

Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

#### 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 amends 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:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–0260 is added to read as follows:

#### § 165.T09–0260 Safety Zone; Red River.

(a) *Location.* The following area is a safety zone: Waters of the Red River in the State of North Dakota, including those portions of the river bordered by Richland, Cass, Traill, Grand Forks, Walsh, and Pembina Counties, plus those in Minnesota South of a line drawn across latitude 46°20'00" N, extending the entire width of the river.

(b) *Effective date.* This rule is effective from 12:01 a.m. April 8, 2011 until 11:59 p.m. July 15, 2011.

(c) *Periods of Enforcement.* This rule will be enforced from April 8, 2011 until 11:59 p.m. May 15, 2011 while dangerous flooding conditions exist. The Captain of the Port Sector Upper Mississippi River will inform the public through broadcast notice to mariners of any changes to enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165, Subpart C of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River and Marine Safety Unit Duluth or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Sector Upper Mississippi River or a designated representative. The Captain of the Port Sector Upper Mississippi River representative may be contacted at (314) 269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Sector Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United

States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 8, 2011.

**S.L. Hudson,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.*

[FR Doc. 2011–10147 Filed 4–26–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Subtitle B, Chapter II

[Docket ID ED–2010–OESE–0005]

RIN 1810–AB10

#### Race to the Top Fund

**ACTION:** Final requirements.

**SUMMARY:** The U.S. Secretary of Education (Secretary) adopts as final, without changes, the interim final requirements for the Race to the Top Fund to incorporate and make binding for Phase 2 of the competition State budget guidance.

**DATES:** These requirements are effective May 27, 2011.

#### FOR FURTHER INFORMATION CONTACT:

James Butler, Telephone: 202–205–3775 or by e-mail: [racetothetop@ed.gov](mailto:racetothetop@ed.gov).

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

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

#### SUPPLEMENTARY INFORMATION:

On April 2, 2010, the Secretary published interim final requirements for the Race to the Top Fund in the **Federal Register** (75 FR 16668). The interim final requirements became effective April 2, 2010. At the time the interim final requirements were published, the Secretary requested public comment on the interim final requirements.

In the interim final requirements, the Secretary made budget ranges for the Race to the Top Fund, which were originally included in the Race to the Top Fund NIA for fiscal year (FY) 2010, published in the **Federal Register** on November 18, 2009 (74 FR 59836), binding on applicants. In developing the budget ranges, the Department grouped the States into five categories by ranking every State according to its share of the national population of children ages 5 through 17 and identifying natural

breaks in the population numbers. The Department then developed overlapping budget ranges for each category based on the student population data.

As explained in the preamble to the interim final requirements (75 FR 16668, 16669), the Secretary made the budget ranges a requirement in response to the unexpected budget requests received in Phase 1 of the Race to the Top competition, which varied widely and proposed, for the most part, budgets that were well above the suggested funding ranges. Additionally, the Department performed an analysis and did not find a relationship between States' scoring ranks in Phase 1 and the extent to which States exceeded the Department's suggested budget ranges. In balancing the need to fund high-quality reform plans and to ensure that a sufficient number of States received grants to serve as models of change for the Nation with the discrete amount of funding available, the Secretary determined that it was essential to make the budget ranges binding on applicants.

There are no differences between the interim final requirements and these final requirements.

#### Analysis of Comments and Changes

In response to our invitation in the interim final requirements, one commenter submitted comments.

Generally we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the interim final requirements.

*Comment:* The commenter raised concerns about the impact of making the budget ranges mandatory on States for Phase 2 of the Race to the Top competition without first considering public comments. The commenter stated that the budget caps would force States to propose less ambitious activities than those proposed in their Phase 1 applications, and that this in turn would harm their ability to undertake the meaningful reform efforts sought under the Race to the Top program. The commenter also noted that limiting States' budgets would in turn limit the amount of funds that local educational agencies (LEAs), particularly small LEAs, would receive, thereby undercutting the capacity of those LEAs to implement bold reform plans. Additionally, the commenter expressed concern with the timing of the release of the interim final requirements, April 2, 2010, contending that States would have far too little time to effectively alter their Phase 1

applications to stay within the budget ranges before the Phase 2 application deadline of June 1, 2010. Finally, the commenter expressed concern with the fairness of creating such a requirement in light of the two Race to the Top Phase 1 winners that received awards in excess of their suggested budget caps. The commenter suggested that this lack of equitability in award amounts between Phase 1 and Phase 2 grantees would hinder the Department's ability to evaluate the effectiveness of the program.

*Discussion:* As explained in detail in the preamble to the interim final requirements, the Department did not have sufficient time to complete notice-and-comment rulemaking on the interim final requirements given that all funds under the Race to the Top program were required to be obligated by September 30, 2010. Completing notice-and-comment rulemaking would have taken four to six months, and, in consideration of the time needed to conduct Phase 2 of the competition, the time States needed to draft applications, and the impending September 30th American Recovery and Reinvestment Act of 2009 (ARRA) obligation deadline, we concluded that it would be impracticable and contrary to the public interest for the Department to complete notice-and-comment rulemaking.

In deciding whether to make the budget ranges binding on applicants, we considered whether States would be able to propose comprehensive and successful reform plans within the proposed budget ranges. Because we did not find a relationship between States' scoring ranks in Phase 1 and the extent to which States exceeded the Department's suggested budget ranges, we concluded that States could, in fact, develop comprehensive reform plans that met the Race to the Top selection criteria. We disagree with the commenter that States that submitted applications in Phase 1 were automatically forced to propose less ambitious activities in their Phase 2 applications. Requiring States to limit their budget requests only required State staff to make strategic decisions about where Race to the Top funds were most needed and where they could coordinate, reallocate, or repurpose other Federal, State, and local sources of funding to support Race to the Top goals, as evaluated under selection criterion (A)(2)(i)(d). While capping the amount of funds that a State could request necessarily limited the 50 percent of Race to the Top funds required to flow to participating LEAs under section 14007 of the ARRA, States could augment the amount of funds

available for participating LEAs from the State portion of the award.

The Race to the Top competition, even with the budget caps, made available the largest amounts of funding ever offered to States through a Department of Education discretionary grant program. We believe these amounts were sufficient to ensure a robust competition and to stimulate comprehensive education reform throughout the country.

Applicants had approximately two months from the announcement of the requirement that States conform to the previously suggested budget ranges until the application submission deadline for Phase 2. While we recognize that it would have been helpful to give applicants more time between the announcement of the requirement and the Phase 2 application deadline, we could not make the final decision about whether to make the budget caps binding until after the Phase 1 competition was complete, and we had the opportunity to analyze applicants' budget requests and scores. Specifically, we needed the results from the Phase 1 competition to investigate whether there was a relationship between the amount of funds requested and a State's rank in Phase 1 to ensure that making the budget ranges binding would not limit a State's ability to propose a successful reform plan in Phase 2. Additionally, applicants in Phase 1 of the competition had two months from the date of publication of the NIA to prepare their applications, just as applicants in Phase 2 had after publication of the budget requirements.

Finally, we do not believe that there will be difficulty comparing results across Phase 1 and Phase 2 grantees. The program is not focused on dollar-for-dollar spending, but rather on improved educational outcomes in winning States.

*Changes:* None.

#### Final Requirements

For the reasons discussed previously, the Secretary amends the Race to the Top Fund final requirements published in the **Federal Register** on November 18, 2009 (74 FR 59688, 59799) to include a new section under the heading Program Requirements, as follows:

*Budget Requirements:* For Phase 2 of the fiscal year 2010 competition, and for any subsequent competitions, the State's budget must conform to the following budget ranges:<sup>1</sup>

<sup>1</sup> The Department developed budget ranges for each State by ranking every State according to its share of the national population of children ages 5 through 17 based on data from "Estimates of the

*Category 1*—\$350–700 million: California, Texas, New York, Florida.

*Category 2*—\$200–400 million: Illinois, Pennsylvania, Ohio, Georgia, Michigan, North Carolina, New Jersey.

*Category 3*—\$150–250 million: Virginia, Arizona, Indiana, Washington, Tennessee, Massachusetts, Missouri, Maryland, Wisconsin.

*Category 4*—\$60–175 million: Minnesota, Colorado, Alabama, Louisiana, South Carolina, Puerto Rico, Kentucky, Oklahoma, Oregon, Connecticut, Utah, Mississippi, Iowa, Arkansas, Kansas, Nevada.

*Category 5*—\$20–75 million: New Mexico, Nebraska, Idaho, West Virginia, New Hampshire, Maine, Hawaii, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, Wyoming, District of Columbia.

The State should develop a budget that is appropriate for the plan it outlines in its application; however we will not consider a State's application if its request exceeds the maximum in its budget range.

*Program Authority:* American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5.

#### Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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 local 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 set forth in the Executive

Resident Population by Selected Age Groups for the United States, States, and Puerto Rico: July 1, 2008" released by the Population Division of the U.S. Census Bureau. The Department identified the natural breaks in the population data and then developed overlapping budget ranges for each category taking into consideration the total amount of funds available for awards.

order. The Secretary has determined that this regulatory action is not significant under section 3(f) of the Executive order.

We summarized the potential costs and benefits of these final requirements in the interim final requirements published in the **Federal Register** on April 2, 2010 at 75 FR 16668, 16670.

#### *Paperwork Reduction Act of 1995*

The final requirements do not contain new information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *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 notification of our specific plans regarding budget requirements for this program.

#### *Electronic Access to This Document:*

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: <http://www.gpo.gov/fdsys>. 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 Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

Dated: April 21, 2011.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2011–10224 Filed 4–26–11; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 52

[EPA–HQ–OAR–2004–0014, FRL–9299–3]

RIN 2060–AQ73

### Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of comment period.

**SUMMARY:** EPA is announcing an extension of the public comment period on the interim rule titled, “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions.” It published in the **Federal Register** on March 30, 2011. EPA is extending the comment period that originally closed on April 29, 2011, by an additional 32 days. The comment period will now close on May 31, 2011. EPA is extending the comment period because of a request we received, which is contained in the docket for this rulemaking.

**DATES:** *Comments.* Comments must be received on or before May 31, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0014, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax: 202–566–1741.*
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2004–0014, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2004–0014. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions.** Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0014. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity

or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact Peter Keller, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–5339, facsimile number (919) 541–5509, electronic mail e-mail address: [keller.peter@epa.gov](mailto:keller.peter@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

*A. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI