

(3) If the Secretary has determined under paragraph (b)(1)(ii)(B) of this section that participation in clinical research is no longer warranted as a requirement for transplantation of organs from donors with HIV, the OPTN shall adopt and use standards of quality with respect to organs from donors with HIV as directed by the Secretary, consistent with 42 U.S.C. 274, and in a way that ensures the changes will not reduce the safety of organ transplantation.

* * * * *

Dated: November 19, 2024.

Xavier Becerra,
Secretary.

[FR Doc. 2024-27410 Filed 11-26-24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 412

RIN 0970-AD10

Investigations of Child Abuse and Neglect Rule

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Interim final rule with comment period (IFR).

SUMMARY: This IFR describes how ORR shall investigate and substantiate allegations of child abuse and neglect occurring in certain ORR care provider facilities, and maintain a registry of perpetrators relating to certain sustained allegations.

DATES: This IFR is effective December 27, 2024. Comments on this IFR must be received on or before January 27, 2025.

ADDRESSES: You may send comments, identified by [docket number and/or Regulatory Information Number (RIN)], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* UCPolicy-RegulatoryAffairs@acf.hhs.gov. Include [docket number and/or RIN] in the subject line of the message.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading

of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

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I. Public Participation

ORR encourages all interested parties to participate in this rulemaking by submitting written comments, views, and data on any or all aspects of this interim final rule. ORR also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. ORR will review all comments received, but ORR will only post comments that address the topic of the interim final rule. All comments ORR posts to <https://www.regulations.gov> will include any personal or commercial information you provide.

A. Submitting Comments

Comments that will provide the most assistance to ORR will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. If you submit comments, please indicate the specific section of this document to which each comment applies and provide a reason for each suggestion or recommendation. You may submit your comments and materials online or by

email, but please use only one of these means. If you submit a comment online via <https://www.regulations.gov>, it will be considered received when it is received at the Docket Management Facility.

Instructions: To submit your comments online, go to <https://www.regulations.gov> and insert “XXXX-XXXX-XXXX” in the “Search” box. Click on the “Comment Now!” box and input your comment in the text box provided. Click the “Continue” box, and if you are satisfied with your comment, follow the prompts to submit it.

For additional information, please read the “Privacy and Security Notice” that is available via the link in the footer of <https://www.regulations.gov>.

ORR will consider all comments and materials received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

Docket: To view posted comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert “XXXX-XXXX-XXXX” in the “Search” box. Click on the “Open Docket Folder,” and you can click on “View Comment” or “View All” under the “Comments” section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ORR through the **FOR FURTHER INFORMATION CONTACT** section above. You may sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

C. Privacy Act

As stated in the Submitting Comments section above, please be aware that anyone can search the electronic form of comments received into any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

II. Table of Abbreviations

ACF—Administration for Children and Families
 ALJ—Administrative Law Judge
 CAPTA—Child Abuse Prevention and Treatment Act
 CWT—ORR’s Child Welfare Team
 DAB—HHS Departmental Appeals Board
 DOJ—U.S. Department of Justice
 EIF—Emergency or Influx Facility
 FBI—Federal Bureau of Investigation
 FSA—Flores Settlement Agreement
 HHS—U.S. Department of Health and Human Services

HSA—Homeland Security Act of 2002
 OIG—Office of the Inspector General
 OMB—Office of Management and Budget
 ORR—Office of Refugee Resettlement, U.S. Department of Health and Human Services
 PCAN Team—ORR’s Prevention of Child Abuse and Neglect Team
 PSA IFR—Standards To Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, Interim Final Rule
 TVPRA—William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
 UC Bureau—Unaccompanied Children Bureau
 VCAA—Victims of Child Abuse Act

III. Executive Summary

This interim final rule provides standards and processes for the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), to apply when it conducts investigations into allegations of child abuse and neglect that occur in certain care provider facilities funded by ORR to provide residential and other services for unaccompanied children;¹ describes a process for appeal and review of substantiated allegations; and establishes an ORR Central Registry to list individuals with certain findings of child abuse and neglect that have been substantiated and sustained after exhausting the appeal and review process. This rule describes how and in what circumstances ORR may conduct investigations, and impose certain consequences with respect to sustained allegations of child abuse and neglect by care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, and other individuals with access to unaccompanied children in ORR care through contracts or grants with ORR. Specifically, the investigations and required consequences described in this rule shall apply in two circumstances: (1) where the State or local authority that would otherwise be responsible for such investigations will not investigate allegations arising at ORR care provider facilities that care for or propose to care for unaccompanied children; and (2) at ORR emergency or influx facilities (EIFs).

Child abuse and neglect can have devastating lifelong mental and physical

¹ An unaccompanied child is defined as a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. See 6 U.S.C. 279(g)(2).

effects on an individual. ORR is committed to preventing and mitigating child abuse and neglect in its care provider facilities and seeks to ensure the safety, well-being, and security of all unaccompanied children in its care.

IV. Background and Purpose

A. Background and History

On March 1, 2003, section 462 of the Homeland Security Act of 2002 (HSA) transferred responsibilities for the care and placement of unaccompanied children from the Commissioner of the former Immigration and Naturalization Service to the Director of ORR. Since that time, ORR has provided for the day-to-day care of over 700,000 unaccompanied children in ORR care provider facilities that are currently administered through a nationwide network of providers (funded via cooperative agreements or contracts, or sub-awards thereof).²

As further detailed below in section IV.B., ORR oversees its care provider facilities through its Unaccompanied Children Bureau³ pursuant to its responsibilities under the HSA,⁴ the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),⁵ the Unaccompanied Children (UC) Program Foundational Rule,⁶ the *Flores* Settlement Agreement (FSA) as relevant,^{7,8} and ORR’s regulatory Standards To Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children interim final rule (PSA IFR).⁹

Consistent with the HSA and TVPRA, ORR is responsible for the care, custody, and placement of unaccompanied children who are in Federal custody by reason of their immigration status.¹⁰ Any department or agency of the Federal government that has an

² Unaccompanied Children Bureau Fact Sheet. (July 5, 2024). Retrieved from: <https://www.acf.hhs.gov/orr/fact-sheet/programs/uc/fact-sheet>.

³ See Statement of Organization, Functions, and Delegations of Authority, 89 FR 49889 (Jun. 12, 2014) (redesignating the former “Unaccompanied Children Program” as the “Unaccompanied Children Bureau”).

⁴ 6 U.S.C. 279.

⁵ 8 U.S.C. 1232.

⁶ 45 CFR part 410.

⁷ Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85–4544–RJK(Px) (C.D. Cal. Jul. 17, 1997).

⁸ As of the publication of this rule, the *Flores* Settlement Agreement (FSA) has been partially and conditionally terminated as to ORR, as a result of the publication of the UC Program Foundational Rule. See Order Re Defendants’ Motion to Terminate the *Flores* Settlement Agreement as to Defendant HHS, *Flores v. Garland*, No. 2:85–cv–04544 (C.D. Cal. Jun. 28, 2024), ECF No. 1447.

⁹ 45 CFR part 411.

¹⁰ See 6 U.S.C. 279(b)(1)(A); 8 U.S.C. 1232(b)(1).

unaccompanied child from a non-contiguous country in its custody is required to transfer custody of such child to HHS.¹¹ Typically, ORR places unaccompanied children in care provider facilities it funds to provide these children with residential and other services, until the children can be safely released to qualified and vetted sponsors (individuals or entities to whom ORR releases unaccompanied children out of ORR custody, in accordance with ORR’s sponsor suitability assessment process and release procedures),¹² are repatriated to their home country, obtain legal status, or otherwise no longer meet the statutory definition of an unaccompanied child (e.g., turn 18 years old). In accordance with the UC Program Foundational Rule (and consistent with the FSA), ORR makes reasonable efforts to place unaccompanied children in State-licensed facilities in those geographical areas where the majority of children are apprehended¹³—except in cases of emergency or influx, when ORR may utilize EIFs.¹⁴ EIFs are Federally contracted facilities that ORR may need to stand up quickly to accommodate placements for children that exceed its standard capacity. Consistent with ORR’s UC Program Foundational Rule (and the FSA), EIFs are not required to be State-licensed.¹⁵

As of the publication date of this rulemaking, ORR has built a network of nearly 300 care provider facilities in 27 States, funded through cooperative agreements and grants between ORR and the care provider facilities. As discussed below, a significant number of ORR care provider facilities are in Texas, which has decided to no longer conduct investigations of reported abuse and neglect arising at ORR-funded care provider facilities housing unaccompanied children.

In addition, as of the publication date of this rulemaking, ORR oversees three influx care facilities, funded through contracts, that currently have no children in care but are ready to commence or resume operations within certain timeframes if needed.¹⁶ ORR does not currently have formal written agreements with the relevant State or local authorities to investigate reports of

¹¹ See 8 U.S.C. 1232(b)(3).

¹² See 45 CFR 410.1001.

¹³ 45 CFR 410.1103(e); see also FSA par. 6.

¹⁴ See 45 CFR part 410, subpart I; see also FSA Exhibit 3.

¹⁵ See 45 CFR 410.1001.

¹⁶ ORR Influx Care Facilities for Unaccompanied Children Fact Sheet. (July 29, 2024). Retrieved from: <https://www.acf.hhs.gov/orr/fact-sheet/programs/uc/influx-care-facilities-fact-sheet>.

child abuse and neglect at these facilities. If such agreements are executed, ORR may in its discretion elect not to exercise its investigative authority and instead rely on the relevant State or local authorities (consistent with its approach to sexual abuse as described at 45 CFR part 411).¹⁷ Nevertheless, even in these circumstances, ORR retains statutory authority to conduct investigations at EIFs, and in these situations could do so consistent with this rule. If ORR were to conduct its own investigation concurrently with a State or local authority's investigation, ORR would cooperate with such authority and ORR's investigation would not conflict with such investigation. Further, ORR would conduct its investigation in such a manner as to minimize potential trauma to the alleged victim (e.g., by not interviewing a child where the State or local authority has already interviewed the child for the same information).

To ensure that reports of child abuse and neglect at Texas care provider facilities and EIFs (as relevant) do not go uninvestigated, and pursuant to ORR's statutory responsibilities, on June 12, 2024, ORR established a Division of Unaccompanied Child Protection Investigations (DCPI) to, among other things, receive reports of alleged abuse or neglect involving unaccompanied children in ORR custody and investigate those claims where it has jurisdiction.¹⁸ DCPI began conducting investigations of alleged child abuse and neglect in ORR-funded care provider facilities in Texas as of July 2024. This interim final rule describes the procedures DCPI uses when it performs child welfare investigations of alleged child abuse and neglect at ORR care provider facilities; and establishes employment consequences for care provider facility staff and volunteers based on ORR investigation dispositions, including relevant due process protections for alleged perpetrators of abuse and neglect.

B. Authority

ORR's statutory authority enables it to perform investigations of alleged child abuse and neglect occurring at its care provider facilities, and to establish disciplinary consequences, including employment consequences, for individuals it determines to have perpetrated abuse or neglect. The HSA transferred to the Director of ORR functions under the immigration laws of the United States with respect to the care of unaccompanied children that

were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service. Pursuant to such transfer, the ORR Director is "responsible for," among other things, "ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an [unaccompanied child],"¹⁹ "implementing policies with respect to the care and placement of [unaccompanied children],"²⁰ and "identifying a sufficient number of qualified individuals, entities, and facilities to house [unaccompanied children]."²¹ In addition, the HSA makes the ORR Director responsible for "overseeing the infrastructure and personnel of facilities in which [unaccompanied children] reside,"²² and "conducting investigations and inspections of facilities and other entities in which [unaccompanied children] reside, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements."²³

Necessarily, a fundamental aspect of ensuring that there are qualified individuals, entities, and care provider facilities to care for and house unaccompanied children is ensuring that care provider facility staff, contractors, or sub-grantees of the care provider facility, along with care provider facility volunteers and other individuals who have access to children in ORR care through contracts or grants with ORR, do not engage in abuse or neglect of children in ORR care; that such individuals who are alleged to have engaged in such abuse or neglect are reported and identified; that allegations of child abuse or neglect against such individuals are properly and thoroughly investigated; and that if the allegations are found to be substantiated and are sustained pursuant to an appeal and review process, actions are taken to ensure that such individuals are prohibited from working or volunteering in any way on ORR-funded grants or contracts and do not have contact with children in ORR custody. Thus, the rule described here is a crucial aspect of implementing ORR's statutory mandates under the HSA, which expressly delegates authority to the ORR Director to administer the UC Bureau.

Pursuant to these authorities, this rule describes the circumstances in which

ORR will investigate allegations of child abuse and neglect; the procedures for such investigations; and steps ORR may take in response to findings that individuals who work or volunteer at ORR-funded care provider facilities have perpetrated abuse or neglect against children in its custody, including due process requirements that would apply to such steps.

In addition to the HSA, ORR's Interim Final Rule regarding the Prevention of Sexual Abuse²⁴ (PSA IFR), which ORR promulgated in 2014 pursuant to the Violence Against Women Reauthorization Act of 2013 (VAWA),²⁵ describes requirements concerning sexual abuse of unaccompanied children in ORR custody. Though the PSA IFR specifically applies to the prevention of *sexual* abuse of unaccompanied children, it describes requirements that inform this IFR regarding the prevention of abuse and neglect, including requirements for staff background checks; suspension of staff, contractors, and volunteers suspected of perpetrating sexual abuse or sexual harassment from all duties that would involve or allow access to unaccompanied children pending the outcome of an investigation; and requirements for restricting the employment of care provider facility staff against whom allegations of child abuse or neglect have been substantiated.²⁶

The standards in the PSA IFR also require care provider facilities to refer allegations of sexual abuse and sexual harassment to proper investigating authorities (i.e., State and local law enforcement, child protective services, and licensing authorities), and to remain informed of ongoing investigations and fully cooperate with outside investigators as necessary.²⁷ ORR notes that nothing in this rule is intended to replace or prohibit investigations of sexual abuse and sexual harassment under other civil rights laws. The PSA IFR also states that ORR will refer allegations to the Department of Justice

²⁴ *Standards To Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children*, 79 FR 77768 (Dec. 24, 2014) (codified at 45 CFR part 411).

²⁵ See Public Law 113-4, 1101(d), 127 Stat. 134, 135 (2013) (codified at 34 U.S.C. 30307(d)) (directing the Secretary of HHS to "publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of unaccompanied alien children (as defined in section 279(g) of Title 6)").

²⁶ See generally *Standards to Prevent, Detect, and Respond to Sexual Assault and Sexual Harassment Involving Unaccompanied Children*, codified at 45 CFR part 411 (PSA IFR); see also the ORR Policy Guide at Section 4.3.

²⁷ See 45 CFR 411.22(a); 411.71(c), (d).

¹⁹ 6 U.S.C. 279(b)(1)(B).

²⁰ 6 U.S.C. 279(b)(1)(E).

²¹ 6 U.S.C. 279(b)(1)(F).

²² 6 U.S.C. 279(b)(1)(G).

²³ 6 U.S.C. 279(b)(1)(L).

¹⁷ See *infra* Section IV.B.

¹⁸ See 89 FR 49889, 49892.

or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding.²⁸

At the time the PSA IFR was published, ORR assumed that all States or localities would maintain their historic practices of investigating alleged child abuse and neglect in ORR State-licensed care provider facilities. Accordingly, the PSA IFR only contemplates scenarios where a State or local authority is the investigating authority for allegations of sexual abuse and harassment occurring at ORR care provider facilities. This rule describes a new system of ORR investigations and actions to be taken based on investigation findings, which ORR would apply, as needed, at care provider facilities as described at § 412.100(c).

Finally, the Victims of Child Abuse Act (VCAA) and its implementing regulations²⁹ impose reporting requirements on ORR-contracted facilities (e.g., EIFs). Under the VCAA, child abuse (as defined in the Act) occurring at Federally-operated or contracted facilities must be reported to local law enforcement or child protective services agencies with jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question, “provided that such agencies, if non-federal, enter into formal written agreements to do so. . . .”³⁰ If there is no such formal written agreement, the Federal Bureau of Investigation (FBI) is the agency designated to receive such reports.³¹ However, ORR is advised that the FBI’s jurisdiction is limited to Federal crimes (*i.e.*, the FBI cannot investigate conduct that does not rise to the level of a Federal crime)—and many child abuse and neglect allegations that nonetheless warrant investigation do not constitute Federal crimes. Upon receipt of such reports of child abuse, agencies designated under the VCAA—which can include other federal agencies or non-federal agencies that are designated pursuant to a formal written agreement—may conduct investigations of the alleged abuse and neglect. This IFR does not conflict with any agency duties under the VCAA. If ORR executes formal written agreements with relevant local authorities to investigate child abuse and neglect at EIFs, it reserves discretion under its statutory authorities to conduct its own investigations as

well. In such cases, ORR intends under this rule that any ORR investigation will not conflict with investigations performed by other authorities in connection with the VCAA.

C. Basis and Scope of Regulatory Action

1. Discontinuation of Investigations of Child Abuse and Neglect at Care Provider Facilities That Care for Unaccompanied Children.

For years, ORR has relied on States or localities both to license its care provider facilities and to investigate any allegations of child abuse and neglect.³² Since 2021, however, three States—Texas, Florida, and South Carolina—have ceased licensing childcare facilities that serve or propose to serve unaccompanied children under grant or contract with ORR. As of publication of this rule, Florida and South Carolina continue to provide for State-based investigations of alleged child abuse and neglect in ORR-funded care provider facilities.³³ In contrast, in connection with the State’s decision to end licensing of care provider facilities housing unaccompanied children, the Texas State agency that would otherwise be responsible for such investigations no longer conducts them at ORR care provider facilities (except foster care providers).

Pursuant to a proclamation by Texas’s Governor Abbott,³⁴ on July 13, 2021, the Texas Health and Human Services Commission (HHSC) issued an emergency rule temporarily exempting Texas’s childcare facilities that shelter unaccompanied children in Federal custody from Texas’s licensing requirement.³⁵ The exemption went through a series of renewals until, on July 22, 2022, Texas amended the

³² See, e.g., 79 FR 77768, 77776 (“ . . . ORR does not conduct investigations regarding the substance of an allegation. Instead, as stated in the previous paragraphs, ORR requires that all care provider facilities refer all allegations, regardless of how an allegation is made or who it comes from, to the proper investigating authorities.”).

³³ ORR notes that Florida continues to investigate child abuse and neglect in care provider facilities housing unaccompanied children, and ORR only operates foster family home care settings in South Carolina. Foster care licensing has not been impacted by South Carolina’s action to not license residential care.

³⁴ Proclamation by the Governor of the State of Texas. (May 31, 2021). Available at: https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf.

³⁵ 46 Tex. Reg. 4407. (July 23, 2021). (Adopting on an emergency basis in Texas Administrative Code title 26 part 1, chapter 745, Licensing, new § 745.10301 and amended § 745.115). The emergency rule—and the exemption it provides—were only effective for 120 days and could only be renewed for an additional 60 days. Available at: https://texashistory.unt.edu/ark:/67531/metaph1362781/m2/1/high_res_d/0723is.pdf.

emergency rule to make the licensure exemption ongoing.³⁶

ORR understands that, pursuant to this change in Texas law, neither Texas HHSC nor the Texas Department of Family and Protective Services (DFPS) currently conducts child abuse and neglect investigations in facilities that house unaccompanied children due to their lack of jurisdiction over license-exempt childcare facilities. Because DFPS is not investigating, substantiating, or sustaining these allegations pursuant to administrative reviews as appropriate, DFPS does not list potential sustained perpetrators in the Texas child abuse and neglect registry,³⁷ and thus such perpetrators will not be identified as having committed abuse or neglect in a background check by an ORR-funded or other provider. State and local law enforcement continue to investigate reported child abuse and neglect that rises to the level of a crime, but in many instances, actions involving abuse or neglect constitute civil violations, but not criminal violations. Depending on circumstances, this may include physical abuse, verbal/emotional abuse, and sexual harassment.

As discussed above, ORR has historically relied on State and local authorities to investigate allegations of child abuse and neglect arising at its care provider facilities. However, a significant gap in investigative capacity has resulted from Texas’s decision to cease DFPS investigations at ORR care provider facilities. ORR was unable to immediately fill this gap by conducting its own investigations because such investigations necessitate the use of skilled and trained investigators, and historically ORR had not played this role.

However, ORR took immediate and ongoing steps after determining that Texas planned to cease its investigations into alleged child abuse and neglect at ORR-funded care provider facilities housing unaccompanied children. Soon after it became clear that Texas DFPS was not going to resume its long-standing child welfare and investigative functions when it extended its emergency declaration in 2022, ORR began examining the operational feasibility, capacity, and expertise that would be required to permanently absorb the investigative responsibilities once performed by Texas DFPS. Such an endeavor represented an unexpected

³⁶ Texas HHS Agenda Item. (May 19, 2022). Available at: <https://www.hhs.texas.gov/sites/default/files/documents/may-2022-ec-agenda-item-2bvi.docx>.

³⁷ Tex. Fam. Code § 261.002.

²⁸ See 45 CFR 411.22(d).

²⁹ See 34 U.S.C. 20341; see also 28 CFR part 81.

³⁰ 28 CFR 81.2

³¹ 28 CFR 81.3.

and significant expansion of ORR's operations, as ORR had successfully relied on relevant state child welfare entities to fulfill that role for years up to this point. ORR's work over the past two years has included, but not been strictly limited to: communicating with Texas state officials to confirm their position regarding investigations into alleged child abuse and neglect at ORR care providers and attempt to reach a resolution with the state directly; consulting with other federal agencies to evaluate available options to address the lack of investigations and seek feedback on ORR's proposed approach; researching and planning how ORR would develop the necessary expertise and capacity to conduct investigations; developing policies and procedures to inform how investigations are conducted; obtaining administrative approval for new agency positions; creating of new comprehensive technical systems for recording and tracking investigations; and, eventually, the hiring, onboarding, and training of qualified investigative staff.

In addition, while engaged in these efforts, ORR directed its care provider facilities in Texas to continue reporting abuse and neglect allegations to State child welfare agencies, State licensing agencies, State and local law enforcement, and where appropriate, the HHS Office of the Inspector General and the FBI. ORR also established a framework, utilizing its child welfare team or CWT (later becoming known as the ORR Prevention of Child Abuse and Neglect or PCAN Team) for conducting in-depth reviews of care provider facility responses to each individual allegation of abuse and neglect. In these reviews, ORR staff receive and review documentation concerning the allegation, assess whether proper interventions and reporting requirements under ORR policies and procedures were followed, and make recommendations for appropriate follow-up actions regarding the alleged victim's medical and mental health needs.

While ORR's in-depth reviews have played an important role in filling some of the investigations-related gaps like ensuring compliance with reporting requirements and following up on appropriate interventions for staff and children, there remained a need for a separate entity other than the care provider facilities themselves—that would ensure independent oversight and response—to investigate allegations of abuse and neglect that do not constitute criminal violations. Accordingly, pursuant to its statutory responsibilities to oversee the personnel

and infrastructure of care provider facilities and to conduct investigations (see discussion under section IV.B. Authority), ORR established the Division of Unaccompanied Child Protection Investigations (DCPI) in June 2024.³⁸ DCPI began conducting investigations of alleged child abuse and neglect at care provider facilities in Texas in July 2024.

However, investigations without more do not fully fill the gap left by Texas DFPS's decision not to investigate allegations of child abuse and neglect, including by substantiating and sustaining such allegations so that perpetrators may be identified and precluded from working with unaccompanied children in ORR's care. The statutory provisions authorizing ORR to establish its investigative division do not specify the particular procedures ORR should follow in conducting investigations and taking action to protect children from individuals with pending or sustained allegations of sexual abuse or neglect. Thus, ORR has determined that in order to fully address the protection of children in its custody, consistent with its statutory responsibility, it is important to establish a mechanism to ensure that individuals with sustained Tier I allegations (as defined in this rule) investigated by DCPI are terminated from employment in ORR-funded programs, prevented from having contact with children in ORR programs, and barred from employment in any ORR-funded program in the future. To accomplish this goal with appropriate due process protections, ORR has adopted this rule.

2. Need for ORR To Investigate Child Abuse and Neglect at Emergency or Influx Facilities

In addition, this rulemaking provides needed clarity with respect to investigations of child abuse and neglect at EIFs. Responsibility for investigating allegations of child abuse and neglect at EIFs is unique to each EIF based on a number of factors, including the willingness of States or local authorities to investigate child abuse and neglect at care provider facilities housing unaccompanied children or enter into a formal written agreement with ORR to do so; the unique size, capacity, and scope of EIFs; and the urgent timelines under which EIFs may be activated. Because EIFs are activated in times of influx, which arise based on unpredictable migration patterns, there

may not be sufficient time to establish formal written agreements with local authorities to conduct child abuse and neglect investigations when ORR activates such facilities. For example, referrals of unaccompanied children to ORR increased dramatically from Federal fiscal year (FFY) 2020 (15,381 children) to FFY 2021 (122,731 children), continued to increase in FFY 2022 (128,904 children), but then decreased in FFY 2023 (118,938 children).³⁹ ORR believes, as a result, that it is appropriate to include EIFs within the scope of this rule—to ensure that reports of child abuse and neglect arising at EIFs are consistently investigated and that ORR may take actions to protect unaccompanied children from those with pending or sustained allegations.⁴⁰

ORR prefers that State and local authorities exercise their long-standing authority under State and local laws and regulations to investigate allegations of child abuse and neglect and will continue to seek to establish agreements with States and local authorities to investigate child abuse and neglect at EIFs. However, as noted above, as of the date of publication, ORR does not currently have written agreements with State or local authorities to conduct child welfare investigations at EIFs, and as noted above, FBI investigations are limited to allegations that potentially rise to the level of Federal crimes. Further, with DCPI investigations of alleged child abuse and neglect underway, there is also a need to maintain an ORR central registry to document substantiated abuse and neglect findings based on its own investigations. As in States that do not provide an investigative infrastructure for ORR-funded facilities housing unaccompanied children, both investigations and the maintenance of a central registry are required at EIFs—particularly where no State or local investigative infrastructure is available (e.g., pursuant to a formal written agreement with ORR).

ORR notes that any ORR investigations into allegations of child abuse and neglect at EIFs under this rule would be separate from any other investigations that may occur by other authorities, whether pursuant to the VCAA or otherwise, and will not conflict with investigations by those other authorities.

³⁹ ORR Unaccompanied Children Facts and Data. (July 5, 2024). Retrieved from: <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

⁴⁰ See also *infra* Section VI (discussing good cause for issuing this IFR).

³⁸ See Statement of Organization, Functions, and Delegations of Authority, 89 FR 49889 (June 24, 2024).

3. Scope of Rulemaking

This IFR describes the circumstances in which ORR will investigate and substantiate child abuse and neglect allegations. It also delineates further steps ORR may take upon conducting such investigations to protect unaccompanied children, such as ensuring that certain individuals against whom allegations of child abuse and neglect have been substantiated and upheld after an appeal and review process are prevented from working or volunteering in any way on ORR-funded grants or contracts, and that alleged perpetrators with pending allegations do not have continued access to children. As discussed below at section VI, considering ORR's recent establishment of the DCPI, there is good cause to issue an IFR both to describe the nature and scope of ORR investigations, and critically, to establish required consequences for certain investigative findings, with appropriate due process protections.

This IFR:

- Describes the responsibilities of ORR to conduct investigations into allegations of child abuse and neglect of unaccompanied children at (1) care provider facilities located in States where the State agency responsible for investigating child abuse and neglect allegations will not investigate such allegations in ORR-funded care provider facilities, and at (2) EIFs;
- Defines the applicable burden of proof as a preponderance of the evidence and describes the investigation disposition types as substantiated-Tier I; substantiated-Tier II; not substantiated; unfounded; or administratively closed;
- Describes notification requirements of the findings of investigations;
- Describes an appeal and review process for individuals with substantiated allegations of child abuse and neglect at ORR care provider facilities in States that will not investigate allegations of abuse or neglect in facilities housing unaccompanied children and at emergency or influx facilities;
- Creates an ORR Central Registry, and associated processes and sanctions, for individuals with sustained Tier I allegations of child abuse and neglect at EIFs and at ORR care provider facilities in States that will not investigate allegations of abuse or neglect in facilities housing unaccompanied children; and
- Describes requirements for care provider facilities to cooperate with investigations.

D. Severability

The different parts of this interim final rule address distinct aspects of investigations of child abuse and neglect. These include: the investigation of allegations of child abuse and neglect occurring at care provider facilities that do not conduct their own investigations, and investigations at EIFs (§ 412.100); interventions and discipline, including an ORR Central Registry of perpetrators relating to certain sustained allegations (§ 412.101); the appeal and review process (§ 412.102); and obligations of care provider facilities (§ 412.103) in cooperating with investigations. To the extent any section or subsection of the rule is declared invalid by a court, ORR intends for all remaining sections and subsections to remain in effect, as they would continue to function sensibly. As an illustration, ORR expects that if a court were to invalidate § 412.100(c)(2), which makes the requirements of § 412.100 relating to investigations into allegations of child abuse and neglect applicable to EIFs, the standards, requirements, and procedures under § 412.100 would continue to be applicable to care provider facilities housing unaccompanied children in States where the State agency responsible for investigating child abuse and neglect allegations will not investigate such allegations in ORR-funded care provider facilities, as provided in § 412.100(c)(1). Likewise, ORR expects that if a court were to declare that the ORR Central Registry as defined at § 412.001 and described at § 412.101(a) is invalid, the requirements of § 412.100 relating to investigations into allegations of child abuse and neglect at certain facilities, and the obligations of care facilities delineated at § 412.103 will remain in effect.

V. Discussion of Elements of the Interim Final Rule

Section 412.001 Definitions

ORR, in § 412.001, is codifying the definitions of terms that apply to this part. Many terms used in this rule are defined in other authorities, including statutes and ORR regulations, and this rule uses these terms consistently with those definitions. For example, this rule uses the term “unaccompanied child” consistently with the definition provided in the UC Program Foundational Rule, at 45 CFR 410.1001 (which is further consistent with the definition of “unaccompanied alien child” found in the Homeland Security Act (HSA), at 6 U.S.C. 279(g)(2)). Below, ORR further explains its rationale for certain definitions applied in this rule.

The definition of “administrative closure” describes when ORR determines it will not make a finding regarding an allegation of child abuse or neglect. Administrative closure does not imply that ORR would have found an allegation of abuse or neglect to be substantiated or not substantiated. ORR may assign an intake report for administrative closure if ORR determines it is not appropriate for investigation. Reasons for administrative closure before an investigation may include, but are not limited to, lack of jurisdiction to conduct an investigation of the allegation (*e.g.*, if the alleged abuse or neglect occurred in a State where the State agency responsible for investigating child abuse and neglect continues to investigate such reports of unaccompanied children in ORR care); transfer of the report to another jurisdiction or agency; an allegation not rising to the level of child abuse or neglect; duplication of an existing report; or an allegation is otherwise outside the scope of this rule, as described at § 412.100(c). ORR may also make a disposition of administrative closure after investigation. Reasons for administrative closure after an investigation may include, but are not limited to, inability to contact the child; insufficient information to proceed with the investigation; or transfer to another jurisdiction or agency. If ORR administratively closes an intake report or investigation, it may consider further investigation related to the initial allegation if new information becomes available.

The definition of “alleged perpetrator” means a person who is alleged to have abused or neglected a child within the scope of this part as described at § 412.100(a) and (c). The term encompasses individuals who are identified in an intake report, and subject to an investigation under this part, but does not include individuals who have been subject to an investigation which resulted in a not substantiated allegation, unfounded allegation, or administrative closure. Per the definition of child abuse and neglect set out at § 412.001, alleged perpetrators can include individuals who observed, permitted, or otherwise allowed a child to be mistreated and knowingly failed to act to protect the child. Alleged perpetrators do not become sustained perpetrators until all appropriate investigative steps have been completed and they have exhausted all administrative remedies, including waiving their right to appeal, as

applicable and as specified in § 412.102(c).

The definition of “child abuse and neglect” in this IFR is based on ORR’s review of Federal laws, consultation with the Administration on Children, Youth, and Families, including the Children’s Bureau, and on its experience operating the UC Bureau. For example, ORR intends that this definition capture the types of behaviors identified at 22 U.S.C. 7102, 34 U.S.C. 20341, and 42 U.S.C. 5106g, Note § 3, to the extent they describe behaviors and situations that are relevant to unaccompanied children for purposes of this rule. At the same time, the definition of “child abuse and neglect” and related definitions (*e.g.*, medical neglect, verbal or emotional abuse) in this rule provide additional granularity relevant to the UC Bureau. The definitions of sexual abuse and sexual harassment used in this rule are the same as the PSA IFR at 45 CFR 411.6. ORR developed other related definitions to appropriately capture incidents and circumstances that raise child welfare concerns, and also reflect how abuse or neglect has historically been identified within the UC Bureau (*e.g.*, based on historical significant incident reporting to ORR, input from subject matter experts in child welfare including ORR’s CWT, Prevention of Sexual Abuse Team, Division of Health for Unaccompanied Children, Federal field specialists, and Data Analytics and Information Management team). For example, this IFR provides separate definitions distinguishing neglect and medical neglect, and child abuse from child neglect, in contrast to 34 U.S.C. 20341, which groups these concepts together. Having separate definitions in this rule also enables ORR to have accurate data on specific kinds of abuse or neglect that may occur with respect to children in its care.

The definition of “inappropriate sexual behavior” refers to inappropriate sexual, derogatory, or offensive conduct that does not rise to the level of sexual abuse or sexual harassment. ORR intends that this term, which is also used in current ORR policies, capture conduct that falls outside of other relevant definitions, but still merits reporting and response.

The definition of “medical neglect” draws in part from ORR’s review of other Federal authorities. For example, it is meant to include concerns described in the definition of “negligent treatment” from 34 U.S.C. 20341(c)(7), and the definition of “neglect” from 42 CFR 483.5. ORR found that these authorities described the types of issues from which it seeks to protect

unaccompanied children in its custody, and, to that extent, these authorities informed the definition of “medical neglect” in this rule. ORR is providing a separate definition for medical neglect, distinct from other forms of neglect, based on its experience operating the UC Bureau, including knowledge of the forms of neglect historically reported within the context of the UC Bureau, and the importance of having sufficient granularity in data reporting and monitoring to appropriately capture and address the types of incidents and circumstances that raise child welfare concerns.

“Multidisciplinary team” is defined as a group of individuals comprised of ORR staff, including subject matter experts. Multidisciplinary teams provide input to ORR’s Child Welfare Investigators by assessing reported allegations of child abuse and neglect at care provider facilities and making recommendations regarding physical and behavioral healthcare needs of unaccompanied children potentially impacted by child abuse and neglect at these facilities. Notably, the multidisciplinary team may include, but is not limited to, child welfare experts, forensic interviewers, mental health practitioners, child development and disability practitioners, pediatricians and other medical experts as needed, policy advisors, Federal program analysts, Federal program management staff, or other subject matter experts. The multidisciplinary team will also focus on the physical and behavioral healthcare needs of unaccompanied children potentially impacted by, and during the course of, the investigation of child abuse or neglect. Importantly, this team is different from, and in addition to, the ORR Child Welfare Investigator. The ORR Child Welfare Investigator sits within the DCPI, which will have the option to consult with the separate multidisciplinary team as necessary and appropriate. ORR believes that this collaborative approach to the investigation will lead to a coordinated response, representing a variety of fields and disciplines to support unaccompanied children while also ensuring a more efficient and thorough investigation.

The definition of “not substantiated allegation” means a disposition that there is not a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect (as defined in this section), but there is at least some evidence that the unaccompanied child was harmed or placed at risk of harm, whether or not by the alleged perpetrator. This term does not include administratively

closed allegations. ORR notes that this definition differs from its definition of “unsubstantiated allegation” under the PSA IFR at 45 CFR 411.5 (“an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred”). This investigation disposition, as well as the other defined dispositions, are further described in § 412.100.

The definition of “physical abuse” in this IFR aligns with the types of behaviors identified at 34 U.S.C. 20341 and described at 42 U.S.C. 5106g, Note § 3, to the extent that those provisions describe behaviors and situations that are relevant to unaccompanied children for the purposes of this rule. Further, the definition of “physical abuse” provided in this rule includes specific non-exhaustive examples, based on ORR’s experience operating the UC Bureau and the forms of physical abuse historically reported, as well as feedback from care provider facilities that definitions with greater specificity better support effective reporting and monitoring.

The definition of “preponderance of the evidence” describes the burden of proof used to substantiate allegations of child abuse and neglect. ORR notes that this definition is based on 42 CFR 93.219, and that this definition means something is more likely than not to be true.

The definition of “sexual abuse,” has the same meaning as that term is defined in 45 CFR 411.6.

The definition of “sexual harassment,” has the same meaning as that term is defined in 45 CFR 411.6. ORR notes that this definition indicates that prohibited conduct “includes” repeated actions; however, the definition is not intended to be exhaustive, and a single instance may constitute sexual harassment.

The definition of “sub-grantee” is based on the definition of the term “subrecipient” from 45 CFR 75.2. ORR is using the term sub-grantee instead of subrecipient for consistency with existing ORR policies and guidance.

The definition of “substantiated allegation-Tier I” means a disposition that there is a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and the investigation indicates one or more automatic Tier I substantiating circumstances have been found pursuant to § 412.100(e)(7) or substantiation at Tier I is warranted based on consideration of aggravating and mitigating factors pursuant to § 412.100(e)(8). ORR notes that this

definition differs from its definition of “substantiated allegation” under the PSA IFR at 45 CFR 411.5 (“an allegation that was investigated and determined to have occurred”) to incorporate that ORR, as the investigating entity, is using the preponderance of evidence standard to establish a disposition of “substantiated” and to incorporate the consideration of automatic Tier I substantiating circumstances, aggravating factors, and mitigating factors.

The definition of “substantiated allegation-Tier II” means a disposition that there is a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and that based on consideration of aggravating and mitigating factors pursuant to § 412.100(e)(8), the evidence does not warrant a finding of “Substantiated Allegation-Tier I.” ORR notes that this definition differs from its definition of “substantiated allegation” under the PSA IFR at 45 CFR 411.5 (“an allegation that was investigated and determined to have occurred”) to incorporate that ORR, as the investigating entity, is using the preponderance of the evidence standard to establish a disposition of “substantiated” and to incorporate the consideration of whether a disposition of substantiated allegation-Tier I is warranted, including in consideration of the aggravating and mitigating factors.

The definition of “substantiated perpetrator” means a person against whom an allegation of child abuse or neglect has been substantiated by ORR at Tier I or Tier II, but who has not exhausted the applicable appeal and review process for such allegations. Substantiated perpetrators at both Tier I and Tier II may appeal the disposition made by ORR to an Administrative Law Judge (ALJ) of the HHS Departmental Appeals Board (DAB) pursuant to § 412.102(c) and subsequently to the HHS Assistant Secretary for Children and Families pursuant to § 412.102(e).

The definition of “sustained allegation” means an allegation that was substantiated by ORR at Tier I or Tier II and that was upheld pursuant to the appeal and review process described in this rule or for which an appeal and review process was dismissed, including when the substantiated perpetrator waives their right to appeal by failing to make a timely request or by waiving those rights as specified in § 412.102(c).

The definition of “sustained perpetrator” means a substantiated perpetrator at Tier I or Tier II whose child abuse or neglect finding was upheld in the appeal and review process

or whose appeal and review process was dismissed, including due to the sustained perpetrator’s waiver of their right to appeal by failing to timely request appeal, or by otherwise waiving those rights as specified at § 412.102(c). Tier I Sustained perpetrators shall be prohibited from working in any way in connection with ORR-funded grants or contracts, including working or volunteering at any ORR care provider facility; may not have access to or contact with any unaccompanied child in ORR custody; will be added to the ORR Central Registry; and will be referred to appropriate law enforcement agencies. Information concerning Tier II sustained perpetrators will be recorded and maintained in agency records.

The definition of “unfounded allegation” means a disposition that there is not a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and the evidence indicates that the unaccompanied child was not harmed or placed at risk of harm. ORR notes that this definition differs from its definition of “unfounded allegation” under 45 CFR 411.5 (“an allegation that was investigated and determined not to have occurred”) to incorporate that ORR, as the investigating entity, is using the preponderance of evidence standard to establish a disposition of “unfounded allegation.” ORR also notes that records regarding unfounded allegations are maintained and disposed of in accordance with the applicable federal records management requirements.

The definition of “verbal or emotional abuse” aligns with the definition of “mental injury” at 34 U.S.C. 20341 and described at 42 U.S.C. 5106g, Note § 3, to the extent that those authorities describe behaviors and situations that are relevant to unaccompanied children for the purposes of this rule. The definition also includes specific non-exhaustive examples, based on ORR’s experience operating the UC Bureau and the forms of verbal and emotional abuse historically reported, as well as feedback from care provider facilities that definitions with greater specificity will better support effective reporting and monitoring.

Section 412.100 Investigations Into Allegations of Child Abuse and Neglect

ORR describes the purpose of this IFR at § 412.100(a). This rule establishes the standards, requirements, and procedures for investigations by ORR of allegations of child abuse and neglect of unaccompanied children in ORR custody alleged to have been committed by care provider facility staff, contractors or sub-grantees of the care

provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR, subject to § 412.100(c). ORR may also investigate individuals including those who are affiliated with legal service providers, child advocates, or other contractors engaged by ORR or the relevant care provider facility, to the extent allegations of abuse or neglect concern unaccompanied children who were in ORR custody at the time of the alleged incident. ORR believes these regulations will reduce the risk of child abuse and neglect of unaccompanied children in ORR care.

Section 412.100(b) provides that the provisions of this part are separate and severable from one another and that if any provision is stayed or determined to be invalid in a final judgment by a court of law, the remaining provisions shall continue in effect. This provision is meant to be consistent with the discussion of severability provided in the preamble at section IV.D.

Section 412.100(c) states that this rule applies in two circumstances. First, it applies to care provider facilities located in States where the State agency otherwise responsible for investigating child abuse and neglect allegations will not, as a matter of policy, investigate allegations of abuse or neglect concerning unaccompanied children at ORR-funded care provider facilities.⁴¹ Second, this rule applies to EIFs. ORR notes this regulation implements ORR’s statutory authority to conduct investigations and inspections of care provider facilities and other entities in which unaccompanied children reside while in ORR custody, regardless of the alleged perpetrator’s particular role or job at the care provider facility—*i.e.*, regardless of whether they are employed directly by the care provider facility, are employed by a contractor or sub-grantee of the care provider facility, are caring for unaccompanied children through a cooperative agreement with ORR, or are volunteers at a care provider facility. Finally, this regulation provides ORR the authority to investigate any allegations of child abuse and neglect that occurred during a child’s stay at an ORR care provider facility, even if the allegation is reported after the unaccompanied child has been released from ORR care and custody. In the event that a child is transferred to another care provider facility, ORR will continue to investigate any allegations of child abuse and neglect that occurred at the

⁴¹ As of the publication of this rule, the only such state is Texas.

care provider facility for which the allegation was submitted.

ORR believes that it is critical to ensure that allegations of child abuse and neglect are reported to ORR. For example, ORR's existing policies and procedures require care provider facilities to report all allegations of child abuse and neglect of an unaccompanied child in ORR custody to ORR and to Federal, State, and local authorities in accordance with any applicable Federal, State, and local reporting and licensing laws.⁴² Further, 45 CFR 411.61 requires care provider facilities to report to ORR any allegation, suspicion, knowledge, or information regarding an incident of sexual abuse or sexual harassment occurring in ORR care, along with any retaliatory actions resulting from reporting such incidents. The UC Program Foundational Rule requires at 45 CFR 410.1303(g) that all care provider facilities report to ORR any emergency incident, significant incident, or program-level event, in accordance with any applicable Federal, State, and local reporting laws. These existing requirements apply to all ORR care provider facilities. The requirements outlined in this rule at § 412.100(d) further provide that any person may report an allegation of child abuse and neglect to ORR directly, to the care provider facility, or to a designated entity or office that is not part of the care provider facility. To ensure clarity and consistency, ORR believes it is important to outline these additional reporting requirements for care provider facilities subject to this rule.

ORR believes that ensuring individuals can report allegations of child abuse and neglect without fear of retaliation is key to ensuring that such reports are made. Therefore, under § 412.100(d), care provider facilities to which this part applies must have written policies and procedures that allow children, care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, families of unaccompanied children, legal service providers, child advocates, attorneys of record, and any other persons to report allegations of child abuse and neglect to ORR directly, to the care provider facility, or to a designated entity or office that is not part of the care provider facility. Under § 412.100(d), the written policies and procedures must minimally address three topics. First, under § 412.100(d)(1), the care provider facilities' policies and

procedures must at minimum provide unaccompanied children and other individuals with methods for reporting and inform them of how they can report an allegation of child abuse and neglect to a designated entity or office that is not part of the care provider facility. Such entity or office must be able to receive allegations of child abuse and neglect and to immediately forward them to ORR, allowing unaccompanied children to remain anonymous upon request. Second, under § 412.100(d)(2), all the methods of reporting must be accessible to all unaccompanied children including those with disabilities and those with limited English proficiency. This can include, for example, ensuring unaccompanied children are aware of, and are able to call, ORR's National Call Center.⁴³ In order to be accessible to unaccompanied children with disabilities, the method of reporting must provide effective communication consistent with section 504 of the Rehabilitation Act of 1973. In addition, ORR notes that the requirements for language access for unaccompanied children with disabilities under the UC Program Foundational Rule must also be met, at 45 CFR 410.1306 and 45 CFR 410.1311 respectively. Third, under § 412.100(d)(3), the care provider facility policies and procedures must include protections to prevent retaliation against unaccompanied children and others who report allegations of child abuse and neglect.

At § 412.100(e), ORR is establishing requirements for the screening and intake of reports of allegations of child abuse and neglect, conducting investigations, assigning dispositions to the allegations, and documenting investigations. When receiving reports of allegations of child abuse and neglect and conducting investigations, ORR must ensure the health and safety of unaccompanied children while making every effort to reduce further trauma to the alleged victim(s).

ORR is requiring at § 412.100(e)(1), that when it receives a report of alleged child abuse or neglect, ORR must generate an intake report and determine whether the report includes an allegation that, if found to be true, would meet the definition of child abuse and neglect in this part and is consistent with § 412.100(a) and (c). If so, ORR will assign the intake report for investigation. If not, ORR will assign the intake report for administrative closure.

ORR will assign an intake report for investigation where the allegation meets the requirements of § 412.100(a) and (c); but ORR may in its discretion elect not to investigate an allegation at an EIF if it has a formal written agreement with the relevant State or local authority to perform such investigations. ORR may administratively close an intake report when it determines it is not appropriate for an investigation, which may include circumstances such as those described in the definition of administrative closure in § 412.001. ORR notes that it will assign an intake report for investigation in accordance with the requirements at § 412.100(e) even if the child is no longer in ORR care, as long as the alleged abuse or neglect occurred while the child was in ORR care. This could include, for example, instances in which an unaccompanied child reports an allegation of abuse or neglect to ORR after they have been released, or if the child has been transferred to another care provider facility. In the event that a child has been transferred to a new care provider facility in a State that conducts investigations, ORR will continue its investigation in the State in which the alleged child abuse or neglect occurred, as the alleged perpetrator may still pose a risk to other children in the care provider facility from which the child was transferred. ORR will document and assess the report to determine the timeline for assigning the report for investigation based on the level of risk of harm to the alleged victim and assign different response times based on the level of risk of harm. ORR will document and maintain a record of every allegation received at care provider facilities that fall under this IFR, whether it is ultimately assigned for investigation and a disposition rendered or assigned for administrative closure. ORR's decision and rationale about whether to classify the allegation as an intake report and assign it for investigation (or for administrative closure) will also be documented.

After an intake report is assigned for investigation, under § 412.100(e)(2), ORR shall assign an ORR Child Welfare Investigator to make a prompt and thorough investigation of the report to obtain sufficient information to determine whether the allegation is substantiated based on a preponderance of the evidence. The preponderance of the evidence standard for ORR investigations shall be applied in determining whether the alleged perpetrator committed child abuse or neglect. As such, the investigation prescribed in this section relates to the

⁴² See, ORR Policy Guide Section 5.8.2 Significant Incidents.

⁴³ See ORR, Office of Refugee Resettlement National Call Center, <https://www.acf.hhs.gov/orr/outreach-material/office-refugee-resettlement-national-call-center> (date accessed Sept. 6, 2024).

underlying allegation of abuse or neglect to a child, in addition to focusing on the individual perpetrator(s) involved. ORR will communicate its disposition to the alleged perpetrator, consistent with the requirements set forth at § 412.100(g), specifying whether the investigation determined that the alleged perpetrator committed abuse or neglect as defined in this rule. ORR emphasizes that this child-centered approach comports with common child welfare best practices seen across State systems.

ORR is requiring, at § 412.100(e)(3), that ORR shall provide notification that an allegation of child abuse and neglect will be investigated by ORR. This notification shall be provided to the alleged perpetrator; care provider facility; alleged victim; alleged victim's attorney of record (if the child has an attorney of record); and the alleged victim's parent(s), legal guardian(s), or sponsor(s) (as appropriate), unless ORR has evidence showing the parents, legal guardians, or sponsors should not be notified. If the alleged victim is 14 years old or older and ORR has determined that the alleged victim is able to make an independent decision, the alleged victim can affirmatively consent to disclosure. ORR notes that this notification requirement to the alleged victim, their attorney of record, and their parents, legal guardians, or sponsors is consistent with ORR's existing subregulatory notification policies and the PSA IFR requirements at 45 CFR 411.61(e) that are specific to sexual abuse and sexual harassment. To be clear, ORR also notes that the requirements of 45 CFR 411.61(f) continue to apply with respect to allegations of sexual abuse and harassment.

ORR is requiring, at § 412.100(e)(4), that the care provider facility must take immediate responsive measures to protect child welfare when notified that an investigation has been initiated, confirm the actions to ORR, and notify the alleged perpetrator, as appropriate. Such responsive measures may extend throughout the pendency of an investigation, and during the pendency of appeal and review processes, as necessary and applicable. ORR believes that this requirement is necessary to protect the safety and well-being of the unaccompanied children in ORR's care and custody until the allegation is either found to be not substantiated, unfounded, or is administratively closed. Additionally, ORR notes that care provider facility actions must be consistent with 45 CFR 411.66, which requires that any ORR and care provider facility staff, contractors, and volunteers suspected of perpetrating sexual abuse

or sexual harassment must be suspended from all duties that would involve or allow access to unaccompanied children pending the outcome of an investigation.

At § 412.100(e)(5), ORR is establishing minimum standards that ORR shall follow when investigating allegations of child abuse and neglect. ORR investigations under this rule are not intended to replace investigations that may be performed by other relevant authorities, including State law enforcement or other Federal agencies, or entities designated under the VCAA to receive reports of child abuse. Accordingly, to the extent possible and appropriate, ORR is requiring at § 412.100(e)(5)(i) that it coordinate with any local or State law enforcement or other Federal agencies during its investigation. ORR may pause or resume an investigation at its discretion, with input from law enforcement partners or other relevant investigatory bodies, as necessary. Such coordination and cooperation with outside investigations is consistent with similar principles described in the PSA IFR.⁴⁴

Additionally, under § 412.100(e)(5)(ii), ORR shall establish, as necessary, a multidisciplinary team comprised of ORR staff, which may include, but is not limited to, child welfare experts, forensic interviewers, mental health practitioners, child development and disability practitioners, pediatricians and other medical experts as needed, policy advisors, Federal program analysts, Federal program management staff, and subject matter experts to collaborate with the ORR Child Welfare Investigator. Although the ORR Child Welfare Investigator is responsible for rendering a final disposition based on their investigation, the multidisciplinary team will engage a range of ORR staff who are subject matter experts to provide input and an assessment of the reported allegation of child abuse or neglect to assist the ORR Child Welfare Investigator's investigation. The multidisciplinary team will also focus on the physical and behavioral healthcare needs of unaccompanied children potentially impacted by, and during the course of, the investigation of child abuse or neglect. This team is different from, and in addition to, the ORR Child Welfare Investigator and the DCPI will have the option to consult with the separate multidisciplinary team as necessary and appropriate. ORR believes that this collaborative approach to the investigation will lead to a coordinated

response, representing a variety of fields and disciplines to support unaccompanied children while also ensuring a more efficient and thorough investigation.

Under § 412.100(e)(5)(iii), the Child Welfare Investigator is required to complete certain minimum actions during an investigation. The Investigator should demonstrate that they have thoroughly investigated the allegation to obtain sufficient information for ORR to make a disposition. Under § 412.100(e)(5)(iii)(A), ORR is requiring that upon receipt of the intake report, the ORR Child Welfare Investigator must review the intake report and the care provider facility's records on the alleged victim and alleged perpetrator, conduct a background check on the alleged perpetrator, interview the person who reported the allegation if this person was not interviewed during intake, immediately request preservation of any potential video and documentary evidence, and as needed, establish a plan for thoroughly investigating the allegation. ORR already requires background checks of care provider facility staff, contractors, and volunteers prior to hiring or before such individuals may have contact with unaccompanied children;⁴⁵ but the intent of this requirement is to ensure that ORR has an updated background check regarding the alleged perpetrator. This may include an FBI fingerprint check of national and State criminal history repositories, a National Sex Offender Public website check, state child abuse and neglect registry checks, or other public records checks. Further, ORR recognizes the importance of avoiding the loss of any video and documentary evidence and therefore requires the ORR Child Welfare Investigator to immediately seek preservation of that evidence. At § 412.100(e)(5)(iii)(B), ORR is requiring the ORR Child Welfare Investigator to visit the care provider facility, as appropriate, to conduct a walkthrough of the facility and review video and documentary evidence. The intent of this requirement is to ensure the Investigator is able to review any video and documentary evidence in a timely way and record any observations that may be relevant to the investigation. Visits to the care provider facility may be unannounced, and the ORR Child Welfare Investigator may visit a care provider facility as often as necessary to complete an investigation.

Under § 412.100(e)(5)(iii)(C), ORR is requiring the ORR Child Welfare Investigator to make reasonable efforts

⁴⁴ See, e.g., 79 FR 77768, 77793; 77797.

⁴⁵ See 45 CFR 411.16(c), (d).

to interview all individuals who have information relevant to the report of child abuse or neglect, including, but not limited to, the alleged perpetrator, care provider facility staff, the alleged victim, sponsor(s), and the parent(s) or legal guardian(s) (as appropriate) of the alleged victim, and any other potential witnesses. ORR recognizes the importance of conducting investigations in a way that minimizes the number of times individual children, including the alleged victim and those who may have relevant information, are interviewed, so as to mitigate potential trauma during the investigation process and to promote reliability of the information collected. This includes taking into consideration when law enforcement or other Federal entities are conducting an investigation of the same allegation in alignment with § 412.100(e)(5)(i). ORR recognizes that some children, however, may require multiple interviews in order to feel more comfortable discussing allegations of child abuse and neglect, remember details, or overcome feelings of shame or guilt.⁴⁶

Care provider facility staff will not be compelled to address questions about allegations regarding either themselves or other staff, under threat of disciplinary actions. ORR will not use threat of discharge to force an employee to be interviewed.

ORR notes that there may be circumstances where the ORR Child Welfare Investigator may not be able to interview all individuals who have information relevant to the report of child abuse or neglect. For example, the ORR Child Welfare Investigator may be unable to locate the individual after making reasonable efforts or the individual is unable to be interviewed due to the individual's parent, legal guardian, sponsor, or attorney representing the individual, refusing to permit the interview. ORR also notes that there may be situations in which it would not be appropriate for the parent, legal guardian, or sponsor to be interviewed (e.g., when a child 14 years old or older has not consented to disclosure). Additionally, the ORR Child Welfare Investigator may not be able to interview an alleged perpetrator if the perpetrator was arrested or is under investigation by a law enforcement agency and the interview would interfere with the investigation; or the alleged perpetrator is detained

and the jail, prison, or other detention facility where the alleged perpetrator is detained will not permit the interview.

At § 412.100(e)(5)(iii)(D), ORR is requiring the ORR Child Welfare Investigator ensure that interviews conducted as part of the investigation are accessible for all unaccompanied children, including those with disabilities and those with limited English proficiency and are properly documented either in writing or by audio or video recording. In order to be accessible for unaccompanied children with disabilities, the interviews must provide effective communication consistent with section 504 of the Rehabilitation Act of 1973. In addition, ORR notes that the requirements for language access and the requirements for unaccompanied children with disabilities under the UC Program Foundational Rule must also be met, at 45 CFR 410.1306 and 45 CFR 410.1311 respectively.

At § 412.100(e)(5)(iii)(F), ORR is requiring that the ORR Child Welfare Investigator review any available evidence in DCPI's records relating to past conduct of an alleged perpetrator, except allegations that resulted in a finding of unfounded or administrative closure. ORR's intent in taking these steps is to ensure that it captures situations that reveal patterns of behavior warranting further scrutiny but protects the rights of the individual as relates to prior unfounded or administratively closed allegations.

At § 412.100(e)(5)(iii)(F), ORR is requiring the ORR Child Welfare Investigator to gather relevant information as part of the investigation, including documents and audio or video evidence.

Lastly, at § 412.100(e)(5)(iii)(G), ORR is requiring the ORR Child Welfare Investigator to assess any imminent or ongoing risk of child abuse or neglect to the unaccompanied children at the care provider facility and, as appropriate, request that the care provider facility implement a plan to mitigate the risk and ensure the safety of the children. ORR's intent, in addition to investigating the underlying allegation, is also to assess any imminent or ongoing risks to children at the care provider facility following an allegation and to ensure the care provider facility implements safeguards to mitigate any such risks and ensure the safety of the children. The ORR Child Welfare Investigator is responsible for identifying any immediate risks to child welfare during the initial care provider facility visit following an allegation. This is not the same as determining whether the allegation occurred, which

is done through the described investigation process, but rather to gain additional insight on how the allegation may have occurred. As appropriate, the ORR Child Welfare Investigator may request that the care provider facility implement a plan to mitigate the risk of child abuse or neglect to ensure safety of the unaccompanied children in ORR care at the care provider facility.

ORR is establishing at § 412.100(e)(6), that once the ORR Child Welfare Investigator's investigation is complete, ORR has the authority to render a disposition based on a preponderance of the evidence for each allegation. Possible dispositions include substantiated allegation-Tier I; substantiated allegation-Tier II; not substantiated allegation; unfounded; or administrative closure. If ORR determines the allegation is not substantiated, unfounded, or administratively closed, it may nevertheless consider further future investigation of the allegation if new information becomes available. ORR based its disposition types and definitions, including the relevant factors in § 412.100(e)(7) and (8), on a variety of existing State domestic child welfare systems and established best practices that balance children's needs and safety, the nuances that can exist in each allegation, and the due process rights of alleged perpetrators.

ORR notes that the first step in determining the disposition of an investigation is establishing whether child abuse or neglect, as defined under § 412.001, occurred based on the available information. If ORR finds, based on a preponderance of the evidence, that child abuse or neglect occurred, the allegation is considered substantiated as defined in § 412.001. ORR will determine whether each substantiated allegation is considered a substantiated allegation-Tier I or substantiated allegation-Tier II as to the substantiated perpetrator, based on the circumstances described at § 412.100(e)(7) and § 412.100(e)(8). ORR will make every reasonable effort to determine the perpetrator(s) responsible for each substantiated allegation of child abuse or neglect, and what role any other individuals involved in the abuse or neglect had, even if they did not perpetrate the act. An individual against whom an allegation of child abuse or neglect has been substantiated by ORR at Tier I or Tier II is considered a substantiated perpetrator, as defined in § 412.001. Under § 412.001, a substantiated perpetrator at Tier I or Tier II may appeal ORR's disposition pursuant to the established appeals process in § 412.102(d).

⁴⁶ Child Welfare Information Gateway. (2023). *Forensic interviewing: A primer for child welfare professionals*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. Available at: <https://www.childwelfare.gov/pubs/factsheets/forensicinterviewing/>.

ORR distinguishes an “unfounded” disposition from a “not substantiated” disposition based on whether there was evidence indicating that a child was harmed or placed at risk of harm. ORR believes that distinguishing these two categories in this way allows for a more child-centric approach to conducting investigations and rendering dispositions by ensuring that any situation in which a child is harmed or placed at risk of harm is specifically documented as such. While there are other existing mechanisms, including ORR’s Significant Incident Reporting and monitoring systems, that may capture this information, these mechanisms do not specifically document ORR investigation dispositions.

By distinguishing “unfounded” and “not substantiated” dispositions, ORR will be able to better monitor and track individuals, grantees, and contractors who may have repeated instances of allegations against them. Even where alleged child abuse and neglect is ultimately not substantiated, ORR believes documenting “not substantiated” is important for child welfare because over time such findings may reveal patterns of conduct requiring further scrutiny or action by ORR. Notably, ORR is also requiring at § 412.100(e)(5)(iii)(F) that any available evidence of past conduct in DCPI’s records relating to the same alleged perpetrator be reviewed as part of the Child Welfare Investigator’s investigative process, except for allegations that resulted in a finding of unfounded or administrative closure.

Under § 412.100(e)(7), a disposition of substantiated allegation-Tier I is automatically required where the allegation is (1) substantiated by a preponderance of the evidence, and (2) where certain enumerated factors are present. The factors warranting an automatic Tier I substantiated allegation are: (i) death or near death of a child as a result of child abuse or neglect; (ii) subjecting or exposing a child to sexual abuse or sexual harassment; (iii) inflicting an injury or creating a condition requiring a child to be hospitalized or to receive significant medical attention; (iv) repeated instances of physical abuse committed by the individual against any unaccompanied child in ORR care; (v) failure to take reasonable action to protect a child from sexual abuse or repeated instances of physical abuse under circumstances where the individual knew or should have known that such abuse was occurring; and (vi) depriving a child of necessary care (e.g., food, shelter, healthcare, supervision)

which either caused serious harm or created a substantial risk of serious harm. ORR notes that “individual” in this case means the care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR. Under § 410.100(e)(7)(iv), when repeated instances of physical abuse are committed by the individual, the finding of substantiated allegation-Tier I could apply to the first incident reported if evidence is found which indicates a pattern of abusive behavior, injuries to a child, or harm. Additionally, under § 410.100(e)(7)(v), the condition of an individual failing to take reasonable action to protect a child from sexual abuse or repeated instances of physical abuse would be met, for example, when another individual is aware of the abuse, and fails to take any action to stop it, and thus allows the perpetrator’s abusive behavior to continue. Under § 410.100(e)(7)(vi), the condition of depriving a child of necessary care which either caused serious harm or a substantial risk of harm includes cases of willful abandonment, deprivation of food, withholding of vital healthcare, forced isolation, and other acts or omissions of similar severity.

If no automatic Tier I substantiating circumstances, as described at § 412.100(e)(7), are present, § 412.100(e)(8) enumerates aggravating and mitigating factors which will be considered in determining if child abuse or neglect should be substantiated at Tier I or II. In the absence of automatic Tier I substantiating circumstances, where ORR finds under a preponderance of the evidence that child abuse or neglect occurred, ORR will make a determination as to whether the allegation should be substantiated as Tier I or Tier II by weighing aggravating and mitigating factors together. Consideration of aggravating and mitigating factors will be based on the totality of the circumstances and in the interest of protecting child welfare. ORR again notes that the “individual” means the care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR. Aggravating factors include any of the following under § 412.100(e)(8)(i): (A) violations of ORR behavior management requirements pursuant to the UC Program Foundational Rule at 45 CFR 410.1304; (B) failure to comply with

clearly established care provider facility policies, corrective action plans, or agreed-upon conditions; (C) the tender age, delayed developmental status or other vulnerability of the child; (D) any significant or lasting physical, psychological, or emotional harm to the child; (E) an attempt to inflict any significant or lasting physical, psychological, or emotional harm to the child; and (F) evidence suggesting a repetition or pattern of abuse or neglect, including multiple instances in which child abuse or neglect was substantiated at Tier I or Tier II, or not substantiated allegations if they demonstrate a pattern of abuse or neglect.

Under § 412.100(e)(8)(i)(A), violations of ORR behavior management requirements⁴⁷ include, for example, the use of prone physical restraints, chemical restraints, or peer restraints for any reason in any care provider facility setting, especially considering the age and particular vulnerability of the child. ORR notes the factor under § 412.100(e)(8)(i)(C) includes tender age as defined in ORR’s Policy Guide which means children 12 years of age or younger. It also includes the alleged victim’s vulnerable status (including history of trauma), particularly if the child is under the age of five; the child’s developmental stage; the child’s individualized needs, the child’s disabilities, if any; and other vulnerabilities of the child. ORR’s consideration of an attempt to inflict any significant or lasting physical, psychological, or emotional harm on the child under § 412.100(e)(8)(i)(E) will include whether there was an attempt to harm the child, even if the child does not appear to have suffered actual harm. Finally, to understand whether there is a repetition or pattern of child abuse or neglect under § 412.100(e)(8)(i)(F), ORR will consider whether there have been multiple Tier I or Tier II allegations that have been sustained pursuant to this IFR, or determined to have occurred by other relevant authorities that indicate such a pattern. ORR will also consider whether there is evidence to indicate prior occurrences or ongoing incidents of child abuse or neglect even if it is the first incident investigated by ORR.

Under § 412.100(e)(8)(ii), mitigating factors shall be weighed together with any existing aggravating factors. ORR again notes that the “individual” means the care provider facility staff, contractors or sub-grantees of the care provider facility, volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR. Mitigating factors include

⁴⁷ See 45 CFR 410.1304.

any of the following: (A) remedial actions taken by the individual before the investigation was concluded; (B) extraordinary, situational, or temporary stressors that caused the individual to act in an uncharacteristically abusive or neglectful manner; (C) the isolated or aberrational nature of the child abuse or neglect; and (D) the limited, minor, or negligible physical, psychological, or emotional impact of the abuse or neglect on the child. Under § 412.100(e)(8)(ii)(C), ORR will consider the isolated nature of the child abuse or neglect and that there is no evidence of a pattern. If a subsequent report yields additional evidence of a historical pattern or behavior, however, this mitigating factor would be eliminated.

Under § 412.100(f), records created, and information gathered or obtained during the course of an investigation are for internal purposes only, will not be shared or made public unless otherwise required or authorized by law, and may not be disclosed without prior ORR approval. All records will be maintained in an appropriate recordkeeping system with protections for the privacy and security of the individuals identified in the records. This provision refers to the entire record gathered during the course of an investigation under this part, in contrast to § 412.101(d), which states ORR will refer names and other identifying information of sustained perpetrators to relevant State and local authorities and to relevant law enforcement agencies in the State in which the child abuse and neglect occurred. This provides ORR with discretion to disclose records, for example, to Federal, State, or local government authorities, or any agents of such authorities, that have a need for such information in order to carry out their responsibilities under law to protect children from child abuse and neglect. The provision also provides ORR with discretion to share relevant information with the HHS Office of the Inspector General (OIG) for purposes of conducting investigations in accordance with the Inspector General Act (IG Act) of 1978.⁴⁸ ORR notes that § 412.100(f) applies to all records and information gathered, whether they pertain to an alleged perpetrator, an unaccompanied child who is an alleged victim or any other unaccompanied child, an individual making an allegation to ORR, or any other individual associated with an allegation, intake report, or investigation under this part. Safeguarding and maintaining the confidentiality of an unaccompanied child's case file records is critical to

carrying out ORR's responsibilities under the HSA and the TVPRA.⁴⁹ Additionally, requiring confidentiality is critical for promoting compliance with the requirement to report allegations of child abuse and neglect at § 412.100(d).⁵⁰

ORR is establishing requirements pertaining to notification of dispositions at § 412.100(g). At § 412.100(g)(1), ORR must notify the alleged perpetrator of the disposition of an investigation in writing within five days of making the disposition. ORR must also notify in writing the alleged victim and their parent(s), legal guardian(s) (as appropriate), or sponsor(s), of the disposition within five days of making a disposition.

Under § 412.100(g)(2), if the disposition is substantiated at Tier I, the notification must state: (i) the substantiated perpetrator will be considered a sustained perpetrator at Tier I and their name and other relevant information will be placed on the ORR Central Registry (unless they seek an appeal of the disposition pursuant to § 412.102) and that once identified in the Central Registry, they will be prohibited from working or volunteering in any way on ORR-funded grants or contracts, and may not have access to or contact with any unaccompanied child in ORR custody; (ii) the reasons for the Tier I substantiated perpetrator's placement on the ORR Central Registry in terms sufficient to put the perpetrator on notice of the conduct or incident(s) upon which it is based; (iii) the substantiated perpetrator may appeal ORR's disposition pursuant to § 412.102, but that if the Tier I substantiated perpetrator either fails to request such appeal in a timely manner, or upon conclusion of the appeal and subsequent review, if any, the disposition is upheld, the perpetrator will be added to the ORR Central Registry and the disposition will be reported to Federal, State, and local authorities as appropriate (such as notifying the State in which the allegation occurred when an allegation is sustained); and (iv) ORR's procedures for making the disposition. ORR believes these requirements are a key part in ensuring a Tier I substantiated perpetrator has adequate notification

⁴⁹ See 89 FR 34384, 34494. See also 81 FR 46682 (stating that ORR treats systems of records containing unaccompanied child information as subject to the provisions of the Privacy Act, 5 U.S.C. 552a).

⁵⁰ ORR further notes that it has finalized regulations relating to the confidentiality of case files of unaccompanied children in ORR care in the Unaccompanied Children Program Foundational Rule. See *id.* at 34599 (codified at 45 CFR 410.1303(h)).

that they will be placed on the ORR Central Registry, the consequences of being placed on the Registry, and of the ability to request an appeal and subsequent review.

Under § 412.100(g)(3), if the disposition is a Tier II substantiated allegation, the notification must inform the Tier II substantiated perpetrator that they may appeal ORR's disposition pursuant to § 412.102, but that if the Tier II substantiated perpetrator either fails to request such appeal in a timely manner, or upon the conclusion of the appeal and subsequent review, if any, the disposition is upheld, the Tier II substantiated perpetrator will be designated as a Tier II sustained perpetrator and ORR's disposition will be retained in ORR records. ORR may use these records for determining patterns of abuse and neglect and for informing future safety planning at care provider facilities. A Tier II sustained perpetrator will not be placed on the ORR Central Registry.

Section 412.101 Interventions and Discipline

Under § 412.101, ORR is establishing mechanisms for interventions and discipline related to substantiated and sustained allegations of child abuse and neglect as determined by ORR under § 412.100. These intervention and discipline mechanisms include maintenance by ORR of a ORR Central Registry of individuals with Tier I sustained allegations of child abuse and neglect; prohibitions on hiring, employing, or permitting as volunteers individuals who are listed in the ORR Central Registry; required disciplinary sanctions by ORR care provider facilities; and provisions for ORR referrals of substantiated allegations of child abuse and neglect to other government and law enforcement agencies. ORR believes that these enforcement mechanisms and requirements are crucial to carrying out the purpose of this part, as specified and described under § 412.100(a) and (c) above.

Section 412.101(a) describes an ORR Central Registry to list Tier I sustained perpetrators under this rule. Under § 412.101(a)(1), for purposes consistent with § 412.100(a) and (c), ORR will create and maintain an ORR Central Registry of Tier I sustained perpetrators, including names and other identifying information, and details regarding the sustained allegations. Under § 412.101(a)(2), subject to legal requirements regarding disclosure of information (e.g., under Freedom of Information Act (FOIA), the Privacy Act, or the IG Act), the ORR Central Registry

⁴⁸ See 5 U.S.C. 6(a).

will not be public-facing, nor available to persons outside of ORR, since its purpose is to inform employment decisions by ORR care provider facilities, home study providers, and post-release service providers by providing the names and other identifying information of Tier I sustained perpetrators, and for ORR to use as part of the screening process by care provider facilities as described in § 412.101(b).

Section 412.101(b) sets out certain working and volunteering prohibitions for individuals listed in the ORR Central Registry, as well as requirements for checking the ORR Central Registry. ORR is requiring at § 412.101(b)(1) that the individuals listed in the ORR Central Registry shall be prohibited from working or volunteering in any way on ORR-funded grants or contracts, and may not have access to or contact with any unaccompanied child in ORR custody, unless ORR removes such individual from the Central Registry (e.g., circumstances contemplated under § 412.102(c)(2)(ii), addressing temporary removal of an individual from the Central Registry while an appeal is pending; § 412.102(e), addressing possible reversal of a DAB finding by second-level review, carried out by the Assistant Secretary for ACF). ORR-funded grants or contracts where individuals listed in the ORR Central Registry will be prohibited from working or volunteering may cover, for example, other care provider facilities, ORR home study and post-release service providers, or other ORR-funded services that may include access to unaccompanied children. At § 412.101(b)(2), ORR is requiring that, as part of the screening process for hiring decisions for staff, contractors or sub-grantees, or for screening volunteers, all care provider facilities, home study providers, and post-release service providers, whether or not located in States that investigate child abuse and neglect allegations at ORR care provider facilities, must check with ORR to confirm that an applicant is not listed in the ORR Central Registry.

At § 412.101(b)(3), ORR sets out the requirement that all care provider facilities, home study providers, and post-release service providers, whether or not located in States that investigate child abuse and neglect allegations at ORR care provider facilities, must also check all of their personnel against the ORR Central Registry at least once annually. Checking applicants and current personnel against the ORR Central Registry is an especially important child safety measure for care provider facilities located in States that

do not investigate allegations of child abuse and neglect, and thus whose registries will not include individuals alleged, or found through investigation, to have perpetrated abuse or neglect at ORR care provider facilities. ORR notes that the requirements at § 412.101(b) are supplementary to those in the PSA IFR at 45 CFR 411.16 and 45 CFR 411.81.

Under § 412.101(c), care provider facilities must implement appropriate disciplinary or remedial measures where they or ORR find care provider facility staff, contractors or sub-grantees of the care provider facility, or care provider facility volunteers engaged in conduct that does not rise to the level of a Tier I substantiated allegation, as defined at § 412.001, but nevertheless raises child welfare concerns.

ORR believes that it is important to share information regarding sustained perpetrators with relevant State and local authorities such that they can take additional action as necessary to protect children in their jurisdictions in accordance with their legal obligations. This information sharing does not mean that information on the registry is public facing, such as other public criminal records databases. Rather, ORR will only share information directly with relevant entities and in accordance with applicable State and Federal information sharing, privacy, and due process protections. Accordingly, under § 412.101(d)(1), ORR will refer names and other identifying information of Tier I sustained perpetrators to relevant State and local authorities (e.g., child protective services) and to relevant law enforcement agencies in the State in which the sustained allegation of child abuse and neglect occurred. This requirement comports with existing requirements in the PSA IFR that all terminations for violations of ORR or care provider facility policies and procedures regarding sexual abuse and sexual harassment, or resignations by staff who would have been terminated if not for their resignation, must be reported to law enforcement agencies and to any relevant State or local licensing bodies.⁵¹ Additionally, if requested by a relevant State or local authority or relevant law enforcement agency, including an authority or agency outside of the State in which the Tier I sustained allegation occurred, ORR will confirm whether a particular individual is on the ORR Central Registry. Furthermore, under § 412.101(d)(2), ORR will provide the names and other identifying information of Tier I sustained perpetrators to the Federal Bureau of Investigation, and

HHS Office of the Inspector General (OIG), consistent with any applicable agreements. Finally, § 412.101(d)(3) requires that neither ORR nor care provider facilities shall interfere with another State, local, or Federal authority or agency's investigation into allegations of child abuse and neglect.

Section 412.102 Appeal and Review Process

ORR is establishing guidelines and requirements regarding the availability of an appeal and review process of dispositions made by ORR at § 412.102.

Under § 412.102(a), a substantiated perpetrator, whether at Tier I or Tier II, may appeal the disposition made by ORR to an Administrative Law Judge (ALJ) in the HHS Departmental Appeals Board (DAB) pursuant to § 412.102(c).

ORR is requiring, at § 412.102(b), that ORR shall notify substantiated perpetrators at Tier I or Tier II of their opportunity for an appeal. As stated above, all alleged perpetrators receive notice of the allegations against them pursuant to § 412.100(e)(3). Under § 412.102(b)(1), after completing an investigation and upon substantiation of any relevant allegations, ORR will send a written notice to the substantiated perpetrator at Tier I or Tier II, in accordance with § 412.100(g). The notice will state that the relevant allegations have been substantiated and that the Tier I substantiated perpetrator will be placed on the ORR Central Registry unless they appeal the disposition by ORR and that the Tier II substantiated perpetrator's information will be retained as a Tier II sustained perpetrator in agency records. Under § 412.102(b)(2), the written notice shall: (i) clearly describe the basis for ORR's disposition that substantiates the relevant allegations at Tier I or Tier II and shall explain the Tier I or Tier II substantiated perpetrator's right to appeal the disposition and the steps required to initiate the appeal; (ii) inform the substantiated perpetrator that they may appeal the disposition before an ALJ; (iii) provide the substantiated perpetrator at Tier I or Tier II and their attorney, if any, with written information and instructions describing the appeal process; and (iv) inform the substantiated perpetrator at Tier I or Tier II that if they do not appeal within 30 days of receiving the notice, the DAB will consider the substantiated perpetrator to have waived their opportunity for an appeal and any subsequent review. A Tier I substantiated perpetrator will be identified on the ORR Central Registry as a Tier I sustained perpetrator. A Tier II substantiated perpetrator's

⁵¹ See 45 CFR 411.81(c).

information will be retained as a Tier II sustained perpetrator in agency records.

At § 412.102(c), ORR is establishing a process for substantiated perpetrators at Tier I or Tier II to appeal of ORR's disposition. Under § 412.102(c)(1)(i), and as further elaborated at § 412.102(c)(2), if the substantiated perpetrator elects to appeal ORR's disposition that a child abuse or neglect allegation is substantiated at Tier I or Tier II, they must file a written notice of appeal with the DAB within 30 days of receipt of the written notice of ORR's disposition. Under § 412.102(c)(1)(ii), within 30 days of receiving this written notice of appeal, ORR will provide all evidence it used in making its disposition to the DAB. Under § 412.102(c)(1)(iii), within 30 days of receiving this written notice of appeal, ORR will provide to the substantiated perpetrator at Tier I or Tier II, and their attorney, if any, all information used in making its disposition, except any information that ORR determines: (A) would compromise the safety and well-being of a child, the reporter, or any other person; (B) would reveal the identity of a child who furnished information with the understanding that their identity would be held in confidence; (C) would reveal the identity of any other alleged perpetrator(s) involved in the same case who has an unfounded disposition (to protect the privacy of the alleged perpetrator with an unfounded disposition); or (D) is otherwise prohibited by State or Federal law or regulation. In the case of information being withheld, the substantiated perpetrator at Tier I or Tier II will be advised of the general nature of the information and the reasons that it is being withheld. Neither the substantiated perpetrator at Tier I or Tier II nor the care provider facility are required to provide information unless they would like the ALJ to consider such information as part of the hearing or record review, and they will not be compelled to provide it.

Dismissal of appeals is covered in § 412.102(c)(2). Under § 412.102(c)(2)(i), the ALJ may dismiss an appeal when the ALJ determines that the substantiated perpetrator waived appeal by not submitting the notice of appeal in a timely manner (*i.e.*, an appeal within 30 days of receiving written notice of ORR's disposition) and failed to demonstrate good cause for the untimely request, withdraws the appeal, abandons the appeal, or does not have a right to ALJ review (including, but not limited to, situations where the case does not involve a Tier I or Tier II substantiated allegation). If the appeal is

dismissed, the Tier I substantiated perpetrator will be placed on the ORR Central Registry as a Tier I sustained perpetrator or ORR will retain the information regarding the Tier II substantiated perpetrator as a Tier II sustained perpetrator in agency records, as applicable. Notwithstanding such a dismissal, under § 412.102(c)(2)(ii) the DAB may in its discretion temporarily remove the designation of sustained perpetrator at Tier I or Tier II, which would result in ORR removing the individual who was designated as a Tier I sustained perpetrator from the ORR Central Registry, in situations where, for example, the ALJ determines that the sustained perpetrator at Tier I or Tier II has established good cause for exceeding the appeal timeframe. This rule contemplates that good cause may be established, for example, where a serious medical condition prevented timely filing of the notice of appeal.

The appeal and review processes are described in § 412.102(d) and (e). Under § 412.102(d)(1), when a substantiated perpetrator at Tier I or Tier II appeals, ORR must transmit all of the evidence upon which ORR's disposition was based to the ALJ. Under § 412.102(d)(2), the evidentiary record must contain all documents and other materials, such as video or audio recordings, that were used by ORR in making its disposition. The ALJ may remand the case to ORR if the ALJ determines that the evidentiary record is insufficiently complete to determine whether ORR's disposition is supported by a preponderance of the evidence. Under § 412.102(d)(3), the substantiated perpetrator at Tier I or Tier II may be represented by an attorney. As described in § 412.102(d)(4), the substantiated perpetrator shall have the burden to show that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation at Tier I or Tier II, and to dispute whether any automatic Tier I substantiating circumstances described at § 412.100(e)(7) existed (if applicable) or whether aggravating factors or mitigating factors described at § 412.100(e)(8) existed (if applicable). Both ORR and the substantiated perpetrator may present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof. The testimony of care provider facility staff shall be voluntary and failure to provide such testimony will not subject the care provider staff member to disciplinary action. Under § 412.102(d)(5), if the substantiated perpetrator appeals and the appeal is

not dismissed by the ALJ pursuant to § 412.102(d)(7), ORR must notify the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s) that an appeal of ORR's disposition will be conducted by an ALJ. The alleged victim, other child witness(es), and family members of the alleged victim shall not be required to testify. Refusal to testify shall have no bearing on a determination as to whether the alleged abuse or neglect did or did not take place.

Under § 412.102(d)(6), both parties (ORR and the substantiated perpetrator) may cross examine witnesses and ask questions during a live hearing, as well as request additional information, either during a live hearing or pursuant to a record review. In order to mitigate the potential for re-traumatization of an alleged victim while still providing a substantiated perpetrator with the opportunity to respond to the allegations, a substantiated perpetrator may not personally cross examine the alleged victim. The parties will be given an opportunity to file briefs or other written statements of fact or law. Under § 412.102(d)(7), the ALJ must conduct a fair and impartial hearing under a *de novo* standard of review to determine whether the substantiated perpetrator met their burden of proving that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation. The ALJ will issue a written decision upholding, modifying, or reversing the ORR's disposition. Under § 412.102(d)(8), the ALJ shall serve a copy of the decision upon the parties and the Assistant Secretary for ACF. The ALJ's decision shall provide the substantiated perpetrator at Tier I or Tier II and their attorney, if any, with instructions for filing a request for review with the Assistant Secretary for ACF. The ALJ also shall provide a copy of the decision to the alleged victim, and, as appropriate, the alleged victim's parent(s), legal guardian(s), or sponsor(s). The complete record upon which the decision is based shall be made available to the Assistant Secretary.

This rule provides another level of review under § 412.102(e). This subsection provides that the Assistant Secretary for ACF may review the ALJ's determination, either *sua sponte* or upon a request by the substantiated perpetrator. Under § 412.102(e)(1), a substantiated perpetrator at Tier I or Tier II may request review of the ALJ's decision within 30 days of receipt of the ALJ's decision, by filing a request for review with Office of the Assistant

Secretary for ACF. Under § 412.102(e)(2), the Assistant Secretary has discretion, within 30 days after receiving a timely request for review of an ALJ's decision under § 412.102(e)(1), to review the ALJ's decision and to dismiss a request for review based on untimeliness or other procedural defects, or to affirm, modify, or reverse the ALJ's decision with regard to dismissal or ORR's disposition of the allegation. A review by the Assistant Secretary will determine whether the ALJ's decision was based on a material error of law or fact.

Section 412.102(e)(3) provides that if the Assistant Secretary affirms the ALJ's decision, or does not modify or reverse the ALJ's decision, within 30 days after receiving a timely review request under § 412.102(e)(1), then the ALJ's decision becomes the final decision of the Assistant Secretary and is binding on both parties (ORR and the substantiated perpetrator). Likewise, under § 412.102(e)(4), if the Assistant Secretary modifies or reverses the ALJ's decision pursuant to § 412.102(e)(2), then the Assistant Secretary's decision is final and binding.

Under § 412.102(e)(5), if at the end of the 30-day period in § 412.102(e)(1), no timely request for review has been made, the Assistant Secretary has 30 days from that point to exercise discretion to review the ALJ's decision. If the Assistant Secretary does not modify or reverse the ALJ's decision, then the ALJ's decision becomes the final decision of the Assistant Secretary and is binding on both parties. The intent of § 412.102(e)(5) is to make clear that the Assistant Secretary has discretion to review the ALJ's decision regardless of whether a timely request for review is made.

Under § 412.102(e)(6), the Office of the Assistant Secretary for ACF shall notify the parties of the Assistant Secretary's final decision. The Office of the Assistant Secretary also shall provide a copy of the final decision to the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s), based on review of the ALJ's previous decision, under § 412.102(e).

Section 412.103 Obligations of Care Provider Facilities

To ensure that ORR can obtain sufficient information to make fair, accurate, and impartial decisions regarding allegations of child abuse and neglect, at § 412.103, ORR is establishing obligations with which care provider facilities must comply during investigations.

Under § 412.103(a)(1) through (3), during any investigation of child abuse and neglect by ORR, a care provider facility must permit ORR: (1) to have unrestricted access to the premises, any physical property on the premises, buildings, staff, and children in the physical custody of the care provider facility; (2) to conduct interviews with children residing at the care provider facility, and without care provider facility staff, contractors or sub-grantees of the care provider facility, or care provider facility volunteers, present; and (3) to observe the activities of care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR. Under § 412.103(a)(4), care provider facilities must promptly preserve any potential video or documentary evidence. ORR notes that this requirement is aligned with the requirement at § 412.100(e)(5)(iii)(A), which states that upon receiving an intake report, the ORR Child Welfare Investigator must immediately request preservation of any potential video and documentary evidence. Additionally, under § 412.103(a)(5), care provider facilities must promptly provide and facilitate access to, upon request, all files, records, reports, data, video recordings, and other information, including copies of any such documents, requested by ORR either prior to or during the investigation. Care provider facilities subject to this rule must also promptly provide access to and contact information for staff, contractors, or sub-grantees of the care provider facility, its volunteers, or other individuals who have access to children in ORR care (§ 412.103(a)(6)); submit complete and accurate responses to any written questions in a timely manner (§ 412.103(a)(7)); and fully cooperate with ORR (§ 412.103(a)(8)). Finally, under § 412.103(a)(9) care provider facilities are required to fully cooperate with any investigation of the same allegation by other State, local, and Federal authorities, and relevant law enforcement agencies.

Further, in alignment with existing ORR policy and 45 CFR 411.67, ORR is requiring at § 412.103(b) that care provider facility staff, contractors or sub-grantees of the care provider facility, and care provider facility volunteers must not retaliate against any person who in good faith reports or participates in an investigation of child abuse or neglect.

Under § 412.103(c), a care provider facility's obstruction, interference, delay

of, or failure to permit or cooperate with any investigation under this part, including failure to protect unaccompanied children from retaliation pursuant to § 412.103(b), may result in ORR taking monitoring and enforcement measures. Such measures may include remote monitoring of the care provider facility (*i.e.*, monitoring that does not occur on-site); on-site monitoring of the care provider facility; monitoring of the corporate offices to review internal policies and reporting structures, as well as supervisory responses to events (*e.g.*, mitigation or future preventative measures); limiting or stopping new placements of unaccompanied children at the care provider facility; removing all children in ORR care and custody from the care provider facility and placing them into other care provider facilities; issuing corrective actions; terminating the contract or cooperative agreement with the care provider facility; or imposing other such remedies for noncompliance applicable to HHS grant recipients and contractors. ORR notes that the cooperation of care provider facilities is critical in investigations of child abuse and neglect, and that enforcement measures such as those described are appropriate to help ensure that ORR can obtain the information necessary to determine whether allegations are substantiated.

Under § 412.103(d), ORR requires care provider facilities, during the course of an investigation, to provide unaccompanied children confidential access to attorneys of record and other legal service providers, as well as their families and legal guardians, in a manner consistent with requirements established at 45 CFR 411.55 (as applicable) as well as 45 CFR 410.1309. Care provider facilities must provide unaccompanied children with access to their child advocates, in a manner consistent with the requirements of the TVPRA at 8 U.S.C. 1232(c)(6) and 45 CFR 410.1308. Finally, care provider facilities must also provide unaccompanied children access to health services (including specialists and mental health practitioners), individual counseling sessions, and crisis intervention (including access to outside victim services and rape crisis centers where appropriate) to most appropriately address unaccompanied children's needs, in a manner consistent with requirements established at 45 CFR 410.1302(c)(5), 45 CFR 410.1307, 45 CFR 410.1311, and 45 CFR 411.21 (as applicable).

VI. Good Cause for Issuing This IFR

When engaging in rulemaking, ORR ordinarily publishes a notice of proposed rulemaking (NPRM) in the **Federal Register** and invites public comment on the proposed rule. However, under the Administrative Procedure Act, 5 U.S.C. 553(b), an NPRM is not required when an agency, for good cause, finds that notice and public comment is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the agency's reasons in the rule issued. With respect to this rulemaking, delaying implementation of the provisions of this regulation until a public notice and comment process is complete would risk serious and imminent harm to unaccompanied children in Texas care provider facilities (and in the future at EIFs, which ORR may need to open on short notice, before it can execute formal written agreements describing child welfare investigations of child abuse and neglect with relevant local authorities), and thus would be impracticable. As such, ORR believes that it has good cause to issue this rulemaking as an Interim Final Rule (IFR) rather than issuing an NPRM.

ORR has determined that this rulemaking is imminently necessary because ORR must have the ability to establish employment consequences at relevant care provider facilities for sustained perpetrators of abuse and neglect in order to fulfill its statutory responsibilities.⁵² Critically, as mentioned earlier, ORR began taking immediate action soon after it became clear that Texas DFPS was not going to resume its historical child welfare and investigative functions when it extended its emergency declaration in 2022. Subsequently, ORR began consulting with other federal agencies, developing the necessary expertise and capacity to conduct investigations, drafting policies and procedures to inform how investigations are conducted, obtaining administrative approval for new agency positions, creating new comprehensive technical systems for recording and tracking investigations, and hiring, onboarding, and training qualified investigative staff. Most pertinently, as discussed at section IV.A, ORR's recently established

Division of Unaccompanied Child Protective Investigations (DCPI) began its investigations of allegations of child abuse and neglect in ORR-funded care provider facilities in Texas as of July 2024.

In addition to investigating allegations of abuse and neglect at care provider facilities located in States that do not conduct investigations, and at EIFs, ORR needs to be able to direct its care provider facilities to prohibit individuals from working or volunteering on ORR-funded grants or contracts when there has been a sustained allegation of abuse or neglect at Tier I (as defined in this rule), and to ensure that perpetrators with such sustained allegations do not have access to or contact with children in ORR custody. To that end, this rulemaking establishes an ORR Central Registry listing Tier I sustained perpetrators, as described in this rule. Further, this rule establishes that Tier I sustained perpetrators listed on the ORR Central Registry are prohibited from working or volunteering in any way on ORR-funded grants or contracts, so as to prohibit them from having access to or contact with any unaccompanied child in ORR custody. Because such requirements potentially implicate alleged perpetrators' ability to work in their chosen profession (if the allegation is sustained at Tier I), ORR believes that substantive rulemaking is required to codify appeal and review procedures with appropriate due process protections for alleged perpetrators (*e.g.*, notice and an opportunity to be heard).

There is good cause to issue this rulemaking as an IFR because requiring notice and comment before implementing these provisions would risk serious and imminent harm to unaccompanied children. For example, even if DCPI concludes through an investigation that an individual perpetrated child abuse or neglect, without an ORR Central Registry, such a perpetrator could potentially pass a background check and be re-hired at any time at another ORR care provider facility, which would undermine the very purpose of the rule—to protect children from such perpetrators. As noted above, ORR understands that creation of the Central Registry requires rulemaking because adequate due process procedures need to be established in consideration of the employment interests at stake. In other words, ORR's DCPI can now investigate, substantiate, and sustain allegations of abuse and neglect of unaccompanied children in its custody against alleged perpetrators in accordance with existing statutory authority, but requiring notice

and comment before this rule goes into effect would prevent ORR from using that critical information in the ORR Central Registry to keep children safe in the near and long term. Until ORR is able to begin operating the ORR Central Registry, unaccompanied children are at elevated risk of abuse or neglect—a risk that ORR seeks to prevent by using this IFR to prohibit the hiring of Tier I sustained perpetrators of child abuse and neglect.

As discussed above, as of July 2024, ORR began investigative activities in relation to reported child abuse and neglect at care provider facilities in Texas. As a result, there is an urgent need to have the provisions of this rule in place to protect child welfare while also providing appropriate due process protections for alleged perpetrators of child abuse and neglect. Notice and comment rulemaking would prevent ORR from taking swift and appropriate action when it identifies an imminent threat to child safety and would allow perpetrators of child abuse and neglect to evade ORR's efforts, pursuant to statutory responsibilities, to protect unaccompanied children in its custody. Notice and comment rulemaking would increase the risk of serious potential harm to unaccompanied children—which ORR seeks to address through this IFR by prohibiting employment of individuals on the ORR Central Registry.

ORR has therefore found good cause in the specific circumstances presented here—where ORR has recently established a new Division to conduct child welfare investigations at EIFs and in States that do not do so given that there is an immediate and ongoing risk to unaccompanied children in such States without the protections described in this rule. This rulemaking is urgently required now to establish required employment consequences for individuals found by ORR investigations to have perpetrated child abuse or neglect, and ORR has not delayed responding to the urgent need to establish such consequences because DCPI began initiating investigations as of July 2024.

Therefore, HHS finds good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. Finally, HHS is providing a 60-day public comment period and will carefully consider public comments received and may update the final rule, as appropriate. ORR plans to finalize the rule within one year of implementation.

⁵² See *supra*, Sec. IV.B (referencing various provisions of the HSA, including 6 U.S.C. 279(b)(1)(G) (making the ORR Director responsible for “overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside”) and 6 U.S.C. 279(b)(1)(L) (making the ORR Director responsible for “conducting investigations and inspections of facilities and other entities in which [unaccompanied children] reside. . .”).

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), HHS is required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by OMB.

This interim final rule with comment requires information collections for which HHS plans to seek OMB approval at a later date. The information collection requirements associated with this interim final rule will not take effect until approved by OMB. HHS will issue future **Federal Register** notices to seek comments on its information collections within one month following finalization, as required by the PRA,⁵³ and will include a system of records notice related to the requirements in this rule.

To estimate the costs associated with the information collection activities described in this interim final rule, ORR utilizes median hourly wage rates in accordance with the Bureau of Labor Statistics' (BLS) most recent update in April 2024 for Education and Childcare Administrators.⁵⁴ The median hourly wage rate is calculated to be \$26.10 with fringe benefits at 100 percent, for a total hourly wage rate of \$52.20 (\$26.10 + \$26.10).

Section 412.100(d) requires that care provider facility staff, contractors, sub-grantees, volunteers, and all ORR staff must report allegations of child abuse and neglect by care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR in accordance with ORR policies and procedures to ORR, and to Federal, State, and local authorities in accordance with any applicable Federal, State, and local reporting and licensing laws. Because this reporting requirement would not require additional reporting above and beyond existing ORR policy, this requirement will not result in additional burden for care provider facilities.

VIII. Regulatory Impact Analysis

A. Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$200 million or more (adjusted every 3 years for changes in gross domestic product), or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impact of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive Order. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. While there are some costs associated with these regulations, they do not exceed the monetary threshold for significance as defined under section 3(f)(1) of E.O. 12866, as amended. However, the regulation is significant and has been reviewed by OMB.

As previously discussed, ORR has developed the child abuse and neglect investigation requirements for ORR care provider facilities with the intention of keeping the best interests of unaccompanied children at the forefront. Because the requirements in this IFR are in line with existing ORR policy, ORR anticipates that care provider facilities will need to make only minimal updates to their staffing, training, and/or policy in order to meet the requirements. Specifically, ORR anticipates that care provider facilities will need to make updates to meet requirements under § 412.101(c) and § 412.103. Typically, ORR care provider facilities spend up to approximately 5 hours to cooperate with a State-led investigation of alleged child abuse or neglect, which can vary widely

depending on the circumstances of the specific allegation. ORR expects that its Texas care provider facilities will spend the same amount of time cooperating with investigations conducted by ORR. Because ACF lacks the ability to account for the specific details of every care provider facility and their ability to meet the requirements, ORR is only able to estimate costs associated with other remedies in general, rather than specific to each care provider facility.

To estimate the economic impacts associated with the policies promulgated in this interim final rule, ACF uses wage rate and annual salary data provided by BLS for Childcare Workers and First-Line Supervisors working in the Child Care Services industry.^{55 56} The median hourly wage rate for childcare workers is calculated to be \$14.60. Assuming benefits and indirect costs of labor equal 100 percent of the hourly wage, the corresponding fully loaded cost of labor for childcare workers is \$29.20 per hour. Additionally, the mean hourly wage rate for First-Line Supervisors working in the Child Care Services industry is calculated to be \$22.45. Note that we do not use the median wage rate because BLS only provides mean wage rates for specific industries. Assuming benefits and indirect costs of labor equal 100 percent of the hourly wage, the corresponding fully loaded cost of labor for childcare supervisors is \$44.90 per hour. ORR assumes that it will take between 0.25 and 0.5 hours at a cost between \$7.30 (\$29.20 × 0.25 hours) and \$14.60 (\$29.20 × 0.5 hours) for each childcare worker to receive the relevant policy update training and between \$11.23 (\$44.90 × 0.25 hours) and \$22.45 (\$44.90 × 0.5 hours) for each childcare supervisor to administer the training. This training would include administrative guidance related to how investigations will be conducted and due process under the interim final rule. ORR also assumes that it will take approximately 1 hour at a cost of \$44.90 (\$44.90 × 1 hour) for each childcare supervisor to update relevant policies.

In § 412.100(a) through (g) ORR discusses the establishment and operation of its investigations into alleged child abuse and neglect. Currently, based on FY 2024 levels of wages, benefits, and indirect labor costs, ORR estimates 24 full-time staff will be required at a cost of approximately \$209,000 per staff member for a total of approximately \$5 million (\$209,000 ×

⁵⁵ <https://www.bls.gov/oes/current/oes399011.htm>. Accessed July 31, 2024.

⁵⁶ <https://www.bls.gov/oes/current/oes391022.htm>. Accessed July 31, 2024.

⁵³ See 44 U.S.C. 3506(c)(2)(A).

⁵⁴ <https://www.bls.gov/oes/current/oes119031.htm>. Accessed July 31, 2024.

24 staff) per year. The ORR Child Welfare Investigators will receive allegations of child abuse and neglect as intake reports, assess the allegation to determine whether it meets applicable requirements and definitions, conduct all necessary interviews, review and preserve all relevant evidence, implement any necessary safety plans, coordinate with the multidisciplinary team as needed, and render a disposition. ORR expects no new costs or burdens on care provider facilities to cooperate with ORR's investigations.

ORR also notes that all care provider facilities discussed in this interim final rule are ACF grantees and the costs of maintaining compliance with the requirements are allowable costs to grant awards under the Basic Considerations for cost provisions at 45 CFR 403 through 405, in that the costs are reasonable, necessary, ordinary, treated consistently, and are allocable to the award. Additional costs associated with the policies discussed in this interim final rule that were not budgeted, and cannot be absorbed within existing budgets, would be allowable for the grant recipient to submit a request for supplemental funds to cover the costs.

B. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as 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. This rule primarily affects the operations of the Federal Government and requires that ORR care provider facilities within the scope of this rule cooperate with Federal investigations of child abuse and neglect. As of publication of this rule, 66 of 284 (23 percent) ORR care provider facilities are located in Texas and would be impacted by the requirements in this interim final rule. While the affected percentage of small entities exceeds the threshold of 5 percent for this subcategory of care provider facilities within the U.S., ORR believes the burden associated with the requirements in this interim final rule are equal to or negligibly greater than the burden imposed by any State-based requirements to which the affected care provider facilities would otherwise be subjected. While this rule primarily affects the Federal Government, ORR assumes all of these care provider facilities qualify as small businesses as defined by the Small Business Administration (SBA), and ORR has therefore attempted to ensure the economic impact on individual care provider facilities is kept to a minimum.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires ORR to prepare a written statement, which includes estimates of anticipated impacts, before proposing “any 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 \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This interim final rule would not likely result in unfunded expenditures that meet or exceed this amount.

D. Executive Order 13132: Federalism

This interim final rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule would implement ORR's explicit statutory authority to investigate child abuse and neglect allegations in ORR care provider facilities, and would enable it to make findings relevant to its responsibility for the care of unaccompanied children. In codifying these practices, ORR was mindful of its obligations to meet the requirements of Federal statutes while also minimizing conflicts between State law and Federal interests. At the same time, ORR is also mindful that its fundamental obligations are to ensure that it implements its statutory responsibilities pursuant to both the HSA and TVPRA, to protect the safety of unaccompanied children while in ORR care.

Typically, ORR enters into cooperative agreements or contracts with non-profit and private organizations to provide shelter and care for unaccompanied children in a care provider facility licensed by the appropriate State or local licensing authority if the State licensing agency provides for licensing of care provider facilities that provide services to unaccompanied children. This regulation allows ORR to investigate allegations of child abuse and neglect only in instances where a State will not investigate allegations of child abuse and neglect in ORR care provider facilities, and at EIFs. ORR has designed its policies and regulations, as well as the terms of its cooperative agreements and contracts with the unaccompanied children care provider facilities, to complement applicable State and local

licensing rules, not to supplant or replace the requirements. Because the applicability of this regulation is limited precisely to circumstances where a State does not investigate child abuse and neglect at ORR care provider facilities, and EIFs, it does not implicate federalism concerns or impose substantial direct compliance costs on State or local governments. Further, this regulation does not preempt State laws and regulations because it applies specifically where States have explicitly abdicated their investigatory responsibility in ORR care provider facilities housing unaccompanied children, and at EIFs where States may not have authority to conduct investigations. Where State or local authorities enter into formal written agreements with ORR to conduct investigations, ORR may still, pursuant to its statutory authority, carry out its own investigations, but any potential ORR investigation under this rule would not interfere with the State or local authority's investigation.

Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Notwithstanding the determination that the formal consultation process described in Executive Order 13132 is not required for this rule, ORR welcomes any comments from representatives of State and local juvenile or family residential facilities—among other individuals and groups—during this rulemaking.

E. Executive Order 12988: Civil Justice Reform

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

IX. Assessment of Federal Regulation 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 criteria specified in the law. This regulation will not have an impact on family well-being as defined in this legislation, which asks agencies to assess policies with respect to whether the policy: strengthens or erodes family

stability and the authority and rights of parents in the education, nurture, and supervision of their children; helps the family perform its functions; and increases or decreases disposable income.

Dated: November 20, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

List of Subjects in 45 CFR Part 412

For the reasons set forth in the preamble, the ORR adds 45 CFR part 412 to read as follows:

PART 412—INVESTIGATIONS OF ALLEGATIONS OF CHILD ABUSE AND NEGLECT

Sec.

- 412.001 Definitions
- 412.100 Investigations of allegations of child abuse and neglect
- 412.101 Interventions and discipline
- 412.102 Appeal and review process
- 412.103 Obligations of care provider facilities

PART 412—INVESTIGATIONS OF ALLEGATIONS OF CHILD ABUSE AND NEGLECT

§ 412.001 Definitions.

ACF means the Administration for Children and Families, Department of Health and Human Services.

Administrative closure means that ORR has determined that it will not make a finding regarding an allegation of child abuse or neglect. ORR may make a determination of administrative closure both before and after an investigation begins. Reasons for administrative closure of an intake report before investigation may include, but are not limited to, lack of jurisdiction to conduct an investigation of the allegation, transfer of the report to another jurisdiction or agency, duplication of an already existing report, an allegation not rising to the level of child abuse or neglect, or an allegation is otherwise outside the scope of this rule, as described at § 412.100(c). Reasons for a disposition of administrative closure after investigation may include, but are not limited to, inability to contact the child, insufficient information to proceed with the investigation, or transfer of the report to another jurisdiction or agency.

Allegation means a written or oral report to ORR of suspected child abuse or neglect.

Alleged perpetrator means a person who is alleged to have abused or neglected a child within the scope of this part as described at § 412.100(a) and (c).

Appeal and review process means the appeal to an Administrative Law Judge (ALJ) of the HHS Departmental Appeal Board (DAB), and review by the Assistant Secretary for ACF of the disposition that an allegation of child abuse or neglect was substantiated at Tier I or Tier II.

Attorney of record has the same definition as provided under 45 CFR 410.1001.

Care provider facility has the same definition as provided under 45 CFR 410.1001.

Child abuse and neglect means any act or failure to act which results in death, serious physical or emotional harm, sexual abuse, or exploitation of a child; or an act or failure to act which presents an imminent risk of serious harm to a child including but not limited to physical abuse, verbal or emotional abuse, sexual harassment, sexual abuse, inappropriate sexual behavior, neglect, and medical neglect.

Child advocates has the same definition as provided under 45 CFR 410.1001.

Contractor means an entity that receives a contract as provided under 45 CFR 75.2.

Days means calendar days, unless otherwise stated.

Disposition means a finding by ORR at the conclusion of an investigation that an allegation of abuse or neglect is substantiated at Tier I, substantiated at Tier II, not substantiated, unfounded, or administratively closed.

Emergency or influx facility (EIF) has the same definition as provided under 45 CFR 410.1001.

HHS means the U.S. Department of Health and Human Services.

Inappropriate sexual behavior refers to inappropriate sexual, derogatory, or offensive conduct that does not rise to the level of sexual abuse or sexual harassment.

Intake report means an allegation of child abuse or neglect identified by ORR as describing child abuse or neglect of an unaccompanied child by an alleged perpetrator.

Legal service provider (LSP) has the same definition as provided under 45 CFR 410.1001.

Medical neglect means any failure to provide medical care or access to medical services that endangers the health of the child.

Multidisciplinary team is a group of individuals comprised of ORR staff that includes subject matter experts that provides input to ORR's Child Welfare Investigators by assessing reported allegations of child abuse and neglect at care provider facilities and making recommendations regarding the

physical and behavioral healthcare needs of unaccompanied children potentially impacted by child abuse and neglect at these facilities.

Neglect refers to any failure to provide adequate food, water, clothing, shelter, or other necessities; punitive, careless, or unnecessary denial of access to other basic services such as education, legal aid, exercise, recreation, bathroom usage, and communication or correspondence with families, sponsors, or attorneys.

Not substantiated allegation means a disposition that there is not a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, but there is at least some evidence that the unaccompanied child was harmed or placed at risk of harm, whether or not by the alleged perpetrator.

ORR means the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ORR Central Registry means a database maintained by ORR consisting of ORR findings of sustained perpetrators of child abuse and neglect at Tier I.

ORR Child Welfare Investigator means an ORR staff member who investigates reports of alleged abuse or neglect of children, renders the investigative disposition, and issues corrective action on behalf of ORR and performs other related work for ORR.

Physical abuse means physical harm to a child that includes, but is not limited to, bruises, cuts, sprains, welts, fractures, burns, lacerations, missing or broken teeth, muscle strains, or internal injuries; in addition to physical mistreatment such as whipping, punching, shoving, kicking, hitting, biting, shaking, dragging, throwing, stabbing, or choking a child, as well as the inappropriate use of restraints.

Preponderance of the evidence means proof, after assessing the totality of available information, that leads to the conclusion that the fact at issue is more probably true than not.

Sexual abuse has the same definition as provided under 45 CFR part 411.6.

Sexual harassment has the same definition as provided under 45 CFR part 411.6.

Sub-grantee means a person or entity that receives a subaward from a care provider facility to carry out activities and programs of ORR or the care provider facility pursuant to a grant or agreement with ORR or with a care provider facility (but does not include an individual that is a beneficiary of such program).

Substantiated allegation—Tier I means a disposition that there is a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and the investigation indicates one or more Automatic Tier I substantiating circumstances are found pursuant to § 412.100(e)(7), or substantiation is warranted based on consideration of aggravating and mitigating factors pursuant to § 412.100(e)(8).

Substantiated allegation—Tier II means a disposition that there is a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and that based on consideration of aggravating and mitigating factors pursuant to § 412.100(e)(8), the evidence does not warrant a finding of Substantiated Allegation—Tier I.

Substantiated perpetrator means a person against whom an allegation of child abuse or neglect has been substantiated by ORR at Tier I or Tier II, but who has not exhausted all applicable appeal and review processes for such allegations.

Sustained allegation means an allegation that was substantiated by ORR at Tier I or Tier II and:

- (1) That was upheld pursuant to appeal and review processes, as described at § 412.102; or
- (2) For which the appeal was dismissed, including when the substantiated perpetrator waives their right to appeal by not making a timely request to the DAB ALJ or by waiving those rights as specified in § 412.102(c).

Sustained perpetrator means a substantiated perpetrator at Tier I or Tier II:

- (1) Whose child abuse or neglect finding was upheld in the appeal and review process; or
- (2) Whose appeal and review process was dismissed, including due to waiving their right to appeal by not timely requesting an appeal to the DAB ALJ or by waiving those rights as specified in § 412.102(c).

Unaccompanied child/children has the same definition as provided under 45 CFR 410.1001.

Unfounded allegation means a disposition that there is not a preponderance of the evidence establishing that the alleged perpetrator committed child abuse or neglect, and the evidence indicates that the unaccompanied child was not harmed or placed at risk of harm.

Verbal or emotional abuse means any criticisms, comments, behaviors, or threats that cause harm to a child's psychological, intellectual, or emotional functioning or self-esteem, which may

be exhibited by a child's anxiety, loneliness, fear, sadness, withdrawal, aggression, or loss of trust with staff.

Volunteer has the same definition as provided under 45 CFR 411.

§ 412.100 Investigations into allegations of child abuse and neglect.

(a) *Purpose.* This part establishes standards, requirements and procedures for investigations by ORR of allegations of child abuse and neglect of an unaccompanied child in ORR custody alleged to have been committed by care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR, subject to § 412.100(c).

(b) *Severability.* The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid by a court of law, the remaining provisions shall continue in effect.

(c) *Applicability.* This part applies to:

- (1) Care provider facilities housing unaccompanied children in States where the State agency responsible for investigating child abuse and neglect allegations will not investigate such allegations in ORR-funded care provider facilities; and
- (2) Emergency or influx facilities (EIFs).

(d) *Reporting.* Care provider facilities to whom this part applies must have written policies and procedures that allow unaccompanied children, care provider facility staff, contractors or sub-grantees of the care provider facility, care provider facility volunteers, families of unaccompanied children, legal service providers, child advocates, attorneys of record, and any other persons, to report allegations of child abuse and neglect to ORR directly, to the care provider facility, or to a designated entity or office that is not part of the care provider facility. The care provider facility written policies and procedures must:

- (1) Provide unaccompanied children and other individuals with methods for reporting and inform them of how they can report an allegation of child abuse and neglect to a designated entity or office that is not part of the care provider facility. Such entity or office must be able to receive allegations of child abuse and neglect and must immediately forward such allegations to ORR. The method for reporting must allow unaccompanied children to remain anonymous upon request.
- (2) Ensure all the methods of reporting described at § 412.100(d)(1)

are accessible for unaccompanied children with disabilities and with limited English proficiency.

(3) Ensure that unaccompanied children, staff, or others who report allegations of child abuse and neglect are protected against retaliation.

(e) *Investigations.* When receiving reports of allegations of child abuse and neglect and conducting investigations, ORR must ensure the health and safety of unaccompanied children while making every effort to reduce further trauma to the alleged victim(s).

(1) If ORR receives a report of an allegation of child abuse or neglect, it must generate an intake report and determine whether the report includes an allegation that, if found to be true, would meet the definition of child abuse and neglect in this part and is consistent with § 412.100(a) and (c). If so, ORR will assign the intake report for investigation. If not, ORR will administratively close the report.

(2) If ORR determines that an intake report is appropriate for investigation, ORR shall assign an ORR Child Welfare Investigator to make a prompt and thorough investigation of the report to obtain sufficient information to determine whether the allegation of child abuse or neglect is substantiated, either at Tier I or II, based on a preponderance of the evidence.

(3) ORR shall provide notification that an allegation of child abuse and neglect will be investigated by ORR to the alleged perpetrator; care provider facility; alleged victim; alleged victim's attorney of record (if the child has an attorney of record); and the alleged victim's parent(s), legal guardian(s), or sponsor(s) (as appropriate), unless ORR has evidence showing the parents, legal guardians, or sponsors should not be notified or the victim is 14 years old or older. If the alleged victim is 14 years old or older and ORR has determined that the alleged victim is able to make an independent decision, the alleged victim can affirmatively consent to disclosure.

(4) Upon notification that an investigation has been initiated, the care provider facility must take immediate responsive measures, for the protection of child welfare, and notify the alleged perpetrator, as appropriate, and ORR of such measures. These measures may extend throughout the pendency of an investigation, and during the pendency of the appeal and review process, as necessary and applicable.

(5) *Investigations process.* (i) ORR shall coordinate with any local or State law enforcement agencies, or other Federal agencies, as appropriate, during its investigation. ORR may pause or

resume an investigation at its discretion, with input from law enforcement partners or other relevant investigatory bodies, as necessary.

(ii) A multidisciplinary team of ORR staff that includes subject matter experts, shall be established, as necessary, to provide input and an assessment of the reported allegation of child abuse or neglect to assist the ORR Child Welfare Investigator.

(iii) During the investigation, the ORR Child Welfare Investigator must complete, at a minimum, the following actions:

(A) Upon receiving an intake report, review the intake report and the care provider facility's records on the alleged victim and alleged perpetrator, conduct background checks on the alleged perpetrator, interview the person who reported the allegation if this person was not interviewed during intake, immediately request preservation of any potential video and documentary evidence, and as needed, establish a plan for thoroughly investigating the allegation;

(B) Visit the care provider facility, as appropriate, to conduct a walkthrough of the facility and review video and documentary evidence;

(C) Make reasonable efforts to interview all individuals who have information relevant to the allegation of child abuse or neglect, including, but not limited to, the alleged perpetrator (as appropriate), care provider facility staff, the alleged victim, sponsor(s), and the parent(s) or legal guardian(s) (as appropriate) of the alleged victim, and any other potential witnesses;

(D) Ensure that interviews conducted as part of the investigation are accessible for individuals with disabilities and with limited English proficiency and are properly documented either in writing or by audio or video recording;

(E) Gather all relevant information, including documents and audio or video evidence;

(F) Review any available evidence of past conduct contained in DCPI's records relating to the same alleged perpetrator, except for allegations that resulted in a finding of unfounded or administrative closure; and

(G) Assess the ongoing risk of child abuse or neglect to the unaccompanied children at the care provider facility and, as appropriate, request that the care provider facility implement a plan to mitigate the risk and ensure the safety of the children.

(6) After the investigation is complete, ORR may make any of the following dispositions based on the

preponderance of the evidence for each reported allegation:

- (i) Substantiated allegation—Tier I;
- (ii) Substantiated allegation—Tier II;
- (iii) Not substantiated allegation;
- (iv) Unfounded allegation; or
- (v) Administrative closure.

(7) *Automatic Tier I substantiating circumstances.* The existence of any one of the following circumstances in connection to a substantiated finding, by a preponderance of the evidence, of child abuse or neglect shall result in an automatic finding of Substantiated allegation—Tier I:

- (i) The death or near death of a child as a result of child abuse or neglect;
- (ii) Subjecting or exposing a child to sexual abuse or sexual harassment;
- (iii) The infliction of injury or creation of a condition requiring a child to be hospitalized or to receive significant medical attention;
- (iv) Repeated instances of physical abuse committed by the individual against any unaccompanied child in ORR care;
- (v) Failure to take reasonable action to protect a child from sexual abuse or repeated instances of physical abuse under circumstances where the individual knew or should have known that such abuse was occurring; and
- (vi) Depriving a child of necessary care (food, shelter, healthcare, supervision) which either caused serious harm or created a substantial risk of serious harm.

(8) *Aggravating factors and mitigating factors.* If ORR determines that there are no automatic Tier I substantiating circumstances under § 412.100(e)(7), ORR shall consider the following aggravating and mitigating factors together in determining if child abuse or neglect should be substantiated at Tier I or II. Consideration of aggravating and mitigating factors will be based on the totality of the circumstances and the interest of protecting child welfare:

(i) *Aggravating factors.* Aggravating factors shall be weighed together with any existing mitigating factors. Aggravating factors include any of the following:

(A) Violations of ORR behavior management requirements pursuant to § 410.1304;

(B) The individual's failure to comply with clearly established care provider facility policies, corrective action plans, or agreed-upon conditions;

(C) The tender age, delayed developmental status or other vulnerability of the child;

(D) Any significant or lasting physical, psychological, or emotional harm to the child;

(E) An attempt to inflict any significant or lasting physical,

psychological, or emotional harm to the child;

(F) Evidence suggesting a repetition or pattern of abuse or neglect, including multiple instances in which child abuse or neglect was substantiated at Tier I or Tier II and not substantiated allegations if they demonstrate a pattern of abuse or neglect or harm.

(ii) *Mitigating factors.* Mitigating factors shall be weighed together with any existing aggravating factors. Mitigating factors include any of the following:

(A) Remedial actions taken by the individual before the investigation was concluded;

(B) Extraordinary, situational, or temporary stressors that caused the individual to act in an uncharacteristically abusive or neglectful manner;

(C) The isolated or aberrational nature of the child abuse or neglect; and

(D) The limited, minor, or negligible physical, psychological, or emotional impact of the abuse or neglect on the child.

(f) *Confidentiality.* Records created and information gathered or obtained during an investigation are for internal purposes only, will not be shared or made public unless otherwise required or authorized by law, and may not be disclosed without prior ORR approval. All records must be maintained in an appropriate recordkeeping system with protections for the privacy and security of the individuals identified in the records.

(g) *Notifications of a Disposition.* (1) ORR must notify the alleged perpetrator of the disposition in writing within five days of making a disposition. ORR must also notify in writing the alleged victim, their parent(s) or legal guardian(s) (as appropriate), or sponsor(s), of the disposition within five days of making a disposition.

(2) If the disposition is substantiated at Tier I, the notification must state:

(i) The substantiated perpetrator will be considered a Tier 1 sustained perpetrator and their name and other details related to the relevant abuse or neglect findings will be placed on the ORR Central Registry, unless they seek an appeal of the disposition pursuant to § 412.102, and that once identified in the ORR Central Registry they will be prohibited from working or volunteering in any way on ORR-funded grants or contracts, and may not have access to or contact with any unaccompanied child in ORR custody;

(ii) The reasons for the Tier I substantiated perpetrator's placement on the ORR Central Registry in terms sufficient to put the perpetrator on

notice of the conduct or incident(s) upon which it is based;

(iii) The Tier I substantiated perpetrator may appeal ORR's disposition pursuant to § 412.102, but that if the Tier I substantiated perpetrator either fails to timely submit a notice of appeal, or upon conclusion of the appeal and subsequent review, if any, the disposition is upheld, the Tier I substantiated perpetrator will be added to the ORR Central Registry as a Tier I sustained perpetrator and the disposition will be reported to Federal, State, and local authorities, as appropriate; and

(iv) ORR's procedures for making the disposition.

(3) If the disposition is substantiated at Tier II, the notification must inform the Tier II substantiated perpetrator that they may appeal ORR's disposition pursuant to § 412.102, but that if they either fail to timely submit a notice of appeal, or upon the conclusion of the appeal and subsequent review, if any, the disposition is upheld, the Tier II substantiated perpetrator will be designated as a Tier II sustained perpetrator and ORR's disposition will be retained in ORR records. ORR may use these records to determine patterns of child abuse and neglect and to inform future safety planning at care provider facilities. A Tier II sustained perpetrator will not be placed on the ORR Central Registry.

§ 412.101 Interventions and discipline.

(a) *ORR Central Registry.* (1) ORR will maintain an ORR Central Registry consisting of the names of Tier I sustained perpetrators for purposes consistent with § 412.100(a) and (c). The ORR Central Registry will contain names and other identifying information for such persons, and details regarding any sustained allegations of child abuse and neglect against those persons.

(2) Subject to legal requirements regarding disclosure of information, as well as information sharing obligations with relevant State, local, or Federal authorities, the ORR Central Registry will not be public-facing, nor available to persons outside of ORR. The ORR Central Registry will only be used by ORR to identify Tier I sustained perpetrators, as defined in this part, and for ORR to use as part of the screening process by care provider facilities as described in § 412.101(b).

(b) *Working and Volunteering Prohibitions and Mandatory ORR Central Registry Checks.* (1) The individuals listed in the ORR Central Registry shall be prohibited from working or volunteering in any way on ORR-funded grants or contracts and may

not have access to or contact with any unaccompanied child in ORR custody unless ORR removes such individual from the ORR Central Registry.

(2) As part of the screening process for hiring decisions for staff, contractors or sub-grantees, or for screening volunteers, all care provider facilities, home study providers, and post-release service providers, whether or not located in States that investigate child abuse and neglect allegations at ORR care provider facilities, must check with ORR to confirm that an applicant is not listed in the ORR Central Registry.

(3) All care provider facilities, home study providers, and post-release service providers, whether or not located in States that investigate child abuse and neglect allegations at ORR care provider facilities, must also check all of their personnel against the ORR Central Registry at least once annually.

(c) *Disciplinary Sanctions.* Care provider facilities must implement appropriate disciplinary or remedial measures where they or ORR find that care provider facility staff, contractors or sub-grantees of the care provider facility, or care provider facility volunteers whose conduct does not rise to the level of a Tier I substantiated allegation, as defined at § 412.001, but nevertheless raises child welfare concerns.

(d) *Referrals to State, Local, and Other Federal Agencies.* (1) ORR shall refer the names and other identifying information of Tier I sustained perpetrators to relevant State and local authorities and to relevant law enforcement agencies in the State in which the sustained allegation of child abuse or neglect occurred. Additionally, if a State or local authority or relevant local law enforcement agency outside of the State in which the Tier I sustained allegation occurred requests information about the sustained perpetrator, ORR will confirm whether a particular individual is on the ORR Central Registry.

(2) ORR will provide the names and other identifying information of Tier I sustained perpetrators to the Federal Bureau of Investigation and HHS Office of the Inspector General (OIG), consistent with any applicable agreements.

(3) ORR and care provider facilities shall not interfere with another State, local, or Federal authority or agency's investigation into allegations of child abuse and neglect.

§ 412.102 Appeal and review process.

(a) A substantiated perpetrator at Tier I or Tier II may appeal the disposition made by ORR to an Administrative Law Judge (ALJ) of the HHS Departmental

Appeals Board (DAB) pursuant to § 412.102(c).

(b) *Notice of Opportunity for an Appeal.* (1) After ORR substantiates an allegation of child abuse and neglect at Tier I or Tier II, it will send a written notice to the substantiated perpetrator at Tier I or Tier II, in accordance with § 412.100(g), with notification that the allegation has been substantiated and that, unless they appeal the disposition by ORR, a Tier I substantiated perpetrator will be placed on the ORR Central Registry as a Tier I sustained perpetrator and a Tier II substantiated perpetrator's information will be retained as a Tier II sustained perpetrator in agency records.

(2) The written notice shall:

(i) Clearly describe the basis for ORR's disposition that substantiates the relevant allegations at Tier I or Tier II and shall explain the Tier I or Tier II substantiated perpetrator's right to appeal the disposition and the steps required to initiate the appeal.

(ii) Inform the substantiated perpetrator that they may appeal the ORR disposition before an ALJ.

(iii) Provide the substantiated perpetrator at Tier I or Tier II and their attorney, if any, with written information and instructions describing the appeal process.

(iv) Inform the substantiated perpetrator at Tier I or Tier II that if they do not submit a notice of appeal within 30 days of receiving the notice of disposition, the DAB will consider the substantiated perpetrator to have waived their opportunity to appeal and any subsequent review. If the appeal is determined to be waived, a Tier I substantiated perpetrator will be identified as a Tier I sustained perpetrator on the ORR Central Registry and a Tier II substantiated perpetrator's information will be retained as a Tier II sustained perpetrator in agency records.

(c) *Notice of Appeal and Dismissal of an Appeal—(1) Notice of Appeal.* (i) If the substantiated perpetrator at Tier I or Tier II elects to appeal ORR's disposition that an allegation is substantiated at Tier I or Tier II, they must file a written notice of appeal with the DAB within 30 days of receipt of the written notice of ORR's disposition.

(ii) Within 30 days of receipt of the notice of appeal, ORR shall provide all evidence it used in making its disposition to the DAB.

(iii) ORR shall provide the substantiated perpetrator at Tier I or Tier II and their attorney, if any, all information used in making its disposition except any portion that ORR determines:

(A) Would compromise the safety and well-being of a child, the reporter, or any other person;

(B) Would reveal the identity of a child who furnished information with the understanding that their identity would be held in confidence;

(C) Would reveal the identity of any alleged perpetrator(s) involved in the same case who has an unfounded disposition; or,

(D) Is otherwise prohibited by State or Federal law or regulation. In the case of information being withheld, the substantiated perpetrator at Tier I or Tier II shall be advised of the general nature of the information and the reasons that it is being withheld.

(2) *Dismissal of appeal.* (i) The ALJ shall dismiss an appeal when the substantiated perpetrator waives appeal by not submitting a notice of appeal within 30 days of receiving written notice of ORR's disposition, pursuant to § 410.102(b)(2)(iv), and does not demonstrate good cause for the untimely submission; or when the substantiated perpetrator withdraws the appeal, abandons the appeal, or does not have a right to ALJ review. If the appeal of a Tier I substantiated perpetrator is dismissed, they will be placed on the ORR Central Registry as a Tier I sustained perpetrator. If the appeal of a Tier II substantiated perpetrator is dismissed, ORR will retain the information regarding the Tier II substantiated perpetrator as a Tier II sustained perpetrator in agency records.

(ii) Notwithstanding such dismissal, the DAB may in its discretion temporarily remove the designation of sustained perpetrator at Tier I or Tier II, which would result in ORR removing the individual who was designated as a sustained perpetrator at Tier I from the ORR Central Registry, for situations including, for example, where the ALJ determines that the sustained perpetrator at Tier I or Tier II has established good cause for exceeding the appeal timeframe.

(d) *Appeal of ORR's disposition.* (1) When a substantiated perpetrator at Tier I or Tier II appeals the ORR's disposition to an ALJ pursuant to § 412.102(c)(1)(i), ORR must transmit to the ALJ all of the evidence upon which the disposition was based.

(2) The evidentiary record must contain all documents and other materials, such as video or audio recordings, that were used by ORR in making its disposition. The ALJ may remand the case to ORR if the ALJ determines that the evidentiary record is insufficiently complete to decide whether ORR's disposition is supported by a preponderance of the evidence.

(3) The substantiated perpetrator at Tier I or Tier II may be represented by an attorney and may present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

(4) The substantiated perpetrator shall have the burden to show that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation at Tier I or Tier II, and to dispute whether any automatic Tier I substantiating circumstances existed (if applicable) or whether any aggravating factors or mitigating factors existed (if applicable). Both ORR and the substantiated perpetrator may present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof. The testimony of care provider facility staff shall be voluntary and failure to offer such testimony will not be subject to disciplinary action.

(5) If the substantiated perpetrator submits a notice of appeal and the appeal is not dismissed by the ALJ pursuant to § 412.102(d)(7), ORR must notify the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s) that that an appeal of ORR's disposition will be conducted by an ALJ. The alleged victim, other child witness(es), and family members of the alleged victim shall not be required to testify. Refusal to testify shall have no bearing on the determination as to whether abuse did or did not take place.

(6) The parties may direct and cross examine witnesses either during a live hearing or pursuant to a record review. The parties will be given an opportunity to file briefs or other written statements as to fact or law.

(7) The ALJ shall conduct a fair and impartial hearing and de novo review to determine whether the substantiated perpetrator proved their burden of showing that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation. The ALJ may either dismiss the case for untimeliness, withdrawal of the appeal, abandonment of the appeal, or because the individual does not have the right to appeal or because of other procedural defects, or will issue a written decision to uphold, modify, or reverse ORR's disposition.

(8) The ALJ shall serve a copy of the decision upon the parties and the Assistant Secretary for ACF. The ALJ's decision shall provide the sustained perpetrator at Tier I or Tier II and their attorney, if any, with instructions for requesting review by the Assistant

Secretary for ACF. The ALJ also shall provide a copy of the decision to alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s). The complete record upon which the decision is based shall be made available to the Assistant Secretary.

(e) *Review of the ALJ's Decision.* (1) A substantiated perpetrator at Tier I or Tier II may request a review of the ALJ's decision within 30 days of receipt of the ALJ's decision, by filing a request for review with Office of the Assistant Secretary for ACF.

(2) The Assistant Secretary for ACF has discretion, within 30 days after receiving a timely submission by a substantiated perpetrator of a request for review of an ALJ's decision under § 412.102(e)(1) to review the ALJ's decision to dismiss a case for untimeliness or other procedural defects, and to affirm, modify, or reverse the ALJ's decision with regard to dismissal or ORR's disposition of the allegation. A review by the Assistant Secretary will determine whether the ALJ's decision was based on a material error of law or fact.

(3) If the Assistant Secretary affirms the ALJ's decision or does not modify or reverse the ALJ's decision within 30 days after receiving a timely review request pursuant to § 412.102(e)(1), the ALJ's decision becomes the final decision of the Assistant Secretary and is binding on the parties.

(4) If the Assistant Secretary modifies or reverses the ALJ's decision pursuant to § 412.102(e)(2), the Assistant Secretary's decision is final and binding.

(5) If at the end of the 30-day period in § 412.102(e)(1), no timely request for review has been made, the Assistant Secretary has 30 days from that point to exercise discretion to review the ALJ's decision. If the Assistant Secretary does not modify or reverse the ALJ's decision, then the ALJ's decision becomes the final decision of the Assistant Secretary and is binding on both parties.

(6) The Office of the Assistant Secretary for ACF shall serve a copy of the final decision upon the parties involved. The Office of the Assistant Secretary for ACF also shall provide a copy of the final decision issued by the Assistant Secretary, based on review on the ALJ's decision under § 412.102(e), to the alleged victim and the alleged victim's parent(s), legal guardian(s) (as appropriate), or sponsor(s).

§ 412.103 Obligations of care provider facilities.

(a) *General requirements.* During any investigation by ORR, a care provider facility must:

(1) Permit ORR unrestricted access to the premises, any physical property on the premises, buildings, staff, and children in the physical custody of the care provider facility;

(2) Permit ORR to conduct interviews with children residing at the care provider facility, and without care provider facility staff, contractors, or sub-grantees of the care provider facility, or care provider facility volunteers present;

(3) Permit ORR to observe the activities of care provider facility staff, contractors, or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR;

(4) Promptly preserve any potential video or documentary evidence;

(5) Promptly provide access to and, upon request, copies of all files, records, reports, data, video recordings, and other information to ORR, either prior to or during the investigation;

(6) Promptly provide access to and contact information for care provider facility staff, contractors, or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through other contracts or grants with ORR;

(7) Submit complete and accurate responses to any written questions in a timely manner;

(8) Fully cooperate with ORR;

(9) Fully cooperate with any investigation of the same allegation by State, local, and Federal authorities and relevant law enforcement agencies.

(b) *Protection against retaliation.* Care provider facility staff, contractors, or sub-grantees of the care provider facility, and care provider facility volunteers must not retaliate against any person who in good faith reports or participates in an investigation of child abuse or neglect.

(c) *Obstruction, interference, delay of, or failure to permit an investigation.*

Obstruction, interference, delay of, or failure of a care provider facility to permit or cooperate with any investigation under this part, including failure to protect unaccompanied children from retaliation pursuant to § 412.103(b), may result in ORR taking monitoring and enforcement measures including, but not limited to: remote monitoring of the care provider facility; on-site monitoring of the care provider facility; monitoring of the corporate

offices to review internal policies and reporting structures, as well as supervisory response to events; limiting or stopping new placements of unaccompanied children at the care provider facility; removing all unaccompanied children from the care provider facility and placing them into other care provider facilities; issuing corrective actions; terminating the cooperative agreement or contract with the care provider facility; or imposing other such remedies for noncompliance applicable to HHS grant recipients and contractors.

(d) *Rights to legal representation, familial supports, and other supports.* During the course of an investigation, care provider facilities must provide unaccompanied children confidential access to attorneys of record and other legal service providers, in a manner consistent with requirements established at 45 CFR 411.55 (as applicable) and 45 CFR 410.1309. Care provider facilities must provide unaccompanied children access to their families, including legal guardians, in a manner consistent with requirements established at 45 CFR 411.55 (as applicable) and 45 CFR 410.1309. Care provider facilities must provide unaccompanied children with access to their child advocates, in a manner consistent with the requirements at 8 U.S.C. 1232(c)(6) and 45 CFR 410.1308. Care provider facilities must also provide unaccompanied children access to health services (including specialists and mental health practitioners), individual counseling sessions, and crisis intervention (including access to outside victim services and rape crisis centers where appropriate) to most appropriately address unaccompanied children's needs, in a manner consistent with requirements established at 45 CFR 410.1307, 45 CFR 410.1311, 45 CFR 410.1302(c)(5), and 45 CFR 411.21 (as applicable).

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 241120-0297]

RTID 0648-XD848

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2024-2025 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Final rule.

SUMMARY: NMFS is implementing annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2024, through June 30, 2025. This rule prohibits most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest is allowed only for use as live bait, in minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine will be limited to 30 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), or up to 2 metric tons (mt) per trip when caught with non-coastal pelagic species stocks. The harvest specifications for 2024-2025 include an overfishing limit (OFL) of 8,312 mt, an acceptable biological catch (ABC) and annual catch limit (ACL) of 6,005 mt, and an annual catch target (ACT) of 5,500 mt. This final rule is intended to conserve, manage, and rebuild the Pacific sardine stock off the coasts of Washington, Oregon, and California.

DATES: Effective December 27, 2024.

FOR FURTHER INFORMATION CONTACT: Katie Davis, West Coast Region, NMFS, (323) 372-2126, Katie.Davis@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (*i.e.*, off the U.S. West Coast states of California, Oregon, and Washington) in accordance with the CPS FMP. The CPS FMP and its implementing regulations require NMFS to set annual reference points and management measures for the Pacific