests.

(d) The Department must respond to all petitions no later than 90 business days after receipt of the petition. The applicable time period for responding is suspended from the time the Department:

(1) Requests additional information from the requestor, until the Department receives the additional information; or

(2) Notifies the requestor of the need to consult with other stakeholders, including but not limited to the Department of Justice or the Department's Office of Inspector General, until the Department completes consultation with other stakeholders.

(e) The Department's written response to petitions must state whether the Department agrees or disagrees with the petition and the Department's rationale. The Department must remedy the substance or use of any guidance documents that it determines in a petition response to be inconsistent with this part or otherwise unlawful. The Department will post all responses to petitions under this section to a designated web page on its guidance repository.

**Alex M. Azar II,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2020-26832 Filed 12-3-20; 4:15 pm]

**BILLING CODE 4150-26-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Parts 1304

**RIN 0970-AC85**

#### Flexibility for Head Start Designation Renewals in Certain Emergencies

**AGENCY:** Office of Head Start (OHS), Administration for Children and

Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule adds a new provision to the Head Start Program Performance Standards (HSPPS) to establish parameters by which ACF may make designation renewal determinations during a federally declared major disaster, emergency, or public health emergency (PHE) and in the absence of all normally required data.

**DATES:** This interim final rule is effective on December 7, 2020.

*Comment date:* To be assured consideration, comments on this final rule must be received on or before February 5, 2021.

**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 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:**

Colleen Rathgeb, Office of Head Start, at [HeadStart@eclkc.info](mailto:HeadStart@eclkc.info) or 1-866-763-6481. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

**SUPPLEMENTARY INFORMATION:**

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## Tribal Consultation Statement

### I. Statutory Authority

ACF publishes this interim final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by sections 641(a), 641(c), and 644(c), of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134).

### II. Executive Summary

#### *Purpose of the Interim Final Rule*

The Improving Head Start for School Readiness Act of 2007 (the 2007 Reauthorization) of the Head Start Act (the Act) required ACF to establish a system for determining whether Head Start (including Early Head Start) grantees are delivering high-quality and comprehensive services to the children and families they serve. In 2011, ACF issued a regulation (76 FR 70009) to establish the Designation Renewal System (DRS) to meet this requirement. Under the DRS, all Head Start grants were transitioned from indefinite to 5-year grant periods, and any grant that meets one or more of seven specified conditions during the 5-year project period is subject to an open competition for continued funding. Any Head Start grant that does not meet one of the seven DRS conditions becomes eligible for a new noncompetitive 5-year grant. The Act lays out the types of data that must be considered as part of these DRS determinations. Three of the seven conditions of the DRS were revised through a final rule published on August 28, 2020. Due to the ongoing 2019 Novel Coronavirus (COVID-19) pandemic, the ability of ACF to collect all data on grants required for making determinations under the DRS has been severely impaired. This issue is described further in the following paragraph. Furthermore, there may be major disasters, emergencies, or PHEs in the future that similarly impact ACF's ability to collect all information required for making DRS determinations.

Therefore, this interim final rule adds a new section to the HSPPS regulation under Part 1304 Subpart B, Designation Renewal. This new section, § 1304.17, establishes parameters by which ACF may make a designation renewal determination when certain federally declared emergencies prevent collection of all normally required data. As with COVID-19, a major disaster or emergency declared by the President under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.

5170 and 5191) or another PHE declared by the Secretary of Health and Human Services (HHS) under section 319 of the Public Health Service Act (42 U.S.C. 247d) may necessitate extended, unanticipated program closures or temporary shifts to different program models or service delivery mechanisms, which can make certain monitoring or data collection activities unsafe, impossible, and/or invalid. In these situations, ACF may lack certain required data to make designation renewal determinations. In cases where a grantee's 5-year grant is ending and all required data are not available due to the impacts of a federally declared disaster or emergency, § 1304.17 allows ACF to still determine if an open competition is required, or if the grant may be renewed noncompetitively based on the conditions for which ACF has data. Without § 1304.17, ACF would not be able to make DRS determinations, which could result in the loss of critical Head Start services in impacted communities.

#### *Interim Final Rule Justification*

On January 31, 2020, Health and Human Services Secretary Alex M. Azar II (the Secretary) determined that a PHE exists retroactive to January 27, 2020,<sup>1</sup> under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19, and on April 21, 2020, the Secretary renewed, effective April 26, 2020, the determination that a PHE exists.<sup>2</sup> On July 23, 2020, the Secretary again renewed this determination that a PHE exists, effective July 25, 2020.<sup>3</sup> The Secretary renewed this determination on October 2, 2020, effective October 23, 2020. On March 13, 2020, the President declared that the COVID-19 pandemic in the United States constitutes a national emergency,<sup>4</sup> beginning March 1, 2020.

The current PHE requires urgent action on the part of ACF to establish a process by which ACF will meet the requirements of the Act to make designation renewal determinations while ensuring the safety of Head Start program staff, children, and families. As a cohort of Head Start grants approach the end of their 5-year grant periods during the on-going COVID-19 pandemic, ACF must make a

determination under the DRS for these grantees to either receive a new 5-year grant non-competitively or to require an open competition. Extended program closures due to the PHE have made, and continue to make, it impossible for ACF to collect certain data elements relevant to the seven DRS conditions and required as part of designation renewal determinations. In the absence of a DRS determination, these communities could be left without any Head Start services during a particularly challenging time for the children and families Head Start programs serve. To ensure children and families do not lose access to Head Start services during a federally declared disaster or emergency, now and in the future, this interim final rule is needed to quickly establish the process by which DRS determinations will be made under these circumstances.

Ensuring the health and safety of Head Start staff, children, and families is of utmost importance. This IFR directly supports that goal, while establishing a process for ACF to meet the requirements of the Act to make designation renewal determinations during the COVID-19 pandemic and certain other federally declared disasters or emergencies. It is critically important that ACF implements this IFR as quickly as possible. Due to the ongoing PHE, ACF finds good cause to waive notice and comment rulemaking as ACF believes it would be impracticable and contrary to the public interest for it to undertake normal notice and comment rulemaking procedures, as that would delay giving ACF the flexibility to make DRS determinations with the data available and to ensure the continuity of critical Head Start services in impacted communities. For the same reasons, because ACF cannot afford any delay in effectuating this IFR, ACF finds good cause to waive the 30-day delay in the effective date and, moreover, to make this IFR applicable as of publication.

#### **III. Background**

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the 2007 Reauthorization, Congress required HHS to ensure these children receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the Designation Renewal System (DRS) to (1) identify Head Start grantees delivering a high-quality and comprehensive Head Start program that could receive funding noncompetitively for a 5-year period and grantees not delivering a high-quality and

comprehensive Head Start program that will be required to compete for continued funding, and (2) transition all grants from indefinite grants to 5-year grant periods. Congress required that decisions about which grantees would have to compete be based on budget and fiscal management data (including annual audits), program monitoring reviews, classroom quality—and in particular teacher-child interactions—as measured by a valid and reliable research-based observational instrument, and other program information.

In 2011, HHS published a final rule to establish the DRS that included seven conditions. Grants that met one or more of the seven conditions would have their funding subject to an open competition for the next 5-year grant period. Grantees that did not meet a condition became eligible to receive a new noncompetitive 5-year grant. Following the transition of all grants from indefinite to 5-year project periods and considering available data and research, a 2020 final rule<sup>5</sup> revised the DRS and made changes to three of the seven DRS conditions. Effective November 9, 2020, Head Start grants that meet one or more of the following seven conditions under the DRS are subject to an open competition: (1) Two or more deficiencies under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, use, and analyze children's progress on agency-established school readiness goals; (3) scores below competitive thresholds in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS); (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualification from the Child and Adult Care Food Program (CACFP); and/or (7) either an audit finding of being at risk for failing to continue as a "going concern," or two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

The notice and comment process for the 2020 final rule predated the COVID-19 pandemic. In the 2019 notice of proposed rulemaking on the DRS, HHS did not propose any flexibilities within the DRS to make designation renewal determinations in the absence of certain

<sup>1</sup> <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

<sup>2</sup> <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>.

<sup>3</sup> <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-23june2020.aspx>.

<sup>4</sup> <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>5</sup> <https://www.federalregister.gov/documents/2020/08/28/2020-17746/head-start-designation-renewal-system>.

data related to the seven conditions due to a federally declared major disaster, emergency, or PHE. Therefore, these flexibilities could not be included in the DRS final rule that was published on August 28, 2020.

#### IV. Provisions of the Interim Final Rule

All Head Start grants now operate on a 5-year project period. As a cohort of Head Start grants conclude their 5-year grant period, ACF must make a determination whether grants may be renewed noncompetitively or if they will be subject to an open competition. The Act requires ACF to consider a number of factors in making a designation renewal determination. As described previously, a federally declared major disaster or emergency or PHE can make it unsafe or impossible to collect some of these required data on grants. In particular with the COVID-19 pandemic, ACF has been, and continues to be, unable to collect data from a valid, reliable, research-based, observational measure of classroom quality as required by the Act. The reasons for this are further elaborated in the following paragraph. It is possible that future disasters or emergencies could also preclude ACF from collecting other required data elements necessary for DRS determinations.

ACF meets the requirement in the Act to use a valid, reliable, research-based, observational measure of classroom quality as part of DRS determinations through the administration of the Classroom Assessment Scoring System: Pre-K (CLASS). The CLASS measures the quality of teacher-child interactions on a seven-point scale in three areas or domains: Emotional Support, Classroom Organization, and Instructional Support. As part of the established ACF monitoring process for Head Start grantees, trained reviewers administer the CLASS on-site in a sample of Head Start classrooms for each grant. The scores for each classroom within a grant are then averaged to create grant-level scores. If a grant receives an average CLASS score below the following competitive thresholds for any of the three CLASS domains, the grant is designated for competition under the DRS: A 5 for Emotional Support, 5 for Classroom Organization, and 2.3 for Instructional Support.<sup>6</sup> Each year, ACF schedules a subset of Head Start grantees for CLASS reviews, depending on where in the 5-year project period

each grant is. The completion of these CLASS reviews within a certain window of time is critical to ensure ACF can complete the necessary subsequent steps for each grant, to determine and notify the grantee of their status as either competitive or non-competitive under the DRS with sufficient time prior to the end of their current 5-year project period to run the necessary competitive processes.

In March 2020, ACF made the decision to temporarily suspend the administration of CLASS reviews in Head Start classrooms due to the COVID-19 PHE. At that time, ACF was concerned about jeopardizing the health and safety of Head Start children and staff by sending outside observers into Head Start classrooms to conduct CLASS reviews. Many Head Start classrooms across the country closed due to increased health and safety concerns amid the spread of COVID-19. Due to the evolving nature of the COVID-19 pandemic, ACF has been uncertain about the ability to resume CLASS reviews during the 2020-2021 program year. Therefore, in an information memorandum directed to Head Start and Early Head Start grantees published on September 24, 2020, ACF announced the decision to suspend all CLASS reviews for the 2020-2021 program year.<sup>7</sup>

There are multiple factors that informed this decision. First, as the impacts of the COVID-19 pandemic are very different in different parts of the country, Head Start programs must make locally determined decisions regarding whether they can safely operate in-person services for children and families. Programs that do not operate in-person services for a period of time are, instead, providing some type of remote or virtual services for enrolled children and families. The CLASS tool was not originally designed to conduct observations of virtual interactions between teachers and children, and the research on such use of the tool is very limited. Therefore, if a program is closed for in-person services for an extended period due to the pandemic, and even if the program is providing virtual services, ACF cannot conduct CLASS reviews of virtual teaching for monitoring and oversight purposes with those programs.

Second, as previously alluded, for Head Start programs that are providing in-person services to children and families during part or all of the 2020-2021 program year, ACF is not able to send additional outside individuals into

classrooms to conduct CLASS observations without increasing the risk of exposing Head Start children and staff to the virus. This is consistent with best practice guidance from the Centers for Disease Control and Prevention on safely providing child care in group settings during the COVID-19 pandemic.<sup>8</sup>

Finally, ACF expects that Head Start services may look very different during the 2020-2021 program year due to the COVID-19 pandemic and the PHE. Therefore, ACF strongly believes the CLASS instrument would not capture an accurate picture of teacher-child interactions during this program year. For instance, due to the fact that some programs will likely be operating virtual services for part or all of their enrollment, and this might change throughout the program year, there is a lot of uncertainty for ACF around the availability of a sufficient sample size for CLASS observations for any given grantee.

In addition, ACF expects that in-person classroom interactions and activities may not be 'typical' during the 2020-2021 program year, as the result of modifications made for the safety of children, families, and staff. For example, classrooms will likely have smaller group sizes and more individual time for children to allow for physical distancing (as opposed to small and large group time, which are usually common in early childhood classrooms). Staff and children will likely be wearing masks, and a key part of accurate CLASS observations depends on the observer being able to observe the reactions of the children to their teacher during an observation period.

Furthermore, ACF expects child attendance will be lower than normal during the 2020-2021 program year, whether out of parental fear of sending their children back to in-person Head Start settings due to possible exposure to the virus, or out of proactive measures taken by the program to reduce classroom group sizes. For these reasons, ACF believes the scores a grantee would receive on a CLASS review during this unusual time would be systematically different from, and not representative of, program learning environments that are more typically observed throughout the 5-year grant period.

While ACF strongly believes it is still important to promote high-quality learning environments for all children

<sup>6</sup> As promulgated in the DRS final rule published on August 28, 2020, the competitive threshold for the Instructional Support domain is 2.3 for CLASS reviews conducted up through July 31, 2025, and then this threshold increases to 2.5 for CLASS reviews conducted on or after August 1, 2025.

<sup>7</sup> <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-20-05>.

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html#open>.

served in Head Start, the health and safety of children and staff during this PHE, as well as the appropriate use of the CLASS tool, are also paramount considerations for ACF. Therefore, ACF has made the determination that a valid and reliable observational instrument that assesses classroom quality as required by the Act does not exist during the current PHE, so ACF cannot fulfill this requirement during this time. The implementation of this IFR provides ACF the flexibility to proceed with DRS determinations in the absence of CLASS data that is the result of the ongoing PHE. This IFR also provides this flexibility for a federally declared major disaster, emergency, or PHE in the future, which could also impact the administration of CLASS or the collection of other data elements necessary for making DRS determinations. The flexibility will allow ACF to ensure the continuity of critical Head Start services for the nation's most vulnerable children and families. As stated previously, ensuring high quality classroom learning environments for enrolled children is still an important priority for ACF. ACF offers a wealth of training and technical assistance (TTA) resources to promote quality improvement in classroom learning environments and teacher-child interactions, including materials on the Early Childhood Learning Knowledge Center website, interactive webinars and learning modules, and online opportunities for grantees to share and learn about best practices with other grantees. ACF also funds a regional TTA system, which includes individualized support from regional specialists for grantees on an as-needed basis and at the discretion of each ACF region.

In summary, the provision established in § 1304.17 allows ACF to make designation renewal decisions with the data available when the determination must be made in order to ensure the continuity of Head Start services, even if certain federally declared emergencies or disasters preclude ACF from collecting all of the data required in the Head Start Act. This flexibility ensures the safety of Head Start staff, children, and families and the continuity of Head Start services.

## V. Regulatory Process Matters

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore

regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term "small entities," as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Under this definition, some Head Start grantees may be small entities. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96-354), that this rule will not have a significant impact on a substantial number of small entities. During a major disaster or emergency or PHE—such as COVID-19—in which ACF is not able to collect all data elements required for DRS determinations and must exercise the flexibility set forth in § 1304.17 of the HSPPS, ACF expects there to be fewer grantees in competition for the relevant competition cycles. Therefore, ACF does not expect there to be a significant impact on a substantial number of small entities. However, ACF invites comments on this IFR if any member of the public believes their business, organization, or governmental jurisdiction qualifies as a small entity and that the actions set forth in this IFR would have a significant economic impact on that small entity.

### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA), see 2 U.S.C. 1501 *et seq.*, was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately \$156 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

### *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 interim final rule will not have any impact on the autonomy or integrity of the family as an institution. However, ACF invites public comment on whether the actions set forth in this interim final rule would have a negative effect on family well-being.

### *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 will 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.

### *Congressional Review*

The Congressional Review Act (CRA) allows Congress to review "major" rules issued by federal agencies before the rules take effect, see 5 U.S.C. 802(a). The CRA defines a major rule as one that has resulted, or is likely to result, in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets, see 5 U.S.C. Chapter 8. This action is not a major rule because it will not have such effect.

### *Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995, Public Law 104-13, seeks to minimize government-imposed burden

from information collections 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 Paperwork Reduction Act 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)). This action does not include any new information collection requirements or changes to existing information collection requirements.

*Regulatory Planning and Review*  
*Executive Order 12866, Executive Order 13563, and Executive Order 13771*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in, Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be

prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and an “economically significant” regulatory action is subject to review by the Office of Management and Budget. ACF does not expect this to be a significant rule.

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the 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 two prior regulations.” This rulemaking is not expected to be subject to the requirements of Executive Order 13771 because it would result in no more than *de minimis* costs.

## VI. Regulatory Impact Analysis

### *Need for Regulatory Action*

This regulatory action is necessary to provide ACF the flexibility to make determinations under the Head Start DRS, even in the absence of all required data, if this lack of data is due to a major disaster or emergency or PHE. The ongoing PHE due to COVID-19 has prevented ACF from conducting on-site observations of grantees with the CLASS tool (an observational measure of the quality teacher-child interactions in the classroom), which is required by regulation. Data from these observations provide one piece of information for determining whether a Head Start grant can be renewed non-competitively or must compete with other potential applicants for continued funding. Several grants (60) whose five year project periods are ending in FY 2022 would typically have their CLASS reviews completed by ACF as part of the federal monitoring process sometime during FY 2020 or FY 2021. However, due to the PHE, ACF has not conducted CLASS reviews since March 2020 and has decided not to conduct any future CLASS reviews until at least the fall of 2021. So these 60 grants whose five year project periods are nearing completion do not yet have CLASS data as part of federal monitoring. Without this regulatory action, CLASS reviews for these 60 grants would have to be conducted in the fall of 2021, and several other decisions must be made by ACF after the CLASS reviews are completed, but before funding can be renewed either competitively or non-competitively. Therefore, having to conduct CLASS reviews for these grants so late in their project periods creates a strong risk of the project periods expiring before ACF can complete the

grant renewal process for these 60 grants. This puts the Head Start services for enrolled children and families at great risk in the impacted service areas.

### *Cost Savings Analysis*

There are approximately 2,200 grants in Head Start. Absent this final rule, it is estimated that 60 or 3 percent of all Head Start grants will require CLASS reviews to be conducted in FY 2022 for renewal determinations that must also be made in FY 2022. CLASS reviews would need to be conducted to acquire the necessary data to make renewal determinations as described in the Head Start Act and the Head Start Program Performance Standards. Typically, CLASS reviews cost about \$8,500 per grant to the federal government. This primarily includes the cost of travel, lodging, and wages for CLASS reviewers. The total baseline cost of the 60 CLASS reviews in FY 2022 is estimated at \$510,000.

Across all Head Start grants, ACF estimates that approximately 13 percent of grants meet the CLASS condition of the DRS and are, therefore, required to compete for continued funding. If ACF applies this percentage to the 60 grants lacking CLASS data due to the COVID-19 pandemic, this results in an estimate of approximately 8 of these 60 grants that would be required to compete for continued funding due to low CLASS scores if they did have CLASS data available.

The cost for competition associated with completing a competitive application is estimated at \$3,097 per applicant. This assumption includes 60 hours per competitive application at a cost of approximately \$51.62 per hour in staff time (ACF multiplies an hourly wage of approximately \$25.81 by two to account for fringe benefits). Applications would likely be completed by a combination of the Head Start Assistant Director and other managers in an early childhood program (*i.e.*, Child Development Manager or Family and Community Partnership Manager). The average hourly wage for these positions is based on the U.S. Bureau of Labor Statistics Job Code 11-9031. ACF multiplies \$3,097 per applicant by sixteen to account for the eight incumbent grantees applying for funds as well as eight non-incumbent applicants for those service areas. This results in a baseline estimated cost of \$49,552 for these eight grantees to complete competitive applications in FY 2022 if they did in fact have to compete, as well as eight additional applicants. The total baseline cost for conducting CLASS reviews for these 60 grants and for competition associated

with 8 of these 60 grants is \$559,552. With this final rule, these baseline costs would not apply and are therefore cost savings in this analysis.

With this final rule, those eight grantees that would have been required to compete in FY 2022 would instead need to complete an annual grant application for a new annual award. ACF assumes it takes approximately 33 hours of staff time to complete a non-competitive application. Using the same assumptions as above for hourly wage, ACF estimates it costs approximately \$1,703 per grant to complete a non-competitive application. ACF multiplies this by eight grants, which results in a total cost of approximately \$13,624 for these grantees to complete a non-competitive continuation application in FY 2022. Taking this cost into account, the total cost savings associated with this final rule is approximately \$545,928. This includes cost savings to those entities that are not existing Head Start grantees as there would be no funding opportunity to which they would submit a competitive application.

A qualitative opportunity cost for this new rule is fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community, for the eight communities where grants were not designated for competition due to potentially low CLASS scores. There is also the qualitative cost of children continuing to be served by grantees which may be providing lower quality classroom learning environments that would have led to competition. However, ACF believes there is an added benefit of existing grantees still receiving DRS determinations in a timely manner and not experiencing undue stress around the status of their grant, particularly in the midst of COVID-19 when continuity of Head Start services for children and families is critically important. Additionally, these grantees would be able to continue to access and receive support from OHS through OHS' extensive training and technical assistance system, to facilitate continued quality improvement in classroom quality care and service provision for children and families.

ACF does not believe there will be a significant economic impact from this regulatory action since the flexibility in this interim final rule will only be exercised when necessary. A federally declared major disaster, emergency, or PHE that limits the ability of ACF to collect all data necessary to assess programs for DRS determinations, such as the COVID-19 PHE, are rare and, therefore, ACF anticipates this

flexibility will rarely be exercised. ACF also anticipates that this flexibility will be exercised in more localized disasters in the future that affect a very small subset of grantees.

This RIA analyzes a one-year time horizon covering FY 2022. In the coming years, ACF anticipates very few grants being impacted by the provision in this interim final rule. However, ACF also recognizes it is difficult to predict future potential emergencies or disasters when ACF may need to again exercise the flexibility laid out in this regulatory provision, resulting in uncertainty around potential costs and cost savings. ACF invites public comment on the reasonableness of the assumptions in this regulatory impact analysis.

#### Tribal Consultation Statement

ACF conducts an average of five tribal consultations each year for those tribes operating Head Start and Early Head Start. The consultations are held in four geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs are able to attend and voice their concerns about issues regarding service delivery. ACF completes a report after each consultation, and then compiles a final report that summarizes the consultations and submits the report to the Secretary at the end of the year. ACF invites public comment on this interim final rule if there are concerns specific to Native communities and programs.

#### List of Subjects in 45 CFR Part 1304

Designation Renewal System, Classroom Assessment Scoring System (CLASS), COVID-19, Education of disadvantaged, Grant programs—social programs, Head Start, Monitoring.

Dated: November 11, 2020.

**Lynn A. Johnson,**

*Assistant Secretary for Children and Families.*

Approved: November 13, 2020.

**Alex M. Azar, II,**

*Secretary.*

For the reasons discussed in the preamble, ACF amends 45 CFR part 1304 as follows:

#### PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

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

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

■ 2. Add § 1304.17 to Subpart B to read as follows:

#### Subpart B—Designation Renewal

##### § 1304.17 Flexibility for Head Start Designation Renewal Determinations in Certain Emergencies.

(a) In reviewing the relevant data as described in § 1304.15(b), if ACF determines that one or more data elements described in the conditions in section § 1304.11 is not available due to an emergency described in paragraph (b) of this section, ACF may make a designation renewal determination based on the data elements that are available.

(b) The emergencies are:

(1) A major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) An emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191).

(3) A public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d).

[FR Doc. 2020-26033 Filed 12-4-20; 8:45 am]

BILLING CODE 4184-01-P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 622

[Docket No. 200124-0029; RTID 0648-XA680]

##### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2021 Red Snapper Private Angling Component Closures in Federal Waters off Texas

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces closures for the 2021 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas will close on January 1, 2021, until 12:01 a.m., local time, on June 1, 2021.