

have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zone lasting no more than 3 hours that would prohibit entry within 190 yards of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all

public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T05-0248 to read as follows:

165. T05-0248 Safety Zone; Apra Outer Harbor, Naval Base Guam.

(a) *Location.* The following areas, within the Captain of the Port Guam (COTP) Zone (See 33 CFR 3.70-15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge for the 4th of July celebrations at Polaris Point, Naval Base Guam. The following position 13 degrees 26 minutes 44.76 seconds N Latitude, 144 degrees 39 minutes 59.16 seconds E Longitude is to be used as a guide to the location of the barge.

(b) *Effective Dates.* This rule is effective from 6 p.m. through 9 p.m. on July 4, 2020.

(c) *Enforcement.* All persons are required to comply with the general regulations governing safety zones found in § 165.23. Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Guam. Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Guam or his designated representative. To seek permission to transit the area, the Captain of the Port Guam and his designated representatives can be contacted at telephone number (671) 355-4821 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(d) *Waiver.* The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(g) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 and 46 U.S.C. 70052.

Dated: May 19, 2020.

Christopher M. Chase,

Captain, U.S. Coast Guard, Captain of the Port, Guam.

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2020-OSERS-0014]

Proposed Priorities, Requirements, and Selection Criteria—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—The Individuals With Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priorities, requirements, and selection criteria.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and selection criteria for the IDEA Paperwork Reduction Planning and Implementation Program, Catalog of Federal Domestic Assistance (CFDA) number 84.326F. The Department may select as many as 15 States to receive support in planning for and implementing waivers of statutory requirements of, or regulatory requirements relating to, IDEA Part B to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities. The Department may use the priorities, requirements, and selection criteria in this document for competitions in fiscal year (FY) 2020 and later years. The IDEA Paperwork Reduction Planning and Implementation Program focuses on an identified national need to reduce the paperwork burden associated with the requirements of IDEA Part B while preserving the rights of children with disabilities and promoting academic achievement.

DATES: We must receive your comments on or before June 29, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Help.”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priorities, requirements, and selection criteria, address them to David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7334. Email: David.Egnor@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and selection criteria. To ensure that your comments have maximum effect in developing the final priorities, requirements, and selection criteria, we urge you to identify clearly the specific section of the proposed priorities, requirements, or selection criterion that each comment addresses.

We are particularly interested in comments about whether the proposed priorities, requirements, and selection criteria would be challenging for new applicants to meet and, if so, how the proposed priorities, requirements, and

selection criteria could be revised to address potential challenges and reduce burden.

Directed Questions:

1. We invite specific public comment on the extent to which the activities in these priorities, requirements, and selection criteria are appropriate for States and whether there are alternatives that would accomplish the same purposes with less burden for States.

2. Although the Department reserves its discretion to establish award sizes, we further invite public input on the appropriate size of awards under these priorities.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and selection criteria by accessing *Regulations.gov*. You may also inspect the comments in person in Room 5163, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are

supported by scientifically-based research.

Program Authority: 20 U.S.C. 1408 and 1463.

Proposed Priorities

Background: The Secretary believes that all students should be given the opportunity to succeed and that their success should be the primary focus of everyone in the educational system. When teachers, related services providers, and administrators who serve children with disabilities spend time completing unnecessary paperwork, their ability to prioritize and focus on improving outcomes for children with disabilities is hampered.

In the 2004 reauthorization of IDEA, Congress recognized that some Federal IDEA Part B requirements could create excessive paperwork and noninstructional time burdens on special education teachers, related services providers, and State and local administrators, thus diverting time and resources away from instruction and other activities that would improve educational and functional results for children with disabilities.

As such, under section 609 of IDEA, Congress gave the Department limited authority to grant waivers of certain requirements of IDEA Part B. Waivers may be granted to not more than 15 States and for a period not to exceed 4 years. Further, the Secretary may not waive any statutory or regulatory provisions relating to applicable civil rights requirements or allow States or local educational agencies to waive procedural safeguards under section 615 of IDEA, and waivers may not affect the right of a child with a disability to receive a free appropriate public education (FAPE) under IDEA Part B. In short, States’ waiver proposals must preserve the fundamental rights of children with disabilities under IDEA.¹ In addition, States have always had the authority, within the constraints of State law, to change or waive State requirements that exceed IDEA statutory and regulatory requirements in order to reduce administrative burden.

Under section 609 of IDEA, the waivers must be based upon proposals submitted by States. In a document

¹ For any State that receives a waiver of Federal IDEA Part B requirements, the Secretary will terminate the waiver if the Secretary determines that the State failed to appropriately implement its waiver, or the Secretary determines the State needs assistance in implementing IDEA requirements and the waiver has contributed to or caused such need for assistance. The Secretary will also terminate the waiver if the Secretary determines the State needs intervention in implementing IDEA requirements, or needs substantial intervention in implementing IDEA requirements.

published elsewhere in this issue of the **Federal Register**, the Department is proposing requirements for States to obtain waivers under section 609 of IDEA (the IDEA Paperwork Reduction Waivers). We invite the public to review that document in conjunction with this one and identify any potential inconsistencies or implementation issues that may arise.

The Department also recognizes that the implementation and evaluation of waivers granted under section 609 of IDEA may require additional Federal support. As such, the Department proposes these priorities, requirements, and selection criteria to make funding available for planning for, and then implementing, waivers of requirements under section 609 of IDEA to reduce excessive paperwork and non-instructional time burdens and thus improve educational and functional results for children with disabilities.

States may apply for a planning grant, an implementation grant, or both.

Proposed Priority 1: The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program—Planning Grants.

The Department seeks to make awards under section 609 of IDEA to State educational agencies (SEAs) to assist them in identifying excessive paperwork and noninstructional time burdens on special education teachers, related services providers, and State and local administrators that do not assist in improving educational and functional results for children with disabilities (hereafter in the priority, “administrative burdens”) and developing comprehensive plans to reduce them. These activities include conducting a comprehensive review of local, State, and Federal IDEA Part B requirements that lead to administrative burdens, as well as, at the discretion of the State, preparing IDEA Paperwork Reduction Waivers for submission to the Department.

Planning projects funded by the Department must achieve, at a minimum, the following expected outcomes—

- Identification of the particular sources and effects of administrative burdens on special education and other teachers, related services providers, and State and local administrators under IDEA Part B; and
- A plan to reduce these administrative burdens.

Under this priority, applicants must propose projects that meet the following programmatic requirements:

(a) The project must meaningfully consult a diverse group of stakeholders

on an ongoing basis to support the goals and objectives of the project. Such a group must include, at a minimum, representatives of the following groups:

- (i) Special education teachers and related services providers.
 - (ii) Local special education administrators.
 - (iii) Individuals with disabilities.
 - (iv) Parents of children with disabilities, as defined in IDEA section 602(23).
 - (v) The State Advisory Panel.
- (b) The project must prepare a plan that—

(i) Identifies the State and local statutory and regulatory requirements or policies, procedures, and practices that exceed IDEA Part B statutory and regulatory requirements and were considered for revision;

(ii) Describes the range of options available to the State in reducing administrative burdens, including any limitations on those options (e.g., statutory or regulatory requirements, judicial precedent);

(iii) Establishes clear and achievable timelines for reducing administrative burdens;

(iv) Identifies the anticipated benefits of any potential reforms, including likely beneficiaries, and the magnitude and scope of anticipated benefits such as reductions in administrative burden hours and potential increases in the time and resources available for instruction and other activities intended to improve educational and functional results for children with disabilities;

(v) Identifies any Federal IDEA Part B statutory or regulatory requirements for which a waiver may be sought under section 609 of IDEA; and

(vi) Describes the procedures the State will use to ensure that any waiver that may be sought in accordance with section 609 of IDEA will not—

(A) Waive any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements or procedural safeguards under section 615 of IDEA; or

(B) Affect the right of a child with a disability to receive FAPE under IDEA Part B.

To be considered for funding under this priority, applicants must also meet the following application requirements. Each applicant must—

(a) Demonstrate, in the narrative portion of the application under “Need for the project,” how the proposed project will identify administrative burdens. To meet this requirement, the applicant must describe what it believes to be—

(1) The approximate current magnitude and scope of the administrative burdens to be addressed;

(2) The approximate current number of special education teachers, related services providers, and State and local administrators affected by those burdens and the number of children with disabilities that they serve; and

(3) The approximate current costs and benefits of those burdens on special education teachers, related services providers, State and local administrators, and children with disabilities (e.g., teacher retention, planning time, transparency for families);

(b) Demonstrate, in the narrative portion of the application under “Significance” how the proposed planning project will—

(1) Develop a plan to reduce administrative burdens and produce meaningful and sustained change at the State or local level; and

(2) Develop proposals for changes to, or waivers of, specific requirements, policies, procedures, or practices that will reduce administrative burdens in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities;

(c) Demonstrate, in the narrative section of the application under “Quality of the project design,” how the proposed project will—

(1) Meet the consultation requirements in paragraph (a) of the programmatic requirements of this priority, including, but not limited to, a proposed timeline for the consultation process, including a description of the methods of consultation (e.g., in-person meetings, conference calls, emails);

(2) Identify local, State, or Federal IDEA Part B requirements, policies, procedures, or practices that may generate administrative burdens and may be reviewed by the project, including any proposed criteria for that review (e.g., frequency, complexity, number of staff affected, number of families affected);

(3) Assess the extent to which specific sources of administrative burdens may affect educational and functional results for children with disabilities; and

(4) Produce and make publicly available a plan that meets the requirements in paragraph (b) under the programmatic requirements of this priority and provide an opportunity for stakeholders enumerated in paragraph (a) of the programmatic requirements of this priority to comment on the plan; and

(d) Demonstrate, in the narrative section of the application under “Quality of the management plan,” how—(1) The proposed management

plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks, including the publication of the final plan on the State's website within three months of the close of the project period;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes; and

(3) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policymakers, among others, in its development and operation.

Proposed Priority 2: The Individuals with Disabilities Education Act (IDEA) Paperwork Reduction Planning and Implementation Program—Implementation Grants.

Implementation grants would provide funds for States to implement comprehensive plans to reduce administrative burdens submitted by the State and approved by the Secretary under section 609 of IDEA. This includes costs associated with developing products or materials that are part of comprehensive plans, such as creating information technology systems to automate paperwork, or creating new, streamlined paperwork to replace more time-consuming paperwork.

To be considered for funding under this priority, an applicant must meet the following application requirements. Each applicant must—

(a) Demonstrate, in the narrative section of the application under "Quality of the project design," how the proposed project will—

(1) Disseminate information about changes in processes, practices, and procedures necessary to reduce administrative burdens to all special education teachers, related services providers, and State and local administrators affected by the State's waiver under section 609 of IDEA (hereafter "affected staff"), including—

(i) The modes of communication the project will use;

(ii) The frequency of communication; and

(iii) The content of such communications;

(2) Support the training of all affected staff regarding changes in processes, practices and procedures necessary to

reduce administrative burdens, including a description of the project's intended means of providing this training;

(b) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes; and

(3) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policymakers, among others, in its development and operation; and

(c) Include, in the narrative section of the application under "Quality of the project evaluation," an evaluation plan for the implementation project. The evaluation plan must—

(1) Articulate formative and summative evaluation questions for evaluating important processes and outcomes, including whether, and how effectively, the waiver—

(i) Reduces paperwork burden on teachers, principals, administrators, and related services providers;

(ii) Reduces non-instructional time spent by teachers in complying with IDEA Part B;

(iii) Enhances longer-term educational planning;

(iv) Improves positive outcomes, including educational and functional results, for children with disabilities;

(v) Promotes collaboration between individualized education program (IEP) Team members; and

(vi) Ensures satisfaction of family members of children with disabilities and teachers, principals, administrators, and related service providers;

(2) Describe how progress in, and fidelity of, implementation, as well as project outcomes, will be measured to answer the evaluation questions; specify the measures and associated instruments or sources for data appropriate to the evaluation questions; and include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of

this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed implementation project and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the evaluation; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing, refining, and implementing the evaluation plan.

Proposed Requirements

The Department proposes the following requirements for these priorities. We may apply one or more of these requirements in any year in which the program is in effect.

Funding Eligibility Requirements:

(a) In order to be eligible for an implementation grant an applicant must already have a waiver under section 609 of IDEA approved by the Secretary.

(b) For an applicant that receives a grant under proposed priority 1—

(1) That does not submit a waiver proposal to the Secretary under section 609 of the IDEA within 12 months of the start of the project period, the grant will end after 12 months without opportunity for extension;

(2) That submits a waiver proposal to the Secretary under section 609 of the IDEA within 12 months of the start of the project period, the project period will be automatically extended for a period, not to exceed six months, during which the Secretary will consider the proposal.

(i) While a State's waiver proposal is under review, grantees may continue to access available remaining funds to conduct one or more of the following planning grant activities:

(A) Responding to possible questions from the Department regarding the State's proposal to obtain a waiver under section 609 of IDEA and the IDEA Paperwork Reduction Waivers.

(B) Continuing to develop, or implement, planned activities to reduce administrative burdens.

(ii) If the Secretary approves the State's IDEA paperwork reduction waiver under section 609 of IDEA, the grantee may continue to access available remaining funds to ensure continuity of the project while applying for an implementation award under Priority 2 to implement and evaluate the IDEA Paperwork Reduction Waivers.

(iii) If the Secretary denies the State an IDEA paperwork reduction waiver under section 609 of IDEA, the project period will end no more than 30 days after the State's receipt of the Secretary's

decision, without opportunity for extension.

Proposed Selection Criteria

The Department proposes the following selection criteria for evaluating applications under this program. We may apply one or more of these criteria in any year in which this program is in effect.

(a) *Significance.*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the likelihood that the proposed project will reduce administrative burdens and increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

(b) *Quality of the project design.*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project will successfully reduce administrative burdens and increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

(ii) The extent to which the proposed project encourages and is responsive to consumer involvement, including parental involvement.

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(c) *Quality of the management plan.*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers how the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, related services providers, school administrators, and others, as appropriate.

Final Priorities, Requirements, and Selection Criteria

We will announce the final priorities, requirements, and selection criteria in a document in the **Federal Register**. We will determine the final priorities, requirements, and selection criteria after considering public comments and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use these proposed priorities, requirements, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions.

For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed priorities, requirements, and selection criteria based on a reasoned determination that the benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in

Executive Order 13563. In summary, the potential costs associated with this final priority would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program—including improved data integration and improved data quality—would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Paperwork Reduction Act of 1995

The proposed priorities, requirements, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1820-0028; the proposed priorities, requirements, and selection criteria do not affect the currently approved data collection.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirements, and selection criteria easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are State educational agencies; local educational agencies (LEAs), including charter schools that operate as LEAs under State law; and freely associated States and outlying areas. We believe that the costs imposed on an applicant by the proposed priorities, requirements, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priorities, requirements, and selection criteria would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is voluntary. For this reason, the proposed priorities, requirements, and selection criteria would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance and Dissemination

to Improve Services and Results for Children with Disabilities program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priorities, requirements, and selection criteria would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov.

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–11417 Filed 5–28–20; 8:45 am]

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Copyright Royalty Board

37 CFR Part 370

[Docket No. 20–CRB–0007–RM]

Regulation Concerning Proxy Distributions for Unmatched Royalties Deposited During 2010–2018

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges are proposing to amend their regulations concerning proxy distributions for unmatched royalties deposited pursuant to statutory license for the period 2010 through 2018.

DATES: Comments are due no later than June 29, 2020.

ADDRESSES: You may submit comments and proposals, identified by docket number 20–CRB–0007–RM, online via eCRB, the Copyright Royalty Board’s online electronic filing application, at <https://app.crb.gov/>.

Instructions: All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at <https://app.crb.gov/> including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board’s electronic filing and case management system, at <https://app.crb.gov/>, and search for docket number 20–CRB–0007–RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain

limitations and exceptions. Among the limitations placed on the performance right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio services, and business establishment services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio services, and business establishment services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, pay royalty fees and to report to copyright owners of sound recordings on the use of their works. Both licenses direct the Copyright Royalty Judges (“Judges”) to determine the royalty rates to be paid. 17 U.S.C. 114(f)(1)(A), (f)(2)(A) and 17 U.S.C. 112(e)(3), and to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The royalty fees collected under the section 114 and 112 licenses, as determined by the Judges, are paid to a central source known as a Collective.¹ 37 CFR 380.2(a). The purpose of the notice and recordkeeping requirement is to ensure that the royalties collected under the statutory licenses are distributed to the correct recipients.

On March 24, 2011, SoundExchange petitioned the Judges to commence a rulemaking proceeding to consider adopting regulations to authorize SoundExchange, when a licensee fails to provide usable reports of use, to use reporting data from certain other licensees (proxy reporting data) as a basis for distributing sound recording royalties deposited by that licensee during the period prior to 2010 to copyright owners and performers. Petition of SoundExchange, Inc. for a Rulemaking to Authorize Use of a Proxy to Distribute Certain Pre-2010 Sound Recording Royalties at 1–2 and n.1, Docket No. RM 2011–5 (March 24, 2011). After notice and comment, the

¹ SoundExchange, Inc., has been the Collective since the inception of the two licenses.

Judges adopted SoundExchange’s proposal to use proxy reporting data to permit distribution of royalties collected for the period April 1, 2004, through December 31, 2009, for the public performance of sound recordings by means of digital audio transmissions pursuant to statutory license for those services for which no reports of use were submitted or for which the reports of use were unusable. 76 FR 45695 (Aug. 1, 2011).²

On November 20, 2018, SoundExchange requested that the Judges amend the Judges’ regulations to authorize SoundExchange to continue to use proxy reporting data to distribute to copyright owners and performers certain sound recording royalties collected by SoundExchange for periods before January 1, 2019, that are otherwise undistributable due to licensees’ failure to provide reports of use or their provision of reports of use that are so deficient as to be unusable. Letter from Steven R. Englund, Counsel for SoundExchange, Inc., Docket No. 14–CRB–0005 (RM) (SoundExchange Letter I).³ SoundExchange stated that it was holding \$24 million in royalties for the period 2010 through 2016 and additional royalties for 2017 that are undistributable due to missing or unusable reports of use. SoundExchange Letter I at 1 & n.1.

SoundExchange renewed its request on April 23, 2020. SoundExchange Letter II. In that letter, SoundExchange stated it was holding approximately \$32 million in statutory royalties for the period 2010 through 2018 and requested that the Judges authorize SoundExchange to distribute these royalties using the same “annual/license type methodology” that the Judges approved in 2011. SoundExchange Letter II at 2, citing 37 CFR 370.3(i), 370.4(f). SoundExchange requested that the Judges change the dates in the current applicable regulations from 2010 to 2019, which would authorize SoundExchange to distribute royalties from the period 2010 through 2018 by using proxy reports of use. SoundExchange Letter II at 2–3.

² The Copyright Office approved a similar proposal in 2004 covering the 1998 to 2004 period. 69 FR 58261 (Sept. 30, 2004).

³ SoundExchange submitted its letter further to Docket No. 14–CRB–0005 RM, Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, which is still pending with the Judges. The 2014 petition included, among other proposals, a provision that would authorize SoundExchange to distribute royalties that did not have a useable, matching report of use by a proxy methodology that SoundExchange would develop in its discretion, on an ongoing basis. Letter from Steven R. Englund, Counsel for SoundExchange, Inc. (SoundExchange Letter II) at 2.