

Federal supply class/ group	Title	Examples of hazardous materials requiring identification
6685 .....	Pressure, temperature, and humidity measuring and controlling instruments.	Items containing mercury or compressed gases.
6740 .....	Photographic .....	Items containing radioactive compounds.
6750 .....	Photographic supplies .....	Items containing hazardous chemicals, solvents, thinners, and cements.
6780 .....	Photographic sets, kits, and outfits .....	Items containing hazardous chemicals, solvents, thinners, and cements.
7360 .....	Sets, kits, and outfits; food preparation and serving.	Items containing compressed gases such as fire extinguishers.
7510 .....	Office supplies .....	Hazardous items, such as thinners, cleaning fluids, flammable inks, and varnishes.
8405 .....	Outerwear, men's .....	Maintenance kits containing flammable solvents.
8410 .....	Outerwear, women's .....	Maintenance kits containing flammable solvents.
8415 .....	Clothing, special purpose .....	Maintenance kits containing flammable solvents.
8465 .....	Individual equipment .....	Maintenance kits containing flammable solvents.
8510 .....	Perfumes, toilet preparations, and powders .....	Shipping containers and pressurized containers with flammable or nonflammable propellants.
8520 .....	Toilet soap, shaving preparations, and dentifrices.	Shipping containers and pressurized containers with flammable or nonflammable propellants.
8720 .....	Fertilizers .....	Items containing weed and pest control or other harmful ingredients or because of their composition, are hazardous.
9390 .....	Miscellaneous fabricated nonmetallic materials.	Items containing flammable solvents or asbestos.
9920 .....	Smokers' articles and matches .....	Lighter fuel and matches only.
9930 .....	Memorials; cemeteries and mortuary equipment and supplies.	Items containing formaldehyde or its solutions.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1305

RIN 0970-AC46

#### Head Start Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule will ensure the neediest children and families in our country benefit from Head Start services first.

**DATES:** This final rule becomes effective March 12, 2015.

**FOR FURTHER INFORMATION CONTACT:** Colleen Rathgeb, Office of Head Start, 202-205-7378 (not a toll-free call). 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 Time.

#### SUPPLEMENTARY INFORMATION:

##### I. Program Purpose

The national Head Start program funds local organizations to provide comprehensive school readiness

services to preschool-age children from low-income families. These services enhance children's social and cognitive development, through health, educational, nutritional and other social services. These services also are designed to respond to children's ethnic, cultural, and linguistic heritages. Many Head Start programs also provide Early Head Start, which serves infants, toddlers, and pregnant women whose families have incomes below the Federal poverty level.

##### II. Background

We published a Notice of Proposed Rulemaking (NPRM) on March 18, 2011 to propose provisions that ensure only the neediest families receive Head Start services first.<sup>1</sup> We received great feedback during the 30-day comment period and, in response, made changes, where appropriate. These changes clarify Head Start's eligibility procedures and enrollment requirements, and reinforce Head Start's overall mission to support low-income families and early learning. We believe this final rule, which is published under the authority granted to the Secretary of Health and Human Services under the Head Start Act (Act)<sup>2</sup> at sections 644(c), 645(a)(1)(A), and 645A(c), provides a

<sup>1</sup> See a copy of the NPRM at <https://www.federalregister.gov/articles/2011/03/18/2011-6326/head-start-program>.

<sup>2</sup> See The Improving Head Start for School Readiness Act of 2007, Public Law 110-134, December 12, 2007 at <http://www.govtrack.us/congress/bills/110/hr1429/text>.

balanced approach to program administration, improves overall program effectiveness, and better aligns us with current practices in the field.

##### III. General Comments and the Final Rule

We received comments in general about this rule. Below, we summarized the comments and responded to them accordingly.

*Comment:* Many commenters supported the notice of proposed rulemaking. They believe the rule strengthens Head Start programs and program accountability. Some programs currently verify eligibility in a similar manner to what we proposed. In addition, a national organization asked us to consider five guiding principles—accountability, efficiency, clarity, do no harm, and flexibility.

*Response:* We appreciate the positive comments, and we believe we have met the five guiding principles. In this final rule, we include provisions that improve Federal oversight and ensure accountability for purposes consistent with the Act. We make the process programs must use to determine eligibility more efficient and clear so there is less room for programs to err. The “do no harm” principle derives from medical ethics. It reminds health care providers to consider the possible harm that any intervention might do. We carefully considered any possible harm that this regulation might do. Finally, we are less prescriptive so as to

allow programs flexibility to better accomplish program and statutory goals.

*Comment:* Some respondents believed the rule is unnecessary and overreaching. Others suggested that it did not go far enough to effectively ensure families with incomes below the poverty level are served first. One commenter thought the measures seemed excessive and contrary to current trends in other Federal programs that serve similar populations. Other commenters were concerned the regulation will impose time and cost burdens on programs.

*Response:* We believe this rule does not overreach; but is rather necessary to support Head Start's overall mission. Furthermore, other Federal programs that serve similar populations have more rigorous and exhaustive regulatory requirements than what we proposed here. Moreover, we have struck the appropriate balance between reasonable cost burden and effective oversight. In fact, some Head Start programs currently conduct processes similar to what we require here with existing staff and resources. For example, programs currently collect and retain documents they use to determine family eligibility. Programs also already contact third parties to verify family eligibility.

*Comment:* Some respondents believed the rule will reduce enrollment, particularly for Latino and dual language learner children. Others stated the provisions for programs to document and certify eligibility are too restrictive. A commenter stated that if we required families to provide documents that are not always readily available, we may create an environment where the neediest families may not receive services.

*Response:* We believe the rule establishes reasonable expectations for families without causing unnecessary burdens. For example, if a family cannot prove income or homelessness, the family can declare its eligibility in writing. If so, we require program staffs to make reasonable efforts to verify the family's eligibility. In addition to verifying eligibility, staffs must also create eligibility determination records for each participant. We also require programs to train and to monitor staffs who make eligibility decisions. We believe these requirements are enough to ensure staffs only enroll eligible children. We removed requirements for staffs to certify that they have made reasonable efforts to verify information.

*Comment:* A few commenters asked us to reference Migrant or Seasonal Head Start each time we refer to Head Start and Early Head Start programs and to use the term *party* rather than the

term *entity* throughout the rule when we refer to third parties.

*Response:* Unless otherwise specified, when we mention Head Start, we mean Head Start, Early Head Start, and Migrant or Seasonal Head Start. We use the word *party*, when appropriate.

*Comment:* Commenters asked us to clarify what *enrolled child* means and how programs should report end of the month enrollment. Other commenters suggested that we include all eligibility requirements from Head Start guidance materials in this regulation.

*Response:* We define *enrolled* and we believe the definition clarifies how programs report end of the month enrollment. We also redefined *enrollment*, in an effort to be consistent with the definition used for reporting. We did not include eligibility requirements from Head Start guidance materials; because once this regulation becomes final, it will supersede all other previously issued guidance. The definitions for *enrolled* and *enrollment* in this regulation are consistent with current guidance and practice.

*Comment:* Some commenters were concerned about: (1) Linking to the service area in which a family lives, rather than where a parent works; (2) questions about disability determinations related to enrollment; (3) setting priorities for enrollment and selection including over-income requirements; (4) attendance regulations at § 1305.8; and (5) under enrollment.

*Response:* We did not make any changes based on these concerns because they are outside the scope of this regulation. This regulation is narrow in scope. It only revises § 1305.2 Definitions and § 1305.4 Eligibility. It does not address recruitment, selection, enrollment and attendance, which are addresses in other sections of 45 CFR 1305.

*Comment:* Respondents asked whether this regulation, when it becomes effective, will apply to families on Head Start waiting lists.

*Response:* Programs must determine each wait listed families' eligibility, according to this regulation when it becomes effective, before the family is enrolled.

*Comment:* Respondents suggested that we allow a phase-in period so programs can receive technical support; issue a national Head Start application and standardized forms to minimize varying interpretations; and create a toll-free technical assistance hotline.

*Response:* We do not believe an additional phase-in period is necessary. We provided notice with the proposed rule. And, the final rule will not become effective until 30 days after it is

published. This should give programs ample time to adjust their practices. However, we will continue to provide technical support. We also issued a standard checklist to help programs navigate the verification process.<sup>3</sup> We will not issue any national applications. We would rather allow programs to develop applications appropriate for their communities and services, provided they meet Head Start requirements.

#### IV. Section-by-Section Discussion and the Final Rule

We received comments about changes we proposed to specific sections in the regulation. Below, we identified each section, summarized the comments, and responded to them accordingly.

##### Section 1305.2—Definitions

We show how this entire section will look below. We removed paragraph designations and we added new definitions for: *accepted*, *enrolled*, *foster care*, *homeless children*, *Migrant or Seasonal Head Start Program*, *participant*, *relevant time period*, and *verify*. We also revised these current definitions: *enrollment*, *family*, and *Head Start eligible*. We believe our efforts here make the regulation easier to understand.

*Comment:* One commenter suggested that we clarify who is authorized to apply for Head Start Services on behalf of a child.

*Response:* We redefined *family* for this purpose. Any *family* member may apply for Head Start services on a child's behalf.

*Comment:* Commenters suggested we define *family*, *parent*, and *guardian* for the purposes of determining income.

*Response:* As stated above, we redefined *family* to clarify who could apply for Head Start services. The revised definition also clarifies for programs whose income to consider when they determine whether a pregnant woman or a child is eligible for services. For example, in the case of a pregnant woman, the definition requires programs to consider income from those who financially support the woman. In the case of a child, the definition requires programs to consider income from the child's family. We define *family*, for a child, to mean all persons that live with child, who are financially supported by the child's parents or guardians and who are related to the child by blood marriage or adoption, or the child's authorized caregiver or

<sup>3</sup> See <http://eclkc.ohs.acf.hhs.gov/hslc/standards/PIs/2010/Head%20Start%20Eligibility%20Verification%20Form,%20Expires%2002-28-2013.pdf>.

legally responsible party. We did not define *parent* because the term has no special meaning for Head Start purposes. Moreover, we did not define *guardian* because we believe our revised definition for *family* is broad enough to include various situations.

*Comment:* A commenter requested that we define *foster care*, so programs will not have to cross reference child welfare regulations. Similarly, other commenters suggested we consult with tribal leadership to determine if the definition should be adjusted for tribal populations. Some commenters asked that we revise *Head Start eligible* to include *Migrant or Seasonal Head Start Program*. Other commenters suggested that we define *Migrant or Seasonal Head Start Program*.

*Response:* We added the *foster care* definition used by Federal child welfare programs. This definition encompasses all children that fall under this definition, tribal or otherwise. We revised *Head Start eligible* to include *Migrant or Seasonal Head Start Program*. We also defined *Migrant or Seasonal Head Start Program*.

*Comment:* We received comments about the phrase “is eligible for or, in the absence of child care, would be potentially eligible for public assistance.” Commenters asked us to define *average daily attendance* and *eligibility period*. We also received comments about *trailer parks* as proposed in the *homeless children* definition.

*Response:* We did not define the phrase “is eligible for or, in the absence of child care, would be potentially eligible for public assistance.” We took the phrase directly from section 645(a)(1)(B)(i) of the Act.<sup>4</sup> As always, we expect programs to continue to enroll the neediest families first. We did not define *average daily attendance* because attendance is beyond the scope of this regulation. This regulation focuses on eligibility. It does not address attendance, which is addressed in another section of 45 CFR 1305. We did not define *eligibility period*, but we clarified how long a participant remains eligible in § 1305.4(k). We defined *relevant time period* to alleviate any confusion. We did not define *trailer parks* because we changed our proposed *homeless children* definition to correspond with section 637(11) of the Act.<sup>5</sup>

*Comment:* One commenter asked why we require a child to attend at least one day of classes to be considered enrolled when the current definition for

*enrollment* does not mention anything about attendance.

*Response:* In light of this comment, we redefined *enrollment*. And we defined *enrolled* and *accepted*. We referred to the PIR for guidance. In the PIR, a child or a pregnant woman is *enrolled* once they have attended class or received a service. A child or pregnant woman is considered *accepted* when they have met the eligibility criteria and have completed the process for enrolling in the program. Consequently, persons on Head Start waiting lists have been accepted but are not yet enrolled.

*Comment:* Overwhelmingly, commenters were pleased that we used the definition of “homeless children” from the McKinney-Vento Homeless Assistance Act, but believed we should provide additional guidance and technical assistance on homeless children. In addition, a few commenters asked how the definition applies to migrant or seasonal farm worker populations.

*Response:* We will continue to provide training and technical assistance on homeless children. The McKinney-Vento Homeless Assistance Act does not specifically define homelessness for migrant or seasonal populations. However, the definition in this regulation also applies to *Migrant or Seasonal Head Start programs*.

#### *Section 1305.4—Determining, Verifying, and Documenting Eligibility*

This section focuses on eligibility requirements, procedures for how programs determine eligibility, and staff training. Based on comments, we reorganized this section to make it easier to understand by adding new paragraphs: (a) *Process Overview*; (d) *Additional allowances for programs*; (g) *Migrant or Seasonal eligibility requirements*; and (k) *Eligibility Duration*.

#### *Section 1305.4(a)*

This paragraph describes overall how programs must determine families’ eligibility. This is a new paragraph. We did not propose a similar paragraph in the NPRM.

*Comment:* An organization stated that the proposed structure of this section may be confusing because programs must determine age before any other eligibility requirements.

*Response:* We reorganized the section. Paragraph (a) provides an overview of the eligibility process and paragraph (b) now speaks to age eligibility requirements.

*Comment:* A few commenters were concerned the in-person interview may be burdensome for families.

*Response:* We allow programs to waive the in-person interview for a telephonic interview, if the in-person interview poses a burden for families. In these instances, programs are required to note in the eligibility determination record the reasons why an in-person interview was not possible. Incidentally, we did not specify where program staffs must conduct the in-person interview. Programs may conduct the in-person interview at a mutually agreed upon location.

*Comment:* One commenter expressed concern that the proposed rule did not state what qualified as an “official document.”

*Response:* We removed the term *official* as it related to documents. However, program staffs must create an eligibility determination record in accordance with paragraph (l) of this section for each enrolled participant. Paragraph (l) describes what each eligibility determination record must contain and for how long it must be kept.

*Comment:* Commenters asked us to clarify who is authorized to apply for program services. They suggested we change the phrase “. . . the pregnant woman or the child’s parent, guardian, or other person (s) seeking services for the child who has knowledge of the family’s finances” to “. . . the pregnant woman or the child’s parent, guardian, authorized caregiver, or legally responsible party.”

*Response:* We replaced the phrase “. . . the pregnant woman or the child’s parent, guardian, or other person (s) seeking services for the child who has knowledge of the family’s finances” with the term *family*. As stated above, we redefined *family*. For a child, *family* means “all persons living in the same household who are: Supported by the child’s parent(s) or guardian(s) income, and related to the child’s parent(s) or guardian(s) by blood, marriage, or adoption; or the child’s authorized caregiver or legally responsible party. For a pregnant woman, *family* means all persons who financially support the pregnant woman. We believe this change makes the regulation easier to understand and clarifies who is authorized to apply for services.

#### *Section 1305.4(b)*

This paragraph outlines Head Start and Early Head Start age requirements. It was proposed as paragraph (a) *Age Eligibility* in the NPRM.

*Comment:* Commenters offered edits to titles and language in this paragraph

<sup>4</sup> See 42 U.S.C. 9840(a)(1)(B)(i).

<sup>5</sup> See 42 U.S.C. 9832(11).

in order to reduce confusion.

Commenters also recommended that we summarize section 645(a)(2) of the Act because we reference it in the introductory paragraph.

*Response:* We changed the title to, “Age eligibility requirements,” and we removed the reference to section 645(a)(2) of the Act.

*Comment:* Many commenters asked us to define age eligibility specifically for Migrant or Seasonal Head Start programs.

*Response:* We defined age requirements for Migrant or Seasonal Head Start programs under paragraph (b)(3).

*Comment:* Commenters wanted to know how programs could verify age eligibility particularly in relation to the date used by the school district in the community where the Head Start program operates. One respondent suggested that we use “the date used to determine eligibility for public school” language in Early Head Start as well as Head Start.

*Response:* We reinforced in paragraph (h) that program staffs must verify a child’s age according to program policies and procedures. We emphasize that these policies cannot require staffs to collect documents if doing so prevents a family from enrolling an otherwise eligible child. We did not add the “public school” eligibility date to the Early Head Start description because it does not apply. Generally, eligible children transition from Head Start programs to public school. Consequently, “the date used to determine eligibility for public school” applies for Head Start not Early Head Start, which serves children birth to age three.

*Comment:* One commenter was concerned that basing age requirements on public school criteria could delay a child from moving to Head Start for an entire year, rather than beginning the transition six months before his third birthday. Respondents asked how to address situations when a public school district uses a date to determine eligibility that is after the date Head Start classes begin. Other commenters wanted flexibility to enroll children who are old enough to attend kindergarten in their school districts, but have Individualized Education Plans (IEP) that state they need another year of preschool. Another commenter suggested that if we allow programs to enroll infants, we should require that infants not attend group care for at least four to six weeks.

*Response:* We exempt children who transition from Early Head Start to Head Start from age eligibility requirements.

Current regulations at § 1304.41(c)(2) require “As appropriate, a child may remain in Early Head Start, following his or her third birthday, for additional months until he or she can transition into Head Start or another program.” Even though age eligibility requirements do not apply when a child transitions from Early Head Start to Head Start, programs must verify the family’s income again. We added children that are “at least three years old or will turn three by the date used to determine eligibility for public school” in paragraph (b)(2) to allow programs to enroll children who are slightly younger, as appropriate. Section 645A(c)(2) of the Act<sup>6</sup> specifies that “children under three” may be eligible to participate in Early Head Start programs; the Act also requires Early Head Start programs to serve children from birth to age three. Programs do not have flexibility to enroll children who are old enough to attend kindergarten in their school districts, but have IEPs that state they need another year of preschool. If a program intends to enroll a child with an IEP, it must ensure the child meets Head Start age requirements. We do not have a minimum age requirement for infants to enroll in group care; however, programs that provide infant group care must comply with state licensing requirements regarding the age at which infants can enter group care.

*Comment:* One commenter asked us to reimburse programs for obtaining birth certificates.

*Response:* We did not make any changes to address this comment because we do not require programs to collect birth certificates.

#### Section 1305.4(c)

This paragraph describes income eligibility requirements. It was proposed as paragraph (b) *Income Eligibility* in the NPRM.

*Comment:* Commenters found this paragraph rather confusing, because it contained program requirements and program options. Other commenters asked us to explain when programs can enroll children with disabilities and children whose family incomes are over the poverty line.

*Response:* In order to make this paragraph clearer, we removed program options and placed them under new paragraph (d) *Additional allowances for programs*. We hope this clarifies that a program can enroll families under paragraph (d) options only after it has satisfied requirements listed here in paragraph (c) or requirements in

paragraph (f). We also removed migrant or seasonal family eligibility requirements and placed them under paragraph (g) *Migrant or Seasonal eligibility requirements*. We also removed language that describes how long participants remain eligible for services and placed it under paragraph (k) *Eligibility Duration*. We believe these changes make the regulation easier to read.

#### Section 1305.4(d)

We created this new paragraph with language from proposed paragraph (b) *Income Eligibility*. We believe this new paragraph will clarify conditions under which programs may enroll families who do not otherwise qualify for services. A program can only use these options after it has enrolled homeless children, or pregnant women and children whose family incomes fall below the poverty line, or pregnant women and children whose families are eligible for, or in the absence of child care, would be potentially eligible for public assistance.

*Comment:* An organization suggested we include specific language from the Act that describes what programs are required to report annually if they choose to enroll families between 100 and 130 percent of the poverty line. Another commenter requested that the rule state when the report is due, what annual cycle should be used for the report, and where and to whom should the report be submitted. A commenter suggested that we allow 12.5 percent of participants to be over-income and remove all “35 percent” regulations.

*Response:* We included specific language from the Act that describes what a program is required to report if it chooses to enroll families under the eligibility option allowing for inclusion of families between 100 and 130 percent of the poverty line. We also indicated when these reports are due and where they must be submitted. However, we do not have authority to remove all “35 percent regulations.” These regulations are required by statute.

#### Section 1305.4(e)

This paragraph lists additional options specifically for tribes operating Head Start programs. It was proposed as paragraph (d) *Special Rule for Indian Tribes* in the NPRM.

*Comment:* One commenter suggested the special rule for Indian tribes be used for all programs.

*Response:* We have not made any changes in response to this comment because the Act specifically applies these allowances to Indian tribes.

<sup>6</sup> See 42 U.S.C. 9832(11).

## Section 1305.4(f)

This paragraph identifies what makes a family categorically eligible for services. It was proposed as paragraph (c) *Categorically Eligibility* in the NPRM.

*Comment:* We received comments about families experiencing homelessness. Many were concerned about how to identify and actually provide services to these families.

*Response:* We defined *homeless children* at § 1305.2 and we added language that aligned with the Act to help programs better serve these families.

The Act identifies homeless children as categorically eligible for Head Start services. In light of the Act, we add homelessness as category for eligibility at § 1305.4(f). We also offer several methods, from service provider statements to self-declarations that programs can use to verify a family's circumstances.

The Act also requires programs to allow homeless children to attend Head Start classrooms, without birth certificates, proof of residency, or immunization records. Congress recognizes that sporadic living conditions can make it difficult for these families to track information. It does not want to bar homeless families from enrolling in Head Start programs just because they do not have these documents.

Here, we require programs to allow families of homeless children to apply to, enroll in, and attend Head Start programs, even if they do not have proof of residency, immunization and other medical records, and birth certificates. We require programs to give these families reasonable time to collect these and other required documents. Head Start is based on the premise that all children share certain needs, and that children from low-income families can benefit from comprehensive developmental services to meet those needs. Homeless children are particularly vulnerable and need the services that a Head Start program can offer.

*Comment:* Numerous respondents asked us to define *public assistance*. Some commenters suggested that we include child-care, Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) and Medicaid rather than TANF and SSI in the definition.

*Response:* Public assistance includes TANF and SSI. We believe this is consistent with longstanding Head Start guidance. We appreciate the suggestion that we to extend the *public assistance* definition to include Medicaid, SNAP,

child care and other benefits. However, we have narrowly construed public assistance in the past and believe that our interpretation of public assistance is consistent with the overall thrust of the eligibility requirements, which emphasize serving children from families in the lowest income brackets. Some forms of public assistance such as Medicaid, SNAP and child care have eligibility levels higher than the Head Start eligibility level. For example, SNAP eligibility is 130 percent of the poverty line and child-care eligibility in some states is higher than 150 percent of poverty. Further, when Congress expanded eligibility to include the ability for grantees to serve families with incomes between 100 and 130 percent of the poverty level, they provided very narrow authority to do so. This indicates that Congress's intent was not to broadly expand eligibility to higher incomes. Therefore, Head Start considering TANF and SSI as public assistance is consistent with the statute and the intent of Congress that Head Start programs should serve families with the lowest income and the greatest need.

*Comments:* Some commenters asked us to explain how programs can determine a family's potential eligibility for public assistance.

*Response:* If a family gives written consent, the program could verify the family's potential eligibility for public assistance with third parties, like TANF or SSI officials. Moreover, if a family does not have proof of income, the program can accept a family member's written declaration that states the family is potentially eligible for public assistance. In these instances, program staffs are required to verify the family's eligibility.

*Comment:* Commenters asked us to clarify how children in foster care are considered categorically eligible for services.

*Response:* We believe our categorical eligibility discussion is sufficient. However, to clarify what it means for a child to be in foster care, we defined *foster care* in § 1305.2. Our *foster care* definition is consistent with the definition used by ACF's Children's Bureau at 45 CFR 1355.20.

*Comment:* One commenter urged us to expand the definition of *homeless* and the income eligibility guidelines to include families with medically fragile and autistic children because they often face financial and emotional struggles and unstable living situations.

*Response:* While we are sensitive to these concerns, we lack the authority to modify either the statutory definition of *homeless* or the income eligibility

requirements for Head Start that are specified in the Act. Furthermore, programs can fill at least 10 percent of their enrollment with disabled or medically fragile children, even if their families' incomes are above the poverty guideline. Consequently, these children may be served, if the program has slots available.

## Section 1305.4(g)

This is a new paragraph. It describes eligibility requirements for migrant or seasonal families.

## Section 1305.4(h)

This is a new paragraph. It reinforces that staffs must verify a child's age according to program policies and procedures.

## Section 1305.4(i)

We proposed the language here under paragraph (e) *Income Verification* in the NPRM. This paragraph explains how program staffs verify family income. It also describes the documents families can present to prove income eligibility.

*Comment:* Commenters asked what to do when families do not have 12 months of pay stubs readily available. Commenters also asked how programs could judge whether a family's income accurately reflects current circumstances.

*Response:* When families are missing any pay stubs or other documentation to prove income, programs may use the information provided to calculate total annual income by using appropriate multipliers. To do this, the program will multiply the family's income earned in a certain time period by the number of weeks or months the family worked during the time period being considered. We also revised the regulation to provide that if the family can demonstrate a significant change in income, such as job loss, the program may consider the family's current income circumstances.

*Comment:* Respondent asked us to clarify the parameters programs have to investigate families' circumstances when they report no income. Other commenters stated that SNAP and Medicaid have much higher income guidelines than Head Start and as a result they should not be used to determine eligibility.

*Response:* We intentionally did not provide examples of how to verify that a family has no income. We believe our silence in this instance will afford programs greater flexibility in their efforts to make informed eligibility decisions.

*Comment:* We received comments from program managers about using

third parties to verify whether families are categorically eligible for services. They asked us to clarify who, *i.e.* what third party, could verify whether a family is homeless. These commenters believed that homeless families often lack close ties with family members who potentially could verify the family's circumstances. Consequently, programs would have to exert tremendous "man hours" to verify a family's circumstances. Other commenters recommended that we allow families, who do not have income or who are unable to prove income, to attest to their eligibility in writing, either as an alternative to, or in addition to third party verification.

*Response:* Programs may use third parties to verify a family's circumstances, if the family gives written consent. In these cases, programs may contact family members, shelter workers, employers, and social workers. We do not prescribe who programs should use as third parties to verify a family's circumstances. Instead, we afford programs flexibility to determine which third parties they could rely on to get information about the families they serve. Moreover, we allow programs to accept written declarations from families who do not have income or who cannot prove income. However, in this and in all other instances, we require program staffs to make reasonable efforts to verify the family's eligibility.

*Comment:* Commenters were concerned about how long it could take to verify income, noting that programs are working with limited funds, and may require more staff.

*Response:* We do not believe these requirements will cause undue burdens for program staff. Programs currently verify family income with existing staffs. They collect supporting documents and contact third parties when necessary.

*Comment:* A commenter wanted to know how to determine income eligibility for various household situations, including custody and incarceration.

*Response:* We believe the definition for *family* addresses this concern.

*Comment:* Commenters asked how often programs must verify whether a migrant family's income comes primarily from agricultural work.

*Response:* We did not address income verification for Migrant or Seasonal Head Start (MSHS) programs in the NPRM and we do not address the issue here in the final rule. We realize MSHS programs verify family income eligibility annually in order to ensure children from migrant or seasonal farm

worker families receive services that are specifically designed to address the needs of families that perform agricultural work. However, MSHS programs are not exempt from the two year eligibility requirement in the Act. Due to the Act's two year eligibility requirement, if an MSHS program determines a child is no longer eligible for its services after the first year, the child can be enrolled in a non-MSHS program in the community for a second year. But if the child cannot be enrolled in a non-MSHS program, the MSHS program must continue to serve him.

#### Section 1305.4(j)

We proposed language here under paragraph (f) *Verification of categorical eligibility* in the NPRM. This paragraph explains how programs must verify categorical eligibility.

*Comment:* A few commenters stated that this paragraph is inconsistent with the requirement that authorizes, "In place of the foregoing documents, the program can substitute a written statement of a program staff member certifying that the staff member has made reasonable efforts to confirm a child is homeless." Commenters were concerned that proving homelessness would be particularly difficult for some populations and sought guidance on the meaning of "reasonable efforts" to confirm that a child is homeless. One organization recommended that we require families experiencing homelessness to present additional documents to establish eligibility under this category. Another commenter believed the process of verifying homelessness should mirror the processes used by the local education authorities in the community and the National Center for the Education of Homeless Children.

*Response:* We removed requirements for staffs to certify that they have made reasonable efforts to verify family eligibility. Consequently, we removed: "In place of the foregoing documents, the program can substitute a written statement of a program staff member certifying that the staff member has made reasonable efforts to confirm a child is homeless." We specify the types of documents programs are required to use in order to verify homelessness. However, in cases where these documents are not available, the family may declare in writing that the child or pregnant woman is homeless. In these instances, we require staff to verify the family's status and to describe the child's living situation. We did not specify how programs should inquire about a family's housing status. However, we will continue to provide

best practices tips through training and technical assistance. We believe the phrase "reasonable efforts" is clear. But we also provide training and technical assistance on what constitutes "reasonable efforts" on the Head Start Early Childhood Learning & Knowledge Center Web site and other resources.

*Comment:* One commenter explained that trying to verify homelessness as a categorical eligibility factor and to document the income of the same family may result in undue pressure on program staff. Staff may fear repercussions despite having made reasonable efforts to collect accurate documentation.

*Response:* We did not require programs to verify both income and homelessness. Programs are required to verify whether a family is either "income eligible" or "categorically eligible."

*Comment:* A commenter noted that in proposed paragraph (f)(2), the phrase "to prove a claim that a pregnant woman or family has no income" should read "to prove a claim that a pregnant woman or family is homeless."

*Response:* This was an error. But we grammatically restructured this paragraph in a way so that it is clear we are referring to categorical eligibility and not income eligibility. We also clarified that a program may use third parties to prove a claim that a family is categorically eligible.

*Comment:* We received comments, concerns, and recommendations about using third parties to verify a family's categorical eligibility. While some commenters supported this provision, many more were concerned that the use of third parties could create unintended consequences such as deterring enrollment or making families and Head Start staff uncomfortable. Some commenters wanted us to offer more guidance on who could serve as a third party contact and whether it had to be someone in a professional capacity or if the program has discretion to decide.

Numerous respondents questioned the value of using other family members and friends as third party verifiers. Commenters asked us to explain how to collect acceptable information from third parties, and what documents are considered appropriate. Another respondent asked us to clarify whether programs that already have self-declaration procedures are required to use third party verification as well. One commenter suggested that we do not require families to consent to third party verification when third party verification could prove detrimental.

*Response:* We believe third parties may be helpful to verify eligibility in

cases where families lack documentation. Programs should only use third party verification if the family consents and if other verification methods are not feasible. Beyond what is specified in the rule, programs may use their own process for verifying information, keeping in mind the purpose, goals, and other rules related to eligibility. Furthermore, throughout the verification process, we require program staff to adhere to program safety and privacy policies outlined in 45 CFR 1304.52(h).

*Comment:* Commenters supported having program staff certify that he or she made reasonable efforts to confirm that a child is homeless. They suggested programs use this method to verify income and other forms of categorical eligibility as well.

*Response:* As we mentioned above, we removed requirements for staffs to certify that they have made reasonable efforts to verify a family's eligibility. However, if a family declares that it is either income or categorically eligible for services, we require staffs to make reasonable efforts to verify the family's situation and to describe the family's living situation.

#### Section 1304(k)

This is a new paragraph. It explains how long participants remain eligible for services.

#### Section 1305.4(l)

This paragraph describes what eligibility determination records must contain and how long they must be kept. It was proposed as (g) *Records and Certification* in the NPRM.

*Comment:* Some commenters recommended we require programs to store data and eligibility determination records electronically. One commenter asked us to explain what an "eligibility determination record" is as used in proposed paragraph (g), and how long these records must be kept.

*Response:* We clarified in paragraph (l) that eligibility determination records may be maintained either electronically or in hard copy. Programs may choose whichever system is appropriate for their needs so long as the system provides accurate information and ensures confidentiality. We believe the term "eligibility determination record" defines itself. However, we describe what eligibility determination records must contain. Programs must keep these records according to 45 CFR 74.53 and 45 CFR 92.42. These are general HHS rules on records retention that stem from Office of Management and Budget Circulars A-110 and A-102 respectively.

*Comment:* Numerous commenters recommended that the language in proposed paragraph (g)(1) that states "copies of all documents submitted . . ." be changed to "all documents used to verify eligibility" to limit the scope. Commenters also wanted to know how programs are supposed to copy documents when recruiting and intake usually take place where there is no access to photocopy machines.

*Response:* A program must be able to show in the eligibility determination record what documents it used to find a participant eligible for services. However, if a staff does not have access to a copier, he may review documents and verify their contents. He can then allow the family to present those documents up until the child's first day of class, when he can make copies.

*Comment:* One commenter proposed changing proposed paragraph (g)(1) to remove reference to "any staff member's notes recording any other information" believing the term is difficult to define, implement uniformly or monitor for compliance. Another commenter related to "staff member's notes" questioned whether staff notes are considered valid documentation, and if so, what rules govern them.

*Response:* We removed the reference to "staff member's notes." Even without staff member notes, program staffs should be able to capture all pertinent information as they determine family eligibility.

*Comment:* Commenters recommended that we remove proposed paragraph (g)(4)(ii), which required programs to maintain documents related to third party verification.

*Response:* We require programs to keep documents related to third party verification in paragraph (l)(2)(C). Third party verification allows programs more flexibility and families more options to prove eligibility. However, we reinforce that staff limit the scope of verifying to that which is relevant to prove eligibility and adhere to program safety and security policies.

*Comment:* A commenter was concerned about the requirement in proposed paragraph (g)(5) to maintain "a record of the eligibility criterion under which the pregnant woman or the child was determined eligible." The commenter explained this may be particularly difficult in the over-income categories. For example, the program may verify a family's income level throughout the spring and summer recruiting season, but enroll and assign them to either paragraph (g)(5)(v) (10 percent allowed over-income category) or paragraph (g)(5)(vi) (over 100 percent

but below 130 percent of poverty category) in the fall.

*Response:* If a program enrolls a child whose family is over income under one of the two over income categories, in paragraph (l)(2)(iii), we require staff to say as much in a written statement and to make that statement a part of the eligibility determination record. However, we do not require staff to specify which of the two over-income eligibility categories applies or when, *i.e.* when the family is determined eligible for services or when the family is enrolled. Programs must, however, make this distinction for reporting purposes.

*Comment:* We received a few comments about proposed paragraph (g)(6) that requires "a signed and dated statement by the program staff person." Supporters believe this will strengthen the integrity of Head Start programs nationwide and increase accountability. Another commenter was concerned about this requirement because her program uses multiple staffs to collect eligibility information, but only one staff to determine eligibility.

*Response:* We removed this requirement as proposed in paragraph (g)(6). However, in (l)(2)(ii), we require staffs to provide a statement that he or she made reasonable efforts to verify information. We do not prescribe any particular method for how programs may collect eligibility information. We want to make it clear that we hold program management ultimately responsible for each eligibility determination.

*Comment:* We received a comment about proposed paragraph (g)(7), which required programs to maintain eligibility determination records for three years. The commenter recommended that these records be kept only as long as the child or pregnant woman is enrolled in the program.

*Response:* We took the three-year record retention requirement from 45 CFR 74.53 and 45 CFR 92.42. These regulations require grantees to keep financial records, supporting documents, statistical records, and all other records pertinent to their grant for three years. Eligibility determination records do not fit these criteria. Therefore, we require programs to keep eligibility determination records for those currently enrolled, for as long as they are enrolled, and for one year after they have stopped receiving services or are no longer enrolled.

#### Section 1305.4(m)

This paragraph requires programs to establish policies and procedures that describe what happens when staffs

violate this rule. It was proposed as (h) *Establishment of agency policies regarding violation of eligibility determination regulations, policies, and procedures* in the NPRM.

*Comment:* Commenters expressed concern about requiring programs to establish policies that describe actions taken against staffs who intentionally violate Federal and program eligibility regulations. They believe this requirement is overreaching. Other respondents recommended that programs must have a general policy against fraud.

*Response:* We do not believe this requirement is overreaching. Current regulations require programs to establish and implement written staff personnel policies that describe appropriate penalties for violating standards of conduct. Programs that already have related policies in place will be in compliance with these new rules as long as their policies cover what is specified in this rule.

*Comment:* One commenter applauds our efforts to inform the Head Start workforce about fraud, and the consequences for committing fraud. However, the commenter does not believe we have articulated what it means to commit fraud clearly. In order to avoid a “chilling effect on hiring,” the commenter suggested we discuss “intent” more in the preamble.

*Response:* We believe we are quite clear about who is eligible for Head Start services and about how a program must determine eligibility. Staffs that intentionally enroll ineligible families should be held accountable. We believe the intent requirement as stated should be sufficient to weed out inadvertent or mistaken enrollments.

Section 1305.4(n)

We initially proposed this language under paragraph (i) *Training* in the NPRM. This paragraph details training requirements for staff and others responsible for making eligibility decisions.

*Comment:* Many commenters were concerned 30 days after the effective date of the rule was not enough time for programs to design and conduct training. Some respondents acknowledged the importance of their roles, but explained that governing body and policy council members should have more time to implement procedures because they are not involved directly in the eligibility verification process. A few commenters suggested that training should be ongoing for some staff.

*Response:* Programs are required to train program management and all staffs who make eligibility determinations, within 90 days after the effective date of this rule. After the initial training, programs must train each newly hired staff member as soon as possible, but within 90 days of hire. Programs must train all governing body and policy council members, within 180 days of the rule being effective. Or, after the initial training, programs must train a new governing body member or a new policy council member, within 180 days of his or her term. We have not added specific flexibility for programs with shorter operating periods because we believe programs will be able to complete the training requirements in the time allowed. We require programs to develop their own policies on how often training is provided, after the initial training, to allow flexibility in training frequency.

*Comment:* A commenter recommended that we require training

to include consequences for families who commit or attempt to commit fraud by providing false documents or eligibility information.

*Response:* We agree. We require program training to include consequences for families who commit or attempt to commit fraud by providing false documents or eligibility information.

*Comment:* Commenters suggested that we provide training and technical assistance materials, such as webinars, PowerPoint presentations, and guidelines with consistent goals, measures, or outcomes for training.

*Response:* We did not make any changes to the rule as a result of these comments. However, the National Center on Program Management and Fiscal Operations will develop training assistance to help programs implement these new training requirements. We believe these requirements are reasonable and will not cause undue burdens. In addition, we allow programs flexibility to determine appropriate training for their operational needs. We do not specify exactly how training must be delivered, the length of training, or specific content beyond what topics must be covered.

**V. Impact Analyses**

*Paperwork Reduction Act*

This rule establishes new information collection requirements in § 1305.4(c), (f), (g), (h), (i), and (j). As required by the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507, the Administration for Children and Families will submit a copy of these sections to the Office of Management and Budget (OMB) for review and they will not be effective until they have been approved and assigned a clearance number.

Requirement	Respondents	Annual	Average burden per respondent (hours)	Total burden hours
§ 1305.4(d)(2) .....	20	1 .....	2	40
§ 1305.4(h)(i), and (j) .....	1,600	(should reflect info collections for each applicant).	15	24,000
§ 1305.4(l) .....	1,600	(should reflect info collections for each applicant).	15	24,000

We estimate costs to implement these requirements will be approximately \$1,103,959 annually. We used the average hourly salary for an assistant teacher, which is closest to the salary for a family worker, who would be doing this work. The estimated hourly salary for a family worker including overhead

and fringe benefits is \$22.98. We multiplied this hourly rate by the estimated total burden hours, 48,040, to get the total estimated cost. We reevaluated the cost burden and the cost burden increased in both the hours of burden and the cost to each program. We also determined that the family

services coordinator would not be the staff person who would verify family eligibility. Instead, the family service worker would conduct intake and determine eligibility. The average salary for a family service worker is closest to that of an assistant teacher. When we adjusted the family service worker’s



salary, we included fringe benefits which we did not include in our original estimate.

#### *Regulatory Flexibility Act*

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant economic impact on a substantial number of small entities. This rule primarily is intended to ensure accountability for Federal funds consistent with the purposes of the Head Start Act and is not duplicative of other requirements. We believe this rule implements the aims of the Head Start Act, as amended, to improve the effectiveness of Head Start programs while preserving the ability of Head Start grantees to continue using creativity and innovation to promote the school readiness of low-income children.

Respondents commented that they thought the estimated costs of \$85 per grantee were too low, considering the new costs of maintaining copies of documents; revamping agency policies and systems; creating additional human resource procedures and policies to address violations of regulations, keeping and filing additional documents in the file, and training on these elements. One organization that commented said that it did not have exact numbers to confirm or refute the amount, but asked HHS to reconsider this estimate. Other respondents shared calculations of their estimated costs of implementing these new requirements. In response to these comments, we have adjusted the number of burden hours and the total calculation of the cost of meeting the new requirements.

Specifically, as noted under the Paperwork Reduction Act section of this preamble, we estimate the cost of implementing the new reporting requirements will be approximately \$1,103,959 annually, which when applied to all 1,600 grantees nationally, results in a cost per grantee of less than \$1,236. In developing this estimate, we assumed that each of the 1,600 Head Start and Early Head Start grantees would spend an additional 30 hours beyond what they spend currently to verify eligibility. The total burden hours for each program would be 30 additional hours for the expanded requirements on verifying eligibility (15) and record keeping (15) as noted in the chart. We anticipate that some of the additional 30 hours would include time needed for grantees to training staff, ensuring record keeping systems complied with the new requirements and maintaining records. We included

in our estimated annual costs minimal costs incurred by those grantees that choose to serve additional pregnant women and children per the authority granted at section 645(a)(1)(B)(iii)(II) in the Act, and therefore would be required to comply with the annual reporting requirements described in section 645(a)(1)(B)(iv) of the Act and paragraph (c)(3)(ii) of this rule. Since no grantees have taken the opportunity to serve additional pregnant woman and children per the authority granted at section 645(a)(1)(B)(iii)(II) in the Act to date, our reasonable expectation is that approximately 20 grantees per year might choose to use this authority in the future, at a total estimated cost of \$1,236 per year.

#### *Regulatory Impact Analysis*

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this Final Rule is consistent with these priorities and principles. These regulations incorporate statutory changes to the Head Start program enacted in the Act and strengthens procedures by which programs determine who is eligible for Head Start services. We have consulted with OMB and determined that these rules meet criteria for a significant regulatory action under Executive Order 12866.

We do not believe there will be a significant economic impact from this regulatory action. Based on our estimate described under the Paperwork Reduction Act section of this preamble, the total cost will fall well below the \$100 million threshold. The estimated total cost of implementation of these rules for all grantees is approximately \$1,103,959 annually.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 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 an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted. The Department has determined that

this 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.

#### *Congressional Review*

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

#### *Executive Order 13132*

Executive Order 13132, Federalism, requires that Federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. This rule will not have substantial direct impact on the states, on the relationship between the National 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 rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, HHS has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### **List of Subjects in 45 CFR Part 1305**

Education of disadvantaged, Grant programs/social programs, Individuals with disabilities.

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

Dated: January 14, 2015.

**Mark H. Greenberg,**

*Acting Assistant Secretary for Children and Families.*

Approved: January 27, 2015.

**Sylvia M. Burwell,**

*Secretary.*

For the reasons set forth in the preamble, part 1305 of 45 CFR chapter XIII is amended to read as follows:

**PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT, AND ATTENDANCE IN HEAD START**

■ 1. The authority citation for part 1305 is revised to read as follows:

**Authority:** 42 U.S.C. 9801 *et seq.*, 5 U.S.C. 553(b).

■ 2. Revise § 1305.2 to read as follows:

**§ 1305.2 Definitions.**

*Accepted* means a child or pregnant woman has met the eligibility criteria and has completed the enrollment process.

*Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term “children with disabilities” for children aged three to five, inclusive, may, at a state’s discretion, include children experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

*Enrolled* means a child has been accepted and attended at least one class, has received at least one home visit, or has received at least one direct service while pending completion of necessary documentation for attendance in a center, based on state and local licensing requirements. For Early Head Start, enrollment includes all pregnant women that have been accepted and received at least one direct service.

*Enrollment* means the number of participants in an Early Head Start, a Head Start, a Migrant or Seasonal, or an American Indian Alaska Native Head Start program.

*Enrollment opportunities* mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

*Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program

provides center or home-based services to a group of children and their families.

*Family*, for a child, means all persons living in the same household who are:

(1) Supported by the child’s parent(s) or guardian(s)’ income; and

(2) Related to the child’s parent(s) or guardian(s) by blood, marriage, or adoption; or

(3) The child’s authorized caregiver or legally responsible party.

*Family*, for a pregnant woman, means all persons who financially support the pregnant woman.

*Foster care* means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

*Funded enrollment* means the number of children which the Head Start grantee is expected to serve, as indicated on the grant award.

*Head Start eligible* means a child or pregnant woman who meets the requirements for age and family income or categorical eligibility or, if applicable, the requirements established by a grantee under section 645(a)(2) of the Head Start Act or by a Head Start program operated by an Indian tribe under 45 CFR 1305.4(e). Unless otherwise noted, references to Head Start eligible include Early Head Start and Migrant or Seasonal Head Start programs.

*Head Start program* means a Head Start grantee or its delegate agency(ies).

*Homeless children and youths* in section 725(2) of the McKinney-Vento Homeless Assistance Act at 42 U.S.C. 11434a(2). The definition in this regulation also applies to Migrant or Seasonal Head Start programs.

*Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans’ benefits, Social Security benefits, unemployment compensation, and public assistance benefits.

Additional examples of gross cash income are listed in the definition of “income” which appears in U.S. Bureau

of the Census, Current Population Reports, Series P–60–185.

*Income guidelines* means the poverty line specified in section 637(19) of the Act (42 U.S.C. 9832).

*Indian Tribe* means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

*Low-income family* means a family whose total income before taxes is equal to, or less than, the income guidelines.

*Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

*Migrant or Seasonal Head Start Program* means:

(1) With respect to services for migrant farmworkers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and

(2) With respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

*Participant* means a pregnant woman or a child who is enrolled in and receives services from a Head Start, an Early Head Start, a Migrant Seasonal Head Start, or an American Indian Alaska Native Head Start program.

*Recruitment* means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.

*Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

*Relevant time period* means:

(1) The 12 months preceding the month in which the application is submitted; or

(2) During the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

*Responsible HHS official* means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

*Selection* means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

*Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

*Vacancy* means an unfilled enrollment opportunity for a child and family in the Head Start program.

*Verify* or any variance of the word means to check or determine the correctness or truth by investigation or by reference.

■ 3. Revise § 1305.4 to read as follows:

**§ 1305.4 Determining, verifying, and documenting eligibility.**

(a) *Process overview.* (1) Program staff must:

(i) Conduct an in-person interview with each family, unless paragraph (a)(2) of this section applies;

(ii) Verify information as required in paragraphs (h) through (j) of this section; and,

(iii) Create an eligibility determination record for each enrolled participant according to paragraph (l) of this section.

(2) Program staff may interview the family over the telephone if an in-person interview is not possible. In addition to meeting the criteria provided in paragraph (a)(1) of this section, program staff must note in the eligibility determination record reasons why the in-person interview was not possible.

(b) *Age eligibility requirements.* (1) For Early Head Start, except when the child is transitioning to Head Start, a child must be an infant or a toddler younger than three years old. A pregnant woman may be any age.

(2) For Head Start, a child must:

(i) Be at least three years old; or,

(ii) Turn three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located; and,

(iii) Not be older than compulsory school age.

(3) For Migrant or Seasonal Head Start, a child must be younger than compulsory school age by the date used to determine public school eligibility for the community in which the program is located.

(c) *Income eligibility requirements.* (1) A pregnant woman or a child is eligible, if:

(i) The family's income is equal to or below the poverty line; or,

(ii) The family is eligible or, in the absence of child care, would be potentially eligible for public assistance.

(2) If the family's income is above the poverty line, a program may enroll a pregnant woman or a child who would benefit from services. These participants can only make up to 10 percent of a program's enrollment in accordance with paragraph (d) of this section.

(d) *Additional allowances for programs.* (1) A program may enroll an additional 35 percent of participants whose families are neither income nor categorically eligible and whose family incomes are below 130 percent of the poverty line, if the program:

(i) Establishes and implements outreach, and enrollment policies and procedures to ensure it is meeting the needs of income or categorically eligible pregnant women, children, and children with disabilities, before serving ineligible pregnant women or children; and

(ii) Establishes criteria that ensures eligible pregnant women and children are served first.

(2) If a program chooses to enroll participants, who are neither income nor categorically eligible, and whose family incomes are between 100 and 130 percent of the poverty line, it must be able to report to the Head Start Regional Program Office:

(i) How it is meeting the needs of low-income families or families potentially eligible for public assistance, homeless children, and children in foster care, and include local demographic data on these populations;

(ii) Outreach and enrollment policies and procedures that ensure it is meeting the needs of income eligible or categorically eligible children or pregnant women, before serving over-income children or pregnant women;

(iii) Efforts, including outreach, to be fully enrolled with income eligible or categorically eligible pregnant women or children;

(iv) Policies, procedures, and selection criteria it uses to serve eligible children;

(v) Its current enrollment and its enrollment for the previous year;

(vi) The number of pregnant women and children served, disaggregated by

whether they are either income or categorically eligible or meet the over-income requirements of paragraph (c)(2) of this section; and,

(vii) The eligibility criteria category of each child on the program's waiting list.

(e) *Additional Allowances for Indian tribes.* (1) Notwithstanding paragraph (c)(2) of this section, a tribal Head Start or Early Head Start program may fill more than 10 percent of its enrollment with participants whose family incomes exceed the low-income guidelines or who are not categorically eligible, if:

(i) The program has served all pregnant women or children who wish to be enrolled from Indian and non-Indian families living on the reservation who either meet low-income guidelines or who are categorically eligible;

(ii) The program has served all pregnant women or children who wish to be enrolled from income-eligible or categorically-eligible Indian families native to the reservation, but living in non-reservation areas the tribe has approved as part of its service area;

(iii) The tribe has resources within its grant or from other non-Federal sources, without using additional funds from HHS intended to expand Early Head Start or Head Start services, to enroll pregnant women or children whose family incomes exceed low-income guidelines or who are not categorically eligible; and,

(iv) At least 51 percent of the program's participants are either income or categorically eligible.

(2) If another Early Head Start or Head Start program does not serve a non-reservation area, the program must serve all income-eligible and categorically-eligible Indian and non-Indian pregnant women or children who wish to enroll before serving over-income pregnant women or children.

(3) A program that meets the conditions of this paragraph must annually set criteria that are approved by the policy council and the tribal council for selecting over-income pregnant women or children who would benefit from Early Head Start or Head Start services.

(f) *Categorical eligibility requirements.* (1) A family is categorically eligible for Head Start, if:

(i) The child is homeless, as defined in § 1305.2; or,

(ii) The child is in foster care, as defined in § 1305.2.

(2) If a program determines a child is categorically eligible under paragraph (f)(1)(i) of this section, it must allow the child to attend a Head Start program, without immunization and other medical records, proof of residency, birth certificates, or other documents.

The program must give the family reasonable time to present these documents.

(g) *Migrant or Seasonal eligibility requirements.* A child is eligible for Migrant or Seasonal Head Start, if:

(1) The family meets an income eligibility requirement in paragraph (c) of this section; or

(2) The family meets a categorical requirement in paragraph (f) of this section; and

(3) The family's income comes primarily from agricultural work.

(h) *Verifying age.* Program staff must verify a child's age according to program policies and procedures. A program's policies and procedures cannot require staff to collect documents that confirm a child's age, if doing so creates a barrier for the family to enroll the child.

(i) *Verifying income.* (1) If the family can provide all W-2 forms, pay stubs, or pay envelopes for the relevant time period, program staff must:

(i) Use all family income for the relevant time period to determine eligibility according to income guidelines;

(ii) State the family income for the relevant time period; and

(iii) State whether the pregnant woman or child qualifies as low-income.

(2) If the family cannot provide all W-2 forms, pay stubs, or pay envelopes for the relevant time period, program staff may accept written statements from employers for the relevant time period and use information provided to calculate total annual income with appropriate multipliers.

(3) If the family reports no income for the relevant time period, a program may:

(i) Accept the family's signed declaration to that effect, if program staff:

(A) Describes efforts made to verify the family's income; and,

(B) Explains how the family's total income was calculated; or,

(ii) Seeks information from third parties about the family's eligibility, if the family gives written consent. If a family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (l)(2)(ii)(C) in this section.

(4) If a child moves from an Early Head Start program to a Head Start program, program staff must verify the family's income again.

(5) If the family can demonstrate a significant change in income for the relevant time period, program staff may consider current income circumstances.

(j) *Verifying categorical eligibility.* (1) A family can prove categorical eligibility, with:

(i) A court order or other legal or government-issued document or a written statement from a government child welfare official demonstrating the child is in foster care;

(ii) A written statement from a homeless services provider, school personnel, or other service agency attesting that the child is homeless or any other documentation that indicates homelessness, including documentation from a public or private agency, a declaration, information gathered on enrollment or application forms, or notes from an interview with staff to establish the child is homeless, as defined in § 1305.2 or,

(iii) Any other document that establishes categorical eligibility.

(2) If a family can provide one of documents described in paragraph (j)(1) of this section, program staff must:

(i) Describe efforts made to verify the accuracy of the information provided; and,

(ii) State whether the family is categorically eligible.

(3) If a family cannot provide one of the documents described in paragraph (j)(1) of this section to prove the child is homeless, a program may accept the family's signed declaration to that effect, if, in a written statement, program staff:

(i) Describes the efforts made to verify that a child is homeless, as defined in § 1305.2; and,

(ii) Describes the child's living situation, including the specific condition described in § 1305.2 under which the child was determined to be homeless.

(4) Program staff may seek information from third parties who have first-hand knowledge about a family's categorical eligibility, if the family gives consent. If the family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (l)(2)(ii)(C) in this section.

(k) *Eligibility duration.* (1) If a child is determined eligible under this section and is participating in a Head Start program, he or she will remain eligible through the end of the succeeding program year.

(2) If a program operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the program's Early Head Start, the program must ensure, whenever possible, the child receives Head Start services until enrolled in school.

(l) *Records.* (1) A program must keep eligibility determination records for each participant and on-going training records for program staffs. A program may keep these records electronically.

(2) Each eligibility determination record must include:

(i) Copies of any documents or statements, including declarations, that are deemed necessary to verify eligibility under paragraphs (h) through (j) of this section;

(ii) A statement that program staff has made reasonable efforts to verify information by:

(A) Conducting either an in-person, or a telephonic interview with the family as described under paragraph (a) of this section;

(B) Describing efforts made to verify eligibility, as required under paragraphs (h) through (j) of this section; and,

(C) Collecting documents required for third party verification under paragraphs (i)(3)(ii) and (j)(4) of this section, that includes:

(1) The family's written consent to contact each third party;

(2) The third parties' names, titles, and affiliations; and,

(3) Information from third parties regarding the family's eligibility.

(iii) A statement that identifies whether:

(A) The family's income is below income guidelines for its size, and lists the family's size;

(B) The family is eligible for or, in the absence of child care, potentially eligible for public assistance;

(C) The child is homeless child, as defined at § 1305.2 including the specific condition described in § 1305.2 under which the child was determined to be homeless;

(D) The child is in foster care;

(E) The family meets the over-income requirement in paragraph (c)(2) of this section; or,

(F) The family meets alternative criteria under paragraph (d) of this section.

(3) A program must keep eligibility determination records:

(i) For those currently enrolled, as long as they are enrolled; and,

(ii) For one year after they have either stopped receiving services; or,

(iii) Are no longer enrolled.

(m) *Program policies and procedures on violating eligibility determination regulations.* A program must establish policies and procedures that describe all actions taken against staff who intentionally violate Federal and program eligibility determination regulations and who enroll pregnant women and children that are not eligible to receive Early Head Start or Head Start services.

(n) *Training.* (1) A program must train all governing body, policy council, management, and staff who determine eligibility on applicable Federal regulations and program policies and procedures. Training must, at a minimum:

(i) Include methods on how to collect complete and accurate eligibility information from families and third party sources;

(ii) Incorporate strategies for treating families with dignity and respect and for dealing with possible issues of domestic violence, stigma, and privacy; and,

(iii) Explain program policies and procedures that describe actions taken against staff, families, or participants who intentionally attempt to provide or provide false information.

(2) A program must train management and staff members who make eligibility determinations within 90 days following the effective date of this rule, and as soon as possible, but within 90 days of hiring new staff after the initial training has been conducted.

(3) A program must train all governing body and policy council members within 180 days following the effective date of this rule, and within 180 days of the beginning of the term of a new governing body or policy council member after the initial training has been conducted.

(4) A program must develop policies on how often training will be provided after the initial training.

[FR Doc. 2015-02491 Filed 2-9-15; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

[Docket No. 130321272-5109-03]

RIN 0648-XC589

#### Listing Endangered or Threatened Species: Amendment to the Endangered Species Act Listing of the Southern Resident Killer Whale Distinct Population Segment

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

**ACTION:** Final rule.

**SUMMARY:** On January 25, 2013, we, NMFS, received a petition submitted by the People for the Ethical Treatment of Animals Foundation to remove the

exclusion of captive animals from the endangered species listing of Southern Resident killer whale DPS, as well as, recognize the captive killer whale (*Orcinus orca*) “Lolita” as a protected member of the endangered Southern Resident killer whale Distinct Population Segment (DPS). We completed a status review and published a proposed rule, and we are now amending the regulatory language of the Endangered Species Act (ESA) listing of the DPS by removing the exclusion for captive members of the population. We have further determined that Lolita, a female killer whale captured from the Southern Resident killer whale population in 1970 who resides at the Miami Seaquarium in Miami, Florida, is not excluded from the Southern Resident killer whale DPS due to her captive status.

We proposed to amend the regulatory language of the ESA listing to remove the exclusion for captive whales from the Southern Resident killer whale DPS on January 27, 2014. Additionally, we solicited scientific and commercial information pertaining to the proposed rule and also conducted a peer review of the status review information on Lolita that informed the proposed rule. We have determined that captive members of the Southern Resident killer whale population should be included in the listed Southern Resident killer whale DPS. This rule amends the regulatory language of the listing to remove the exclusion for captive members of the DPS.

**DATES:** This final rule becomes effective on May 11, 2015.

**ADDRESSES:** Information supporting this final rule can be found on our Web site at: [http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/killer\\_whale/lolita\\_petition.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/lolita_petition.html).

Or in our office at:

- Protected Resources Division, NMFS, Northwest Region, Protected Resources Division, 7600 Sand Point Way NE., Attention Lynne Barre, Branch Chief.

**FOR FURTHER INFORMATION CONTACT:**

Lynne Barre, NMFS Northwest Region, (206) 526-4745; Marta Nammack, NMFS Office of Protected Resources, (301) 427-8469.

**SUPPLEMENTARY INFORMATION:**

**ESA Statutory Provisions and Policy Considerations**

On January 25, 2013, we received a petition submitted by the People for the Ethical Treatment of Animals Foundation on behalf of the Animal Legal Defense Fund, Orca Network,

Howard Garrett, Shelby Proie, Karen Munro, and Patricia Sykes to remove the exclusion of captive whales from the SRKW DPS ESA listing and to include the killer whale known as Lolita in the ESA listing of the Southern Resident killer whales. Lolita is a female killer whale captured from the Southern Resident population in 1970, who currently resides at the Miami Seaquarium in Miami, Florida. Copies of the petition are available upon request (see **ADDRESSES**, above).

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable within 90 days of receipt of a petition to list, reclassify, or delist a species, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). The Secretary of Commerce has delegated this duty to NMFS. If we find that the petition presents substantial information indicating that the petitioned action may be warranted, we must commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. On April 29, 2013 we made a finding (78 FR 25044) that there was sufficient information indicating that the petitioned action may be warranted and requested comments to inform a status review.

After accepting a petition and initiating a status review, within 12 months of receipt of the petition we must conclude the review with a determination that the petitioned action is not warranted, or a proposed determination that the action is warranted. Under specific facts, we may also issue a determination that the action is warranted but precluded. On January 27, 2014 we made a finding (79 FR 4313) that the petitioned action to remove the exclusion of captive killer whales from the ESA listing of the Southern Resident killer whale DPS and to include captive killer whales in the ESA listing of the Southern Resident killer whale DPS was warranted and proposed to amend the regulatory language describing the DPS by removing the current exclusion for captive whales. Within 12 months of issuing a proposed rule on a listing determination, we must publish a final regulation to implement the determination or publish a notice extending the 12-month period. This notice is a final rule to implement our