## CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

**AGENCY:** Rhode Island Department of Health

**RULE IDENTIFIER:** 216-RICR-30-05-4

**RULE TITLE:** MASKING IN SCHOOL

**REASON FOR RULEMAKING:**
The Rhode Island Department of Health (RIDOH) is proposing to adopt Masking in School (216-RICR-30-05-4) for the purpose of publicly setting forth the framework and considerations for any future face masking requirement issued by RIDOH for students in grades Kindergarten (K) through twelve (12) in Rhode Island. If a school masking requirement ever were to be instituted, the proposed regulation would also require RIDOH to set forth the rationale for the masking requirement through a public statement.

**ANY FINDINGS REQUIRED BY LAW AS A PREEQUISITE TO THE EFFECTIVENESS OF THE RULE:** N/A

**TESTIMONY AND COMMENTS:**

The Rhode Island Department of Health ("RIDOH") received comments (written submissions and testimony provided during a public hearing) from members of the public. The following is a summary of the comments:

***Requests for Rulemaking Documents***
Several comments included requests for the rulemaking documents (public comments, hearing transcript, and Benefit-Cost Analysis).

***RIDOH Response:*** The requested rulemaking documents were provided upon request.

***Inquiry Regarding Investigations of Masking Policies in Schools***
A comment was received inquiring how the Department would investigate issues with masking policies in schools.

***RIDOH Response:*** This comment is not germane to the proposed regulation, as this regulation does not address enforcement or oversight of any potential future masking requirement.

***Claims that Masks Are Ineffective***

Several comments were received indicating a belief that masking is not an effective infection prevention measure.

***RIDOH Response:*** The proposed regulation does not implement a masking requirement. The effectiveness of masking for preventing infections is not germane to the proposed rule.

***Concerns Regarding Government Overreach***

Several comments were received expressing concerns that the proposed regulation is beyond the powers granted to RIDOH under State law. RIDOH also received several comments suggesting that the ability to implement any future masking requirement for students should not be provided to RIDOH.

***RIDOH Response:*** These comments are beyond the scope of the proposed regulation, as the proposed regulation does not implement any specific measures. They are intended to increase consistency and transparency with regard to any future masking requirement for students.

***Claims of Harm Caused by Masking Requirements***

Several comments were received expressing concern regarding harm that was experienced by children due to prior masking requirements and the possibility of future harm in the event of a subsequent masking requirement.

***RIDOH Response:*** The proposed regulation does not implement a masking requirement. These comments are beyond the scope of the proposed regulation.

***Data Utilized by RIDOH***

Comments were received expressing concern over what was perceived as a lack of data and the application of best practices in determining whether a masking requirement is necessary in the future.

***RIDOH Response:*** RIDOH notes that § 4.3(B) of the proposed regulation would result in the Department using a consistent framework in considering any potential face masking requirements in schools, and publicly providing a rationale for any future face masking requirement in schools.

***Violation of Federal and/or State Statutes***

Several comments were received suggesting that the implementation of a masking requirement may violate or be in conflict with both federal and state statutes.

***RIDOH Response:*** These comments are not germane to the proposed regulation, as the regulation does not implement a masking requirement.

***Opposition to Proposed Regulation***

Several comments were received stating only that the commenters opposed to the promulgation of the proposed regulation, but did not provide the reason for the opposition.

***RIDOH Response:*** RIDOH acknowledges receipt of these statements.

***Benefit-Cost Analysis Concerns***

RIDOH received several comments regarding the Benefit-Cost Analysis that was developed to assess the feasibility and impact of the proposed regulation. The comments received were concerning the benefits and costs of implementing a masking requirement in the future.

***RIDOH Response:*** These comments are not germane to the proposed regulation, as the regulation do not implement a masking requirement.

***Opposition to Wording Not Proposed***

Several comments were received expressing opposition to wording from § 4.3(B) that was not included as part of the regulatory text submitted for public comment.

***RIDOH Response:*** Because the wording that is referenced in these comments was not included in the proposed regulation, they are beyond the scope of the proposed regulation.

***Questions Regarding the Evidence for the Effectiveness of Masking***

Several comments were received with questions regarding evidence for the effectiveness of masking requirements.

***RIDOH Response:*** These comments are not germane to the proposed regulation, as the regulation does not implement a masking requirement.

***Questions Regarding Considerations Not Included***

A comment was received including a question of “why RIDOH would consider such a step without fully assessing the effects mask mandates have on:

1. social connections?
2. On language acquisition?
3. On reading?
4. On speech development?
5. On learning?
6. On mental health?
7. On connections?
8. On oxygen levels and heart rates?
9. On facial recognition?
10. On social development?"

***RIDOH Response:*** Should RIDOH ever weigh the need for a future face masking requirement in schools, RIDOH would adhere to § 4.3(B) of the proposed regulation, which stipulates the factors to be considered.

***Purpose of the Proposed Regulation***

Several comments were received which incorrectly portrayed the purpose of the proposed regulation as imposing a masking requirement in schools.

***RIDOH Response:*** These comments are beyond the scope of the proposed regulation, as the regulation does not impose a masking requirement, however, based on the number of comments received, RIDOH determined a clarification was required. As noted previously, this regulation is being adopted for the purpose of publicly setting forth the framework and rationale for a masking requirement in the event a future masking requirement is promulgated by RIDOH for students in grades K-12 in Rhode Island.

***Support for Proposed Regulation***

RIDOH received comments supporting the promulgation of the proposed regulation.

***RIDOH Response:*** RIDOH acknowledges receipt of these statements.

***Suggested Wording Changes***

Several comments were received with suggested wording for the proposed regulation.

*The following wording changes were suggested:*

- "There will be no regulation requiring masking in schools for the alleged prevention of respiratory viral infections until evidence of their effectiveness has been demonstrated convincingly by multiple, rigorous, randomized controlled trials (RTCs) in school children."
- "There will be no regulation requiring masking in schools for respiratory viral infections until evidence of their effectiveness has been demonstrated convincingly by multiple, rigorous, randomized controlled clinical trials."
- "There will be no regulation requiring masking in schools for alleged prevention of respiratory viruses until evidence of their effectiveness has been demonstrated convincingly by multiple, rigorous, randomized controlled trials (RTCs) in school children."

***RIDOH Response:*** Should RIDOH assess the need for a masking requirement in the future, § 4.3(B) of the proposed regulation require the consideration of scientific evidence, among other factors. As a result, RIDOH declines to make these changes.

*The following wording change was suggested:*

- "RIDOH will not implement a mask mandate because RIDOH cannot support its regulation with quality science."

***RIDOH Response:*** RIDOH declines to implement this language because the proposed regulation does not implement a face masking requirement.

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*The following wording change was suggested:*

- "The rationale described in § 4.3(A) needs to be significantly more detailed than a statement that "Masks Work." At a minimum, it should address in detail, the items listed in 4.3(B)(9)."

***RIDOH Response:*** The comprehensive rationale requirements in § 4.3(B) are already included in the public statement requirement in § 4.3(A). As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- "[Section] 4.3(A) should be expanded to require a more detailed statement and rationale should a school mask mandate be implemented."

***RIDOH Response:*** The comprehensive rationale requirements in § 4.3(B) are already included in the public statement requirement in § 4.3(A). As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- "[§]§ 4.3(B)(6), (7), (8), and (13) should be removed."

***RIDOH Response:*** These considerations are integral to the process of deciding whether to implement a face masking requirement for students. As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- "§ 4.3(B)(10) should be revised to read: ""Parents and guardians MUST be included as stakeholders from whom input will be sought."

***RIDOH Response:*** A public comment period is already required for all regular rulemaking under the Administrative Procedures Act. As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- "§ 4.3(C) should be removed and in § 4.3(A), RIDOH must disclose publicly all of the individuals who reviewed the scientific evidence, their credentials and what specific evidence they relied upon to reach their conclusions."

***RIDOH Response:*** This comment does not include a basis or explanation for removal of § 4.3(C). Further, the requirements of § 4.3(C) are integral to the process of deciding whether to implement a face masking requirement for students. With respect to § 4.3(A), the proposed rule provides: "The Director shall have the final decision within the Department regarding face masking for students." As a result, RIDOH declines to make these changes.

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*The following wording change was suggested:*

- "In order to implement a school mask mandate. RIDOH will specify in its regulation how the department will determine what science to disregard when deciding to implement a mask mandate. RIDOH will outline specific criteria that it will use to determine why a particular study or meta-analysis will be disregarded. RIDOH will specify necessary criteria of a particular study, meta-analysis or data set, in order to be included in their analysis of whether or not to impose a mask mandate."

***RIDOH Response:*** RIDOH declines to implement this language because the proposed regulation does not implement a face masking requirement. RIDOH declines to implement this language.

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*The following wording changes were suggested:*

- "RIDOH will specify the transmission rate threshold necessary in order to trigger the implementation of a mask mandate.
- RIDOH will specify which viral outbreaks may trigger the implementation of a mask mandate (Covid, influenza, RSV, whooping cough, chicken pox, etc.)
- RIDOH will demonstrate the efficacy of mask mandates via randomized control trials that clearly prove the effectiveness and safety of universal mask use.
- RIDOH will demonstrate a lack of correlation between mask use and learning loss.

- RIDOH will demonstrate a lack of correlation between mask use and deteriorated mental health in children.
- RIDOH will poll the general public for a period of 30 days in order to ascertain how parents feel about forcibly masking their children in order to access public schools. RIDOH will ask how parents feel that mask mandates affect the learning, communication, socialization, mental health, physical health, breathing, viral infection rate and sense of well-being of their children.
- RIDOH will send surveys to all public schools asking students, the principle stakeholders, for their input regarding how mask mandates affect their learning, communication, socialization, mental health, physical health, breathing and sense of well-being.
- RIDOH will send surveys to all teachers and administrators asking for input regarding how mask mandates affect learning, communication, socialization, mental health, physical health, breathing, connections and overall sense of well-being of both students and staff."

***RIDOH Response:*** RIDOH notes that a public comment period is already required for all regular rulemaking. Additionally, the criteria provided in § 4.3(B) of the proposed regulation is sufficient in indicating the rationale for implementing any future masking requirement. As a result, RIDOH declines to make these changes.

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*The following wording changes were suggested:*

- "RIDOH's 216-RICR-30-05-4 regulation will include an analysis of the ways that mask mandates affect developing children. RIDOH's regulation will include a benefit/cost analysis of the following:
    - How do mask mandates affect mental health?
    - How do mask mandates affect social development?
    - How do mask mandates affect social connections to one another and to adults?
    - How do mask mandates affect language acquisition?
    - How do mask mandates affect receptive language?
    - How do mask mandates affect expressive language?
    - How do mask mandates affect communication?
    - How do mask mandates affect learning loss?
    - How do mask mandates affect dental and oral health?
    - How do mask mandates affect blood oxygen levels during exercise?
    - How do mask mandates affect resting heart rates?
    - How do mask mandates affect rates of skin infections?

- How do mask mandates affect children with prior facial surgeries? How do mask mandates affect children with sensory sensitives?
- How do mask mandates affect children with asthma? How do mask mandates affect children with allergies?
- How do mask mandates affect children with respiratory conditions? How do mask mandates affect viral transmission rates?
- How do mask mandates affect overall health outcomes of children?"

***RIDOH Response:*** The factors to be considered which are provided in § 4.3(B) of the proposed regulation are not exhaustive. RIDOH may consider additional factors when determining the need for a future masking requirement. Additionally, a public comment period is already required for all regular rulemaking. Furthermore, the Administrative Procedures Act already requires a benefit-cost analysis as part of the regular rulemaking process. As a result, RIDOH declines to make these changes.

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*The following wording change was suggested:*

- "§ 4.3(B) should include "will first demonstrate with respect to a masking requirement, the Department's full compliance with the Administrative Procedures Act (APA) by providing the complete, requisite Regulatory Analysis including adherence to the Rhode Island Office of Regulatory Reform December 2023 guidance document ANALYZING REGULATORY BENEFITS AND COSTS - A guide for Rhode Island executive agencies. The masking requirement will also be supported by scientific evidence derived from randon [sic] control trials (RCTs) and will demonstrate direct applicability to students wearing masks in schools for the duration of the school day and during all school-associated activities. The masking requirement will also explain it's reasoning for feasibility."

***RIDOH Response:*** RIDOH is required to comply with the Administrative Procedures Act. A statement confirming this compliance is not necessary for the proposed regulation. In the event that RIDOH assesses the need for a masking requirement in the future, RIDOH will follow the requirements stated in § 4.3(B) of the proposed regulation. As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- "§ 4.3(B)(16) should be added to state: "How masking affects children with various conditions, including but not limited to: social and emotional difficulties,

developmental delays, special educational needs, diagnosed medical conditions, diagnosed mental health disorders or conditions."

***RIDOH Response:*** Should RIDOH assess the need for a masking requirement in the future, RIDOH will follow the requirements stated in § 4.3(B) of the proposed regulation. In addition, the factors to be considered which are provided in § 4.3(B) of the proposed regulation are not exhaustive. RIDOH may consider additional factors when determining the need for a future masking requirement. Furthermore, a public comment period is already required for all regular rulemaking. As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- "§ 4.3(D) should be added to state: "EXEMPTIONS - In the event of a masking requirement, any child, parent or guardian may claim an exemption for any reason, including, but not limited to a medical, philosophical, or religious exemption."

***RIDOH Response:*** RIDOH declines to implement this language because the proposed regulation does not implement a face masking requirement and therefore, exemptions are not being considered for this regulation.

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*The following wording change was suggested:*

- "If any future mask mandate for schools is going to be the final decision of the director for RIDOH, as referenced in the new proposed regulation, Section 4.3C, then it should spell out that the director is required to thoroughly review the available information firsthand."

***RIDOH Response:*** § 4.3(C) already requires "The Director shall have the final decision within the Department regarding face masking for students." As a result, RIDOH declines to make this change.

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*The following wording change was suggested:*

- A revision for the definition of "Scientific Evidence" was proposed. This proposed definition is: ""Scientific evidence" means published guidelines from the Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), or other major scientific organizations. In rapidly evolving emergent outbreaks of respiratory disease, the results of clinical trials or other studies published in peer-reviewed articles, as well as medical literature

recognized by the relevant medical specialty community, will also be regarded as evidence to drive policy."

***RIDOH Response:*** RIDOH believes that the terms of the proposed definition are already provided for within the text of the proposed regulation, as § 4.2(A)(3) provides a versatile definition of "scientific evidence" including "…medical literature generally recognized by the relevant medical specialty community" which makes specific references to the CDC or NIH unnecessary. As a result, RIDOH declines to make this change.

**CHANGES TO THE TEXT OF THE RULE:**

No changes to the regulatory text were made beyond that which was proposed for public comment.

**REGULATORY ANALYSIS:**

In development of this rule, consideration was given to:

1) Alternative approaches;

2) Overlap or duplication with other statutory and regulatory provisions; and

3) Significant economic impact on small business

No alternative approach, duplication or overlap was identified based on available information. RIDOH has determined that the benefits of the rule justify its costs.