

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

■ 2. Section 302.6 is amended by adding paragraph (e) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(e) The following releases are exempt from the notification requirements of this section:

(1) Releases in amounts less than 1,000 pounds per 24 hours of nitrogen oxide to the air which are the result of combustion and combustion-related activities.

(2) Releases in amounts less than 1,000 pounds per 24 hours of nitrogen dioxide to the air which are the result of combustion and combustion-related activities.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

■ 4. Section 355.40 is amended by adding paragraph (a)(2)(vii) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(1) * * *

(2) * * *

(vii) Any release in amounts less than 1,000 pounds per 24 hours of:

(A) Nitrogen oxide (NO) to the air that is the result of combustion and combustion-related activities.

(B) Nitrogen dioxide (NO₂) to the air that is the result of combustion and combustion-related activities.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1310

RIN 0970-AC26

Head Start Program

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

ACTION: Final rule.

SUMMARY: This rule finalizes the provisions of the proposed rule published on May 30, 2006 and responds to public comments received as a result of the proposed rule. This final rule authorizes approval of annual waivers, under certain circumstances, from two provisions in the current Head Start transportation regulation (45 CFR part 1310): the requirement that each child be seated in a child restraint system while the vehicle is in motion, and the requirement that each bus have at least one bus monitor on board at all times. Waivers would be granted when the Head Start or Early Head Start grantee demonstrates that compliance with the requirement(s) for which the waiver is being sought will result in a significant disruption to the Head Start program or the Early Head Start program and that waiving the requirement(s) is in the best interest of the children involved. The rule also revises the definition of child restraint system in the regulation to remove the reference to weight which now conflicts with Federal Motor Vehicle Safety Standards.

The regulation also reflects new effective dates for Sec. 1310.12(a) and 1310.22(a) on the required use of school buses or allowable alternate vehicles and the required availability of such vehicles adapted for use of children with disabilities, as the result of enactment of Section 224 of Public Law 109-149 and Section 7012 of Public Law 109-234.

DATES: These rules are effective November 3, 2006, except sections 1310.12(a) and 1310.22(a) will become effective on December 30, 2006.

FOR FURTHER INFORMATION CONTACT: Office of Head Start, (202) 205-8572. 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: On December 30, 2005, the President signed Public Law 109-149 that included in Section 223 a provision that authorizes the Secretary of Health and Human Services to waive the requirements of regulations promulgated under the Head Start Act (42 U.S.C. 9831 *et seq.*) pertaining to child restraint systems or vehicle monitors if the Head Start or Early Head Start agency can demonstrate that compliance with such requirements will result in a significant disruption to the program and that waiving the requirement is in the best interest of the children involved. This waiver authority extends until September 30, 2006, or the date of the

enactment of a statute that authorizes appropriations for fiscal year 2006 to carry out the Head Start Act, whichever date is earlier. These rules extend that limited waiver authority indefinitely.

The rules also provide a definition of child restraint system in the Head Start regulations and codify in Head Start regulations the requirement for use of child restraint systems to reflect current National Highway Traffic Safety Administration (NHTSA) regulations with flexibility to address any future changes in the weight range covered by the NHTSA regulation. NHTSA is the agency responsible for issuing Federal Motor Vehicle Safety Standards.

Finally, this rule removes provisions added to section 1310.11(b) and 1310.15(c) that are no longer necessary.

Summary Description of Regulatory Provisions and Response to Comments

Section 1310.2—Waiver Authority and Effective Dates

The regulation provides that effective November 1, 2006, “good cause” for a waiver would exist when adherence to a requirement of the Head Start transportation regulation would create a safety hazard in the circumstances faced by the agency, or when compliance with requirements related to child restraint systems (Secs. 1310.11 and 1310.15(a)) or the use of bus monitors (Sec. 1310.15(c)) would result in a significant disruption to the program and the grantee can demonstrate that waiving such requirements would be in the best interest of the children involved. We are using the November 1, 2006 effective date in recognition that the rule will not be effective until 30 days from the date of publication. In concert with this change, we also have added language under this section to ensure there is no gap in waivers between October 1, 2006 and November 1, 2006. That language provides that the responsible HHS official has authority to grant waivers related to child restraint systems or bus monitors that are retroactive to October 1, 2006, during the period from November 1, 2006 to October 30, 2007.

The regulation also provides that the effective date of Sec. 1310.12(a) and 1310.22(a) is December 30, 2006, reflecting enactment of section 224 of Public Law 109-149, which provides Sec. 1310.12(a) of title 45 of the Code of Federal Regulations (October 1, 2004) shall not be effective until June 30, 2006, or 60 days after the date of the enactment of a statute that authorizes appropriations for fiscal year 2006 to carry out the Head Start Act, whichever date is earlier and subsequent enactment of Section 7021 of Public

Law 109–234 extending this date to December 30, 2006. In the event that legislation authorizing appropriations for fiscal year 2006 to carry out the Head Start Act is enacted before November 1, 2006, a notice informing the public of the new effective date of Sections 1310.2(b)(1), 1310.12(a) and 1310.22(a) will be issued.

Comment

The majority of comments received support the proposed change to the waiver authority in the regulation. Concern over the potential loss of partnerships with school districts and loss of transportation services for Head Start children were cited. Over half expressed support for both bus monitor and child restraint system exceptions. Some letters also described circumstances related to one or the other of the two requirements. Two commenters suggested waivers be approved for a period exceeding one year. In addition, two Head Start agencies perceived the notice of proposed rulemaking as an opportunity to submit waiver requests.

Three respondents indicated opposition to this change and instead suggested eliminating the requirements altogether so waivers would not be needed. One commenter opposed the change based on concern that Head Start will lose ground in providing safe transportation services for young children. A child restraint manufacturer described the availability of child restraint systems designed specifically for use in school buses and allowable alternate vehicles that have come on the market in recent years. One commenter expressed opposition based on concerns for safety, and another said that enough time had passed since the regulation was published that all Head Start programs should now achieve full compliance.

Response

The Administration for Children and Families (ACF) agrees with the need to provide a mechanism to address the circumstances faced by individual agencies related to these issues. We maintain the view that the opportunity for annual authority is necessary in order to keep pace with changes in the industry and communities. Agencies should continuously seek opportunities to come into full compliance with support from the Head Start Technical Assistance system. In response to the concern that more agencies will request waivers, agencies will be required to justify their requests and to describe

efforts toward achieving the goal of full compliance. ACF will publish guidance related to the circumstances under which requests will be approved. Except in extreme circumstances, those agencies who have previously achieved compliance will not receive waivers.

Definition and Requirements for Use of Child Restraint Systems

This rule also updates and modifies the definition and requirements for use of child restraint systems. Under Sec. 1310.3, child restraint systems were defined as any device designed to restrain, seat, or position children who weigh 50 pounds or less which meets the requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213. NHTSA raised the weight threshold required for approved restraint systems and is considering raising it yet again. In addition, discussions with NHTSA indicate it would be advisable to include a formal reference to the exclusion of Type I lap belts for small children. Therefore, we have updated the definition by removing the weight requirement in order to stay current with FMVSS 49 CFR 571.213, and to exclude Type I lap belts as defined at 49 CFR 571.209.

Comment

One commenter expressed appreciation for the Agency's proposal to update the definition of child restraint system, but notes the improved definition will have no meaningful effect if the restraint requirements are waived. One Head Start grantee expressed dismay that funding is not available to purchase more child restraint systems for those children who will require these systems under the revised definition.

Response

We believe the improved definition will impact Head Start transportation services and therefore children positively. Agencies that may request and receive waiver approvals are the exception. With regard to funding, we wish to note that since publication of the NPRM a considerable amount of money has been made available to grantees to achieve compliance with the child restraint system and bus monitor requirements.

Section 1310.15—Operation of Vehicles

Section 1310.15(a) of the regulation provided that each agency providing transportation services must ensure that, "On a vehicle equipped for use of such

devices, any child weighing 50 pounds or less is seated in a child restraint system appropriate to the height and weight of the child while the vehicle is in motion." As discussed earlier, the definition of the child restraint system is being updated to reflect FMVSS standards. We have removed the poundage reference to include those few Head Start and Early Head Start children who are over 50 pounds in the requirement for the use of child restraint systems to coincide with the change in the definition.

We also revised the language to clarify that the regulation applies only to Head Start and Early Head Start enrolled children. In coordinated transportation arrangements, questions have been raised regarding the applicability of this requirement to other children on the bus. Under the regulation, the language requires that any child enrolled in a Head Start or Early Head Start program is seated in a child restraint system appropriate to the child's height and weight while the vehicle is in motion.

Comments related to the definition of child restraint systems are included above. No comments were received related to applicability of this requirement to other children on the bus.

Paperwork Reduction Act

This rulemaking contains information collection requirements in Sec. 1310.2. This summary includes the estimated costs and assumptions for the paperwork requirements related to this rule. These paperwork requirements have been approved by the Office of Management and Budget under number 0970–0260 as required by 44 U.S.C. 3507(a)(1)(c) of the Paperwork Reduction Act of 1995, as amended. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The Office of Head Start estimates that the rule would create 275 burden hours annually. Table 1 summarizes burden hours by grantee. We estimate 1 hour of paperwork burden for each Head Start grantee requesting a transportation waiver. The waiver request would include basic information to identify the grantee, the nature of the transportation services provided and the children affected and a justification for the waiver. We estimate receiving no more than 275 requests resulting in a total burden of 275 hours.

TABLE 1.—TOTAL BURDEN HOURS OF RULE

[Summary of All Burden Hours, by Provision, for Grantees]

Provision	Annualized burden hours
1310.2	275
Total	275

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The regulation provides flexibility and clarity in meeting the Head Start transportation requirements while ensuring child safety.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be revised to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act 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. The Department has determined that this rule would 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.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as “regulations, legislative comments or proposed

legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distribution of powers and responsibilities among the various levels of government.” This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subjects in 45 CFR Part 1310

Head Start, Reporting and recordkeeping requirements, Transportation.

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

Wade F. Horn,

Assistant Secretary for Children and Families.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ For the reasons discussed, title 45 CFR chapter XIII is amended as follows:

PART 1310—HEAD START TRANSPORTATION

■ 1. The authority citation for part 1310 continues to read as follows:

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

■ 2. Revise paragraphs (b) and (c) of § 1310.2 to read as follows:

§ 1310.2 Applicability.

* * * * *

(b)(1) Sections 1310.12(a) and 1310.22(a) of this part are effective December 20, 2006.

(2) This paragraph and paragraph (c) of this section, the definition of child restraint systems in Sec. 1310.3 of this part, and Sec. 1310.15(a) are effective November 1, 2006. Sections 1310.11 and 1310.15(c) of this part are effective June 21, 2004. Section 1310.12(b) of this part is effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective November 1, 2006, an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. “Good cause” for a waiver will exist when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the agency, or when compliance with requirements related to child restraint systems (Secs. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) will result in a significant disruption to the program and the agency demonstrates that

waiving such requirements is in the best interest of the children involved. In addition, the responsible HHS official shall have the authority to grant waivers of the requirements related to child restraint systems (Sec. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) that are retroactive to October 1, 2006 during the period from November 1, 2006 to October 30, 2007. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

■ 2. Revise the definition of Child Restraint System in § 1310.3 to read as follows:

§ 1310.3 Definitions.

* * * * *

Child Restraint System means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

* * * * *

§ 1310.11 [Amended]

■ 3. In § 1310.11, remove and reserve paragraph (b).

§ 1310.12 [Amended]

■ 4. In § 1310.12, amend paragraph (a) by removing “January 18, 2006” and adding “December 30, 2006” in its place.

■ 5. Revise § 1310.15(a) and (c) to read as follows:

§ 1310.15 Operation of vehicles.

* * * * *

(a) Effective October 1, 2006, on a vehicle equipped for use of such devices, any child enrolled in a Head Start or Early Head Start program is seated in a child restraint system appropriate to the child's height and weight while the vehicle is in motion.

(b) * * *

(c) Effective June 21, 2004, there is at least one bus monitor on board at all

times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

* * * * *

§ 1310.22 [Amended]

■ 6. In § 1310.22, amend paragraph (a) by removing "January 18, 2006" and adding "December 30, 2006" in its place.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 205 and 225

RIN 0750-AF33

Defense Federal Acquisition Regulation Supplement; Berry Amendment Notification Requirement (DFARS Case 2006-D006)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006. Section 833(a) requires the posting of a notice on the FedBizOps Internet site, when certain exceptions to domestic source requirements apply to an acquisition.

DATES: *Effective Date:* October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D006, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2006-D006 in the subject line of the message.
- *Fax:* (703) 602-0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy

Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS policy to implement Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 833(a) amended 10 U.S.C. 2533a to add a requirement for the posting of a notice on the FedBizOps Internet site, within 7 days after award of a contract exceeding the simplified acquisition threshold, for the acquisition of (1) certain clothing, fiber, yarn, or fabric items, when DoD has determined that adequate domestic items are not available; or (2) chemical warfare protective clothing, when an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to a notification requirement that is performed by the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 833(a) requires DoD to post a notice on the FedBizOps Internet site, within 7 days after award of a contract exceeding the simplified acquisition threshold, when DoD has applied one of certain exceptions to domestic source requirements with respect to the contract. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 205 and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 205 and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 205 and 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 2. Section 205.301 is added to read as follows:

205.301 General.

(a)(S-70) *Synopsis of exceptions to domestic source requirements.*

(i) In accordance with 10 U.S.C. 2533a(k), contracting officers also must synopsis through the GPE, awards exceeding the simplified acquisition threshold that are for the acquisition of any clothing, fiber, yarn, or fabric items described in 225.7002-1(a)(2) through (10), if—

(A) The Secretary concerned has determined that domestic items are not available, in accordance with 225.7002-2(b); or

(B) The acquisition is for chemical warfare protective clothing, and the contracting officer has determined that an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country, in accordance with 225.7002-2(p).

(ii) The synopsis must be submitted in sufficient time to permit its publication