

that, in order to ensure uniformity and consistency in implementing the principles of Executive Order 13279 throughout DOL, the regulations dealing with faith-based and community organizations, and with religious activities, should to the extent possible be consolidated in one place. 69 FR 11234. The Department further determined that these regulations should not be program-specific, but should apply to all such organizations receiving DOL support, except where the implementing statute imposed particular requirements. Accordingly, in the March 9 NPRM, the Department proposed new revisions to 29 CFR 37.6(f)(1), as well as to 20 CFR 667.266(b)(1) and 667.275(b). Instead of the language proposed in the September 30 NPRM, the March 9 NPRM proposed that each of these regulatory provisions cross-reference 29 CFR part 2, subpart D. See 69 FR at 11237, 11238, 11241. Thus, the amendments to 29 CFR 37.6(f)(1), 20 CFR 667.266(b)(1), and 20 CFR 667.275(b) proposed in the September 30 NPRM were superseded by the amendments to those paragraphs that were proposed in the March 9 NPRM and finalized in the final rule published elsewhere in today's **Federal Register**. The March 9 NPRM also superseded the proposal in the September 30 NPRM to add a new paragraph (f)(2) to 29 CFR 37.6.

For these reasons, the Department is withdrawing, and is terminating the rulemaking proceedings on, the portion of the September 30 NPRM that proposed to revise 29 CFR 37.6(f)(1), 20 CFR 667.266(b)(1), and 20 CFR 667.275(b), and to add a new 29 CFR 37.6(f)(2). The Department has proceeded with that part of the September 30 NPRM that proposed other amendments to 29 CFR 37.6(f). A final rule accomplishing these amendments is published elsewhere in today's **Federal Register**.

Signed at Washington, DC this 7th day of July, 2004.

Emily S. DeRocco,

Assistant Secretary for Employment and Training.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 04-15709 Filed 7-8-04; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 36 and 48

RIN 1076-AE51

Home-Living Programs and School Closure and Consolidation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: As required by the No Child Left Behind Act of 2001, the Secretary of the Interior has developed proposed regulations using negotiated rulemaking that address home-living programs and school closure and consolidation.

DATES: Comments on the proposed rule must be received on or before November 9, 2004.

ADDRESSES: You may submit comments, identified by the number 1076-AE51 by any of the following methods:

—Direct Internet response: <http://www.blm.gov/nhp/news/regulatory/index.htm>, or at <http://www.blm.gov>, or at regulations.gov under Indian Affairs Bureau.

—Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076-AE51.

—Hand delivery: No Child Left Behind Act, 1620 L Street, NW., Room 401, Washington, DC 20036.

Send comments on the information collections in the proposal to: Interior Desk Officer (1076-AE51), Office of Information and Regulatory Affairs, OMB, (202) 395-6566 (facsimile); e-mail: oir_docket@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Catherine Freels, Designated Federal Official, PO Box 1430, Albuquerque, NM 87103-1430; Phone: (505) 248-7240; e-mail: cfreels@bia.edu.

SUPPLEMENTARY INFORMATION As required by the No Child Left Behind Act of 2001 (Pub. L. 107-110; enacted January 8, 2002, referred to in this preamble as "NCLBA" or "the Act"), the Department of the Interior established a Negotiated Rulemaking Committee to develop proposed rules to implement several sections of the Act relating to the Bureau of Indian Affairs-funded school system. Negotiated Rulemaking is a process sanctioned by subchapter III, or chapter 5, title 5, United States Code and the Federal Advisory Committee Act, 5 U.S.C. Appendix (FACA), that employs Federal representatives and members of the public who will be

affected by rules to jointly develop proposed rules.

In this case, the Act required the Secretary of the Interior to select representatives of Indian tribes and Bureau-funded schools as well as Federal government representatives to serve on the Committee. The Committee's task was to draft proposed rules to recommend to the Secretary. Upon the Secretary's approval, draft rules are published in the **Federal Register** for written public comments within a 120-day public comment period. After the close of the public comment period, the Committee will reconvene to review these comments and to recommend promulgation of final rules to the Secretary.

The Secretary chartered the Committee under the Federal Advisory Committee Act on May 1, 2003. It is comprised of 19 members nominated by Indian tribes and tribally operated schools. The law required that, to the maximum extent possible, the tribal representative membership should reflect the proportionate share of students from tribes served by the bureau-funded school system. The Secretary also appointed to the Committee six members from within the Department of the Interior. The Committee selected three tribal representatives and two Federal representatives as co-chairs. Six individuals were hired to facilitate all Committee meetings.

The Committee initially met in five week-long sessions in the months of June through October 2003 to develop regulations in the following six areas:

1. Definition of "Adequate Yearly Progress";
2. Attendance boundaries;
3. Allocation formula for school funding;
4. Direct funding procedures;
5. Student rights; and
6. Grants under the Tribally Controlled Schools Act.

The Department published proposed rules developed by the Committee on February 25, 2004 (69 FR 8751). Since then, the Department has reconvened the Committee to develop regulations in the areas of closure or consolidation of schools and criteria for home-living situations. The Committee met on several occasions and developed the proposed rules being published today. The rules are discussed in detail in the remainder of this preamble, which is organized as follows:

- I. Part 48—School Closure or Consolidation of Schools
 - A. Substantial Curtailment of a Bureau School

- B. Procedures for School Closure, Consolidation, Transfer to Another Authority or Substantial Curtailment (Absent a Request From the Tribal Governing Body).
 - C. First Notice
 - D. Second Notice
 - E. Further Procedures and Requirements
 - F. Consultation Process
 - G. Final Report on Proposed Action
 - H. Conclusion
- II. Part 36—Home Living Situations
- A. Home-living Staffing
 - B. Home-living Program
 - C. Home-living Privacy
 - D. Conclusion
- III. Procedural Matters
- A. Regulatory Planning and Review (E.O. 12866)
 - B. Regulatory Flexibility Act
 - C. Takings (E.O. 12630)
 - D. Consultation With Indian Tribes (E.O. 13175)
 - E. Paperwork Reduction Act
 - F. National Environmental Policy Act
 - G. Civil Justice Reform (E.O. 12988)
 - H. Clarity of This Regulation
 - I. Public Comment Solicitation

I. Part 48—School Closure or Consolidation of Schools

The No Child Left Behind Act (NCLBA) required the Secretary of the Interior to develop draft regulations to implement section 1121(d) governing the “closure or consolidation of schools.” Although the NCLBA Negotiated Rulemaking Committee reached consensus in other areas, it did not reach consensus in the area of closure or consolidation of schools. The Committee could not reach consensus regarding this issue due to differing Federal and tribal legal interpretations of section 1121(d) of the NCLBA.

After much thoughtful deliberation, it became clear that consensus could not be reached on one particular issue: Whether section 1121(d)(7) authorizes the Secretary (without the consent of a tribal governing body) to carry out the regulations promulgated under section 1121(d)(3)–(5) to close, consolidate, or substantially consolidate a school. The Committee considered two differing legal interpretations of section 1121(d)(7). Some tribal members of the Committee interpreted the “may” in section 1121(d)(7) to condition the Secretary’s ability to close, consolidate, transfer to another authority, or substantially curtail the programs of a school upon the mandatory approval of the affected tribal governing body. The interpretation of the Federal team was that “may” was not “shall not” and that approval from the tribal governing body was discretionary.

Ultimately, the proposed rule attempts to incorporate the committee’s discussions. The proposed rule

authorizes the Secretary to close, consolidate, transfer to another authority or substantially curtail a school under the following three circumstances:

(1) Under section 1121(d)(2)(A), the Secretary may close, consolidate, or substantially curtail a school based upon the request of the tribal governing body or the local school board;

(2) Under section 1121(d)(2)(B), the Secretary may temporarily close, consolidate or substantially curtail a school if there was an immediate hazard to health and safety conditions that meets the requirements of section 1125(e); and

(3) The Secretary may also close, consolidate, transfer to another authority, or substantially curtail a bureau-funded school if the Secretary provides the appropriate notice to the affected school, tribal governing body and community (as required by section 1121(d)(4)), and follows all appropriate reporting requirements in section 1121(d)(5).

The tribal team members agreed that the Secretary could take both the actions described in numbers 1 and 2. As previously discussed, the Committee could not come to consensus on the Secretary’s authority to close, consolidate or substantially curtail a school (without tribal governing body approval) as outlined in number 3, above. Although consensus could not be reached by the Committee on the Secretary’s authority to close or consolidate a school without tribal governing body approval, the Committee members did consider and draft proposed procedures that the Secretary would have to take if she were to begin such an action. Those procedures are discussed in §§ 48.3–48.9 of the proposed regulations.

A. Substantial Curtailment of a Bureau School

The Committee also considered whether there is a difference between the substantial curtailment of a school’s program and the substantial curtailment of a school itself. Some tribal members of the Committee interpreted the law to read that no program—including a pilot, discretionary, or competitive program—could be modified once a school had received funding for that program. The Federal Committee members and some tribal members believed that there was a distinction between substantial curtailment of a program and substantial curtailment of a school. The Federal team was concerned and asked the Committee to consider the Bureau’s need to effectively monitor programmatic compliance. Ultimately,

consensus was reached on a definition of substantial curtailment that defined it as, “the reducing of the fundamental structure or scope of a ‘school’.”

B. Procedures for School Closure, Consolidation, Transfer to Another Authority or Substantial Curtailment (Absent a Request From the Tribal Governing Body)

The Committee developed regulations for when the Department considers closing, consolidating, transferring to another authority, or substantially curtailing a bureau-funded school. The tribal team asked the Committee to consider procedures similar to those outlined in the law. The Federal team asked the Committee to consider more comprehensive regulations that would provide a more defined process. The Committee considered both views and ultimately proposed regulations that expanded on the framework provided for in the NCLBA, sections 1121(d)(3)–(5). The Committee as a whole came to consensus on draft language that supplemented section 1121(d)(3)–(5). The tribal members argued that these regulations were contingent on tribal governing body approval. The Federal team argued that these regulations only applied when the Secretary took action to close, consolidate, or substantially curtail a school without tribal authorization. As proposed in this document, these regulations apply when the Secretary proposed to take an action that was not based on a tribal request.

C. First Notice

In order to ensure the highest level of communication between the affected tribal governing body, school board, and school administrator, the Committee considered and determined that prompt and immediate notification of the involved parties must occur within 30 days of when the Secretary begins active consideration of the closure, consolidation, transfer of another authority or substantial curtailment of a bureau-funded school. The Committee considered how comprehensive this notice provision should be. Ultimately, the Committee determined that the first notification should include general information such as, the action proposed, the reasoning for such action and an outline of future steps.

D. Second Notice

The Committee also considered and determined that an additional, more comprehensive notice should be given to the interested parties within 90 days after the first notice was sent. The purpose of this second notice is to encourage communication between the

affected tribe, school board and school administrator, community and the Department. The Committee determined that the second notice:

(1) Was the appropriate time to begin to receive feedback from the parents or guardians of students who attend the affected school;

(2) Was also the appropriate time to begin informing the appropriate committees of Congress of what action was being considered by the Secretary; and

(3) Should be more specific and detailed as to the history of the proposed action, the alternatives that might help remedy the situation, the timetables for conducting the study required by NCLBA section 1121(d)(5), and the timetable for consultation and communication. This timetable will include a monthly status report from the Director OIEP to the interested parties (§ 43.8).

E. Further Procedures and Requirements

The Committee considered the need for comprehensive public comment. Therefore, it recommends that the Director allow a 90-day comment period after the second notice is issued.

F. Consultation Process

The Committee considered the importance of direct tribal community input regarding any proposed decision to close, consolidate, transfer to another authority or substantially curtail a school. Therefore, the consultation process (§ 48.6) requires the Director to hold at least one public meeting in the affected community to listen and gather information. In addition, the Director must also hold at least one public meeting to present information to support the proposed action.

The Committee was concerned about situations where a school may serve more than one tribe. To deal more effectively with that situation, the regulations require the Director to hold a meeting in a single location and invite the governing bodies of all tribes involved.

G. Final Report on Proposed Action

The Committee considered the importance of a thorough and comprehensive record for the proposed action. Therefore, the regulations require the Director OIEP to prepare a final written report on the proposed action as required in NCLBA section 1121(d)(5) and submit it to the tribe, tribal governing body, local school board, school administrator, and the appropriate committees of Congress. The report must describe all of the following:

(1) The impact of this proposed action on students;

(2) The students served by the affected school;

(3) Alternative services available to the affected students; and

(4) The consultation process that was undertaken.

H. Conclusion

During negotiated rulemaking, differences in statutory interpretation are not uncommon. Although every effort is made by all parties to reach consensus, differences in legal interpretation often prevent negotiated rulemaking for reaching consensus. When consensus is not reached in negotiated rulemaking, it is the Department's responsibility to develop and publish a proposed regulation. The Committee encourages all tribal communities who are concerned regarding both national home-living standards and the issue of school closure and consolidation to provide comments during the 120 day public comment period. This public comment period is invaluable in assisting the Department in fulfilling both the letter and the intent of the NCLBA.

II. Part 36—Home-Living Situations

The No Child Left Behind Negotiated Rulemaking Committee reconvened February 2–7, 2004, to develop recommendations for proposed regulations regarding the National Criteria for Home-Living Situations under the No Child Left Behind Act of 2001 (Act), section 1122. In developing the proposed regulations for home-living (dormitories/residential) situations, the Committee considered draft regulations proposed by Bureau of Indian Affairs school and residential administrators. These draft regulations formed the foundation of the Committee's consensus and proposed regulations published today. The Committee decided to organize the proposed regulations into three broad categories: Home-living staffing, Home-living programs, and Home-living privacy.

A. Home-Living Staffing

In order to reach consensus on these proposed regulations, the Committee worked to develop home-living standards that were feasible within the existing budget process and other parameters governing the delivery of residential services. In order to allow for resource and budget planning, the Committee recommends that the regulations regarding higher qualifications for staff and lower

student-to-staff ratios be implemented in the 2009–2010 school year (§ 36.75).

Many Committee members and public commenters expressed concern about current student-to-staff ratios and the qualifications for home-living staff. Public comments and tribal caucus reports indicated a need to lower the student-to-staff ratios in order to better serve students in home-living situations. Federal Committee members, some tribal Committee members, and some public commenters indicated a need to raise qualifications of home-living staff to better serve the students housed in the residential programs. The Committee discussed requiring a minimum of 32 hours of college credit in a field related to child development and at least one year of relevant experience. The Committee decided, in § 36.75 to require that new program staff have at least 32 post-secondary semester hours (or 48 quarter hours) in an applicable academic discipline, including fields working with children, such as child development, education, behavioral sciences or cultural studies. The Home-living Manager and Home-living Supervisor now also are required to have an associate's degree and bachelor's degree, respectively.

The Committee also considered the behavioral health needs of students in BIA's residential program. The Committee discussed what the appropriate ratio of behavioral health staff to students and the qualifications and licensure of this staff should be. Tribal Committee members expressed concern about licensure and objected to requiring State licensure for behavioral health staff. Tribal Committee members advocated allowing tribal licensure. To reach consensus, the Committee agreed that the first full-time behavioral health staff member in a home-living program must be either a Licensed Social Worker (LSW) or a Licensed Professional Counselor (LPC) licensed to practice in the State where the home-living program is located (§ 36.79). Other behavioral health staff supervised by this person may come from a variety of fields, including art, music, physical education, or academic subjects and are not required to be LSW's or LPC's. All behavioral health staff must have tribal, State, or Federal licensure or certification.

The Committee also considered the difficulty in finding behavioral health staff to work all hours at dormitory facilities. In addition, the Committee recognized the importance of limiting the time students are removed from the academic setting. Therefore, the Committee proposed guidelines for work hours and a maximum number of

hours a student may receive behavioral health services during school hours (§ 36.82).

The Committee considered the need for on-site medical health services and determined that these services were readily available through the Indian Health Service. However, in large or isolated home-living situations the Committee recommends retaining a nurse on staff to provide those services.

B. Home-Living Program

The Committee discussed the need for a home-living program that promotes both personal and academic achievement. The Committee agreed that program requirements are best determined at the local level. The Committee also considered and drafted regulations that require residential programs to make available specific activities such as physical activities on weekends, structured study hours, native language and cultural activities, wellness and other personal education activities (§ 36.92). Some Committee members questioned the appropriateness of some of the suggested activities, such as native language or sex education, but deferred to those with home-living situation experience and agreed to the inclusion of these items as recommended activities.

The Committee also considered and drafted regulations that required each home-living situation to distribute a home-living handbook that discussed student conduct and other procedural information (§ 36.93).

Another issue the committee considered was provision of health services to students in home-living situations. The Committee decided that the best way to facilitate efficient delivery of health services to students in home-living situations was through agreements between the Office of Indian Education Programs and the Indian Health Service. The Committee also drafted a regulation to cover those occasions when, because of illness, it may be necessary to remove a student from the rest of the student body. Another section addresses removal of a student for emergency behavioral or health reasons (§ 36.98).

C. Home-Living Privacy

The Committee determined by consensus that standards relating to heating, cooling, and lighting of dormitories for home-living situations should be deferred for later consideration by the negotiated rulemaking committee charged with negotiating school construction under section 1125 of the Act. The Committee

determined that it did not have the necessary expertise to define standards for these areas. However, the Committee felt it was appropriate to give general guidance on what types of space and resources must be made available to students in home-living situations. The Committee also:

(1) Discussed the importance of students' ability to safely store personal belongings and other privacy issues (§ 36.110); and

(2) Acknowledged that any storage compartments were the property of the dormitory and subject to random search.

D. Conclusion

The Committee considered drafting provisions to implement section 1122(d) of the Act, which would allow grant and contract schools to waive the home-living standards in the rule. As a result, the proposed regulation outlines the process by which a tribal governing body or school board may petition the Director of the Office of Indian Education Programs for a waiver of these proposed standards and the implementation of alternate tribal standards. Finally, the Committee considered the need for accountability in the home-living programs and proposed regulations requiring an annual report from each residential program to the local school board, the tribal governing body, the Office of Indian Education Programs, and the Secretary of the Interior.

III. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866)

This document is a significant rule and the Office of Management and Budget (OMB) has reviewed the rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule does not pertain to funding, and is not expected to have an effect on budgets.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule has been prepared in consultation with the U.S. Department of Education.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule does not pertain to funding and is not expected to have an effect on budgets.

(4) OMB has determined that this rule raises novel legal or policy issues.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Nothing in the rule proposes rules of private property rights, constitutional or otherwise, or invokes the Federal condemnation power or alters any use of Federal land held in trust. The focus of this rule is civil rights and due process rights. A takings implication assessment is not required. Federalism (E.O. 13132) In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nothing in this rule has substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not implicate State government. Similar to federalism concepts, this rule leaves to local school board discretion those issues of student civil rights and due process that can be left for local school boards to address. A federalism assessment is not required.

D. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, we have identified potential effects on federally recognized Indian tribes that will result from this rule. Accordingly: (1) We have consulted with the affected tribe(s) on a government-to-government basis. The consultations have been open and candid to allow the affected tribe(s) to fully evaluate the potential effect of the rule on trust resources. (2) We will fully consider tribal views in the final rule. (3) We have consulted with the appropriate bureaus and offices of the Department about the political effects of this rule on Indian tribes. The Office of Indian Education Programs and the Office of the Assistant Secretary—Indian Affairs have been consulted.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department is requesting comments on the information collection

incorporated in this proposed rule. Comments on this information must be received by August 11, 2004. You may submit your comments to the Desk Officer for the Department of the Interior at OMB by facsimile at (202) 395-6566 or by e-mail at OIRA_DOCKET@omb.eop.gov.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden

including the validity of methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The information collection will be used to enable BIA to better administer the No Child Left Behind program subject to this rulemaking. In all instances, the Department has striven to lessen the burden on the public and ask

for only information that is absolutely essential to the administration of the programs affected and in keeping with the Department's fiduciary responsibility to federally recognized tribes.

A synopsis of the new information collection burdens for parts 36 and 48 is provided below. Burden is defined as the total time, effort, or financial resources expended (including filing fees) by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

CFR section	Number of respondents	Responses per respondent	Burden per response (hours)	Total annual burden (hours)	Cost @ \$12/hour (dollars)
36.75(b)(2)	50	1	.25	12.50	150
36.86	1110	1	40.00	44,400.00	532,800
36.93			Covered by existing OMB approval 1076-0163		
36.94			Covered by existing OMB approval 1076-0163		
36.97(c)	10	1	.25	2.50	30
36.100(g)	76	1	.02	1.52	18
36.111	19	1	.50	9.50	114
36.111(a)	19	1	40.00	760.00	9,120
36.120			Covered by existing OMB approval 1076-0122		
48.2	1	1	1.00	1.00	12
Totals	1205			45,187.00	542,244

[Note: There are 53 residential schools, of which 29 are Bureau-operated = 24 tribally operated. There are 14 peripheral dormitories, of which 1 is Bureau-operated = 13 tribally operated. Thus, we must cover the collection of information from 37 of the 67 home-living residences. The cost of reporting and recordkeeping is estimated to be approximately \$12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or requirements submission) completed, the cost of the time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill the information collection requirements in these parts.]

Under § 36.75(b)(2) we estimate that 50 of the present staff will not meet the new qualifications and will request a waiver; we expect that others will retire before having to meet the new qualification requirements.

Under § 36.86, we estimate that the tribal schools will train 1,110 staff for a total burden of 44,400 hours at a cost of \$ 532,800. Each year, the schools are required to train new employees and update the training of present employees.

Under § 36.97(c), we estimate that about 10 parents may request to opt out of any non-emergency services, taking about .25 hours each for a total of 2.5 hours annually at a cost of \$30 per year.

Under § 36.100(g), we estimate that 76 students will be reported ill and unable to attend school; we estimate that it will

take .02 hours to report each for a total annual burden of 1.52 hours, costing \$18.24 annually.

Under § 36.111, a tribe, tribal governing body, or local school board may waive in whole or in part the standards established under this section. While the question and answer does not specify that these entities must submit a request, it is implicit that they will have to submit a request to waive such standards. We estimate that each year 19 tribally operated dormitories would request a waiver of the standards as being otherwise inappropriate for the dormitory. We also estimate that it would take these entities ½ hour to compose such a waiver request through a letter to the Secretary.

Under § 36.111(a), a tribe, tribal governing body, or local school board that waives the standards established under this section must submit proposed alternative standards to the Office of Indian Education Programs. We estimate that 19 respondents (corresponding to the estimate for those requesting waivers) will submit proposed alternative standards and that the standards will require approximately 40 hours to prepare.

Under § 48.2, we expect that a tribe will only rarely request closure, consolidation or substantial curtailment of a school. Because this will be such a

rare occurrence, we estimate 1 per year at a burden of 1 hour and a cost of \$12.

F. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

H. Clarity of This Regulation

Executive Order 12866 requires each agency to write rules that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section"

appears in bold type and is preceded by the symbol "Sec." and a numbered heading; for example: Sec. 42.2 What rights do individual students have? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

I. Public Comment Solicitation

Although this rule is published by the Bureau of Indian Affairs, the Bureau of Land Management is processing comments under agreement with BIA. If you wish to comment on this proposed rule, you may submit your comments by any one of several methods.

(1) You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076-AE51.

(2) You may submit comments electronically by direct Internet response to either <http://www.blm.gov/nhp/news/regulatory/index.html> or <http://www.blm.gov>.

(3) You may hand-deliver comments to 1620 L Street, NW., Room 401, Washington, DC 20036.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects

25 CFR Part 36

Indians—Education, Schools, Elementary and Secondary education programs, grant programs—Indians, Government programs—education.

25 CFR Part 48

Indians—Education, Schools, Students, Elementary and Secondary education programs.

Dated: June 4, 2004.

David W. Anderson,
Assistant Secretary—Indian Affairs.

For the reasons given in the preamble, parts 36 and 48 of Title 25 of the Code of Federal Regulations are proposed to be amended as follows:

* * * * *

1. Subpart H of part 36 is revised to read as follows:

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

Subpart H—Home-Living Programs

Sec.

- 36.70 What terms do I need to know?
36.71 What is the purpose of this part?

Staffing

- 36.75 What qualifications must home living staff possess?
36.76 Must an identified staff member be in charge of all home-living operations?
36.77 Are home-living programs required to have other home-living staffing requirements?
36.78 What are the staffing requirements for home-living programs offering less than 5 nights service?
36.79 What are the home-living behavioral staff/student ratio requirements?
36.80 If a school has separated boys' and girls' home-living programs, may the same behavioral staff be used for each program?
36.81 May a home-living program use support staff or teachers to meet behavioral health staffing requirements?
36.82 May behavioral health staff provide services during the academic school day?
36.83 How many hours can a student be taken out of the academic setting to receive behavioral health services?
36.84 Can a program hire or contract behavioral health professionals to meet staffing requirements?
36.85 Is a nurse required to be available in the evenings?
36.86 Are there staff training requirements?

Program Requirements

- 36.90 What recreation, academic tutoring, student safety and health care services must home-living programs provide?
36.91 What are the program requirements for behavioral health services?
36.92 Are there any activities that must be offered by a home-living program?
36.93 Is a home-living handbook required?
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Waivers and Accountability

- 36.111 Can a tribe, tribal governing body or local school board waive the home-living standards?
36.112 What are the consequences for failing to meet the requirements of this part?
36.120 What type of reporting is required to ensure accountability?

Authority: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107–110 (115 Stat. 1425).

§ 36.70 What terms do I need to know?

Home-living Manager means the employee responsible for direct supervision of the home living program staff and students.

Home-living Program means a program that provides room and board in a boarding school or dormitory to residents who are either:

- (1) Enrolled in and are current members of a public school in the community in which they reside; or
- (2) Members of the instructional program in the same boarding school in which they are counted as residents and:

- (i) Are officially enrolled in the residential program of a Bureau-operated or funded school; and
- (ii) Are actually receiving supplemental services provided to all students who are provided room and board in a boarding school or dormitory.

Home living Program Staff means the employee(s) responsible for direct supervision of students in the home living area.

Home-living Supervisor means the employee with overall administrative responsibility for supervising students, programs and personnel in the home living area.

§ 36.71 What is the purpose of this part?

The purpose of this part is to establish standards for Home-living situations.

Staffing

§ 36.75 What qualifications must home living staff possess?

(a) Home living staff must possess the qualifications shown in the following table:

Position	Required training
(1) Home-living Supervisor	Must be qualified based on size and complexity of the school but at minimum possesses a bachelor's degree.
(2) Home-living Manager	Must be qualified based on the size and complexity of the student body but must at a minimum have an associate's degree no later than 2008.
(3) Home living Program Staff	Must have at least 32 post-secondary semester hours (or 48 quarter hours) in an applicable academic discipline, including fields related to working with children, such as, child development, education, behavioral sciences and cultural studies.

(b) A person employed as a home-living program staff when this part is published in final:

(1) Should meet the requirements of paragraph (a) of this section by the 2009–2010 school year; and

(2) May, upon showing good cause, petition the school supervisor (or the home-living supervisor for peripheral dorms) for a waiver from the new qualifications.

§ 36.76 Must an identified staff member be in charge of all home-living operations?

Yes, an identified staff member must be in charge of all home-living operations. The person in charge is the home-living supervisor, the administrative head of the home-living program who has the authority to ensure the successful functioning of all phases of the home-living program. The program must ensure clear lines of authority under an organizational chart approved by the local board responsible for operations of the home-living program.

§ 36.77 Are home-living programs required to have other home-living staffing requirements?

Home-living programs must meet the staffing requirements of this section.

(a) Effective with the 2009–2010 school year, each home-living program must maintain the following student minimum supervisory requirements on weekdays:

Grade level	Time of day	Ratio
Elementary (Grade 1–6).	Morning	1:20
	During school	(¹)
	Evening	1:20
	Night	1:40
High School (Grade 7–12).	Morning	1:40
	During school	(¹)
	Evening	1:30
	Night	1:50

¹ As school needs.

(b) The following staffing ratios apply on weekends:

Grade level	Time of day	Ratio
Elementary (Grade 1–6).	Morning/day	1:20
	Evening	1:20
	Night	1:40
High School (Grade 7–12).	Morning/day	1:40
	Evening	1:30
	Night	1:50

¹ As school needs.

§ 36.78 What are the staffing requirements for home-living programs offering less than 5 nights service?

For home-living programs providing less than 5 nights service, the staffing levels from § 36.77 apply. To fill this requirement, the program must use only employees who work a minimum of 20 hours per week.

§ 36.79 What are the home-living behavioral staff/student ratio requirements?

Behavioral health staff is necessary in home-living programs to address issues, such as abuse, neglect, trauma, cultural conflict, and lack of school success. Each home-living program must provide a minimum of one half-time behavioral health professional for every 50 students.

(a) The program may fill the staffing requirements of this section by using contract services, other agencies (including the Indian Health Service) or private/nonprofit volunteer service organizations.

(b) Off-reservation home-living programs should consider providing one full-time behavioral health professional for every 50 students.

(c) For purposes of this section, a one half-time behavioral health professional is one that works for the home-living program a minimum of 20 hours per week.

§ 36.80 If a school has separated boys' and girls' home-living programs, may the same behavioral staff be used for each program?

Yes, a program may use the same behavioral staff for both boys' and girls' programs. However, behavioral health staffing requirements are based on combined enrollment during the home-living count period.

§ 36.81 May a home-living program use support staff or teachers to meet behavioral health staffing requirements?

No, a home-living program must not use support staff or teachers to meet behavioral health staffing requirements. The only exception is if the individual support staff employee has the appropriate behavioral health license or certification.

§ 36.82 May behavioral health staff provide services during the academic school day?

Behavioral health staff must average at least 75 percent of their work hours with students in their dormitories. These work hours must occur outside of the academic school day, except in emergency situations as deemed by the administrative head of the home-living program or designee. The purpose of this requirement is to maximize contact time with students in their home-living setting.

§ 36.83 How many hours can a student be taken out of the academic setting to receive behavioral health services?

A student may spend no more than 5 hours per week out of the academic setting to receive behavioral health services from the home-living behavioral health staff, except for emergency situations.

§ 36.84 Can a program hire or contract behavioral health professionals to meet staffing requirements?

A program may hire or contract behavioral health professionals to meet staffing requirements.

(a) At least one individual must be a Licensed Professional Counselor (LPC) or a Licensed Social Worker (LSW) who is licensed to practice at the location where the services are provided.

(b) For additional staffing, other individuals with appropriate certifications and licenses are acceptable to meet staffing requirements.

§ 36.85 Is a nurse required to be available in the evenings?

No, a program is not required to make a nurse (LPN or RN) available in the evenings. However, this is encouraged for home-living programs with an enrollment greater than 300 or for programs that are more than 50 miles from available services.

§ 36.86 Are there staff training requirements?

Yes. All home-living program staff must have the appropriate certification and requirements up to date and on file. Programs must provide annual and continuous professional training and development appropriate to the certification and licensing requirements.

(a) Annually, all home-living staff must be given the following training before the first day of student occupancy for the year:

(1) First Aid/Safety/Emergency & crisis preparedness;
(2) CPR—Automated External Defibrillator;

(3) Student Checkout Policy;
(4) Confidentiality (Health Information Patient Privacy Act);

(5) Medication Administration;
(6) Student Rights;
(7) Child Abuse Reporting and Protection Standards;

(b) Home-living staff must be given the following training annually at any time during the year:

(1) De-escalation/conflict resolution;
(2) Substance Abuse issues;
(3) Ethics;
(4) Parent training (parenting skills for home-living program staff)/child care;
(5) Special education and working with students with disabilities;
(6) Student supervision skills;
(7) Child development; and
(8) Basic counseling skills.

Program Requirements

§ 36.90 What recreation, academic tutoring, student safety and health care services must home-living programs provide?

All home-living programs must provide for appropriate student safety, academic tutoring, recreation, and health care services for their students, as deemed necessary by the local school board or home-living program board.

§ 36.91 What are the program requirements for behavioral health services?

A home-living program's behavioral health program must include:

(a) Behavioral health screening/assessment;
(b) Diagnosis;
(c) Treatment Plan;
(d) Treatment and placement;
(e) Evaluation; and
(f) Record of services, in coordination with the student's Individual Education Plan, where appropriate.

§ 36.92 Are there any activities that must be offered by a home-living program?

Yes, a home-living program must make available the following activities:
(a) One hour per day of scheduled, structured physical activity Monday through Friday and 2 hours of scheduled physical activities on the weekends;

(b) One hour per day of scheduled, structured study at least four days per week for all students and additional study time for students who are failing any classes;

(c) Tutoring during study time;

(d) Native language or cultural activities; and

(e) Character, health, wellness, and sex education.

§ 36.93 Is a home-living handbook required?

Yes, each program must publish a home-living handbook, which may be incorporated into a general student handbook. The home-living program must:

(a) Provide each student with a copy of the handbook;

(b) Provide all school staff and students with a current and updated copy of student rights and responsibilities before the first day of school;

(c) Conduct an orientation for all students on the handbook; and

(d) Ensure that all students, school staff and, to the extent possible, parents and guardians confirm in writing that they have received a copy and understand the home-living handbook.

§ 36.94 What must a home-living handbook contain?

A home-living handbook must contain all of the following, and may include additional information:

(a) Mission/Vision Statement;

(b) Discipline Policy;

(c) Parent/Student Rights and Responsibilities;

(d) Confidentiality;

(e) Sexual Harassment Policy;

(f) Violence/Bullying Policy;

(g) Home-living Policies and Procedures;

(h) Services Available;
(i) Personnel and Position Listing;
(j) Emergency Procedures and Contact Numbers;
(k) Bank Procedures;
(l) Transportation Policy;
(m) Check-Out Procedures;
(n) Dress Code;
(o) Drug/Alcohol;
(p) Computer Usage Policy;
(q) Medication administration; and
(r) Isolation/separation policy.

§ 36.95 What sanitary standards must home-living programs meet?

Each home-living program must meet all of the following standards:

(a) Restrooms, showers, and common areas must be cleaned daily;

(b) Rooms must be cleaned daily;

(c) Linens must be changed and cleaned weekly;

(d) Linens are to be provided;

(e) Toiletries must be provided; and

(f) Functional washing machines and dryers must be provided.

§ 36.96 May students be required to assist with daily or weekly cleaning?

Yes, students can be required to assist with daily or weekly cleaning. However, the ultimate responsibility of cleanliness rests with the home living supervisor and local law or rules regarding chemical use must be followed.

§ 36.97 What basic requirements must a program's health services meet?

(a) Each home-living program must make available basic medical, dental, vision and other necessary health services for all students residing in the home-living program, subject to agreements between the Office of Indian Education Programs and the Indian Health Service.

(b) Each home-living program must have written procedures for dealing with emergency health care issues.

(c) Parents or guardians may opt out of any non-emergency services by submitting a written request.

(d) The home living supervisor or designee must act *in loco parentis* when the parent or guardian cannot be found.

§ 36.98 Must the home-living program have an isolation room for ill children?

Yes, the home-living program must have an isolation room for ill children. At least two isolation rooms must be made available for use by students with contagious conditions—one for boys and one for girls. The isolation rooms should have a separate access to shower and restroom facilities. Students isolated for contagious illness must be supervised as frequently and as closely as the circumstances and protocols require, but at least every 30 minutes.

§ 36.99 Are immunizations required for residential program students?

Each student must have all immunizations required by state, local, or tribal governments before being admitted to a home-living program. Annual flu shots are not required but are encouraged.

§ 36.100 Are there minimum requirements for student attendance checks?

Yes, there are minimum requirements for student attendance checks as follows:

- (a) All students must be physically accounted for four times daily;
- (b) Each count must be at least two hours apart;
- (c) If students are on an off-campus activity, physical accounts of students must be made at least once every two hours or at other reasonable times depending on the activity;
- (d) At night all student rooms should be physically checked at least once every hour;
- (e) If a student is unaccounted for, the home-living program must follow its established search procedures; and
- (f) If a student is going to be absent from school, the home-living program is required to notify the school.

§ 36.101 How often must students who have been separated for emergency health or behavioral reasons be supervised?

Students who have been separated for emergency behavioral or health reasons must be supervised as frequently and as closely as the circumstances and protocols require. No student will be left unsupervised for any period until such factors as the student's health based on a medical assessment, the safety of the student, and any other applicable guidance for dealing with behavior or health emergencies are considered.

§ 36.102 What student resources must be provided by a home-living program?

The following minimum resources must be available at all home-living programs:

- (a) Library resources;
- (b) A copy of each textbook used by the academic program or the equivalent for peripheral dorms; and
- (c) Reasonable access to a computer with internet access to facilitate homework and study.

§ 36.103 Are there requirements for multipurpose spaces in home living programs?

Home living programs must provide adequate areas for sleeping, study, recreation, and related activities.

Privacy**§ 36.110 Must programs provide space for storing personal effects?**

Yes, students are entitled to private personal spaces for storing their own personal effects, including at least one lockable closet, dresser drawer, or storage space. However, all drawers, dressers, storage space, or lockable space are the property of the home-living program and are subject to random search.

Waivers and Accountability**§ 36.111 Can a tribe, tribal governing body or local school board waive the home-living standards?**

A tribal governing body or local school board may waive some or all of the standards established by this part if the body or board determines that the standards are inappropriate for the needs of the tribe's students.

(a) If a tribal governing body or school board waives standards under this section, it must, within 60 days, submit proposed alternative standards to the Director of the Office of Indian Education Programs.

(b) Within 90 days of receiving a waiver and proposal under paragraph (a) of this section, the Director must either:

- (1) Approve the submission; or
- (2) Deliver to the governing body or school board a written explanation of the good cause for rejecting the submission.

(c) If the Director rejects a submission under paragraph (c) of this section, the governing body or school board may submit another waiver and proposal for approval. The standards in this part remain in effect until the Director approves alternative standards.

§ 36.112 Can a home-living program be closed, transferred, consolidated, or substantially curtailed for failure to meet these standards?

No, a home-living program cannot be closed, transferred to any other authority, consolidated, or its programs substantially curtailed for failure to meet these standards.

§ 36.120 What type of reporting is required to ensure accountability?

The home-living program must provide to the local school board, the tribal governing body, OIEP, and the Secretary of the Interior an annual accountability report consisting of:

- (a) Enrollment figures for the program;
- (b) A brief description of programs offered;
- (c) A statement of compliance with the requirements of this part; and
- (d) Identification of issues and needs.

2. Part 48 is added to read as follows:

PART 48—SCHOOL CLOSURES

Sec.

- 48.1 What definitions are used in this subpart?
- 48.2 Can the Secretary close, consolidate, or substantially curtail a Bureau-funded school?
- 48.3 What must the Secretary do before closing, consolidating, curtailing, or transferring a Bureau-funded school, without the tribal governing body's approval?
- 48.4 What requirements must the first notice meet?
- 48.5 What requirements must the second notice meet?
- 48.6 How must consultation on school closure be conducted?
- 48.7 What must the Department's report contain?
- 48.8 What happens when the Secretary decides to close, consolidate, or substantially curtail a Bureau-funded school or dormitory?
- 48.9 What is the earliest date that the Secretary can implement the formal decision?

Authority: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107-110 (115 Stat. 1425).

§ 48.1 What definitions are used in this subpart?

Active consideration means any action by the Director of OIEP to consider the closure, consolidation, transfer of authority or substantial curtailment of programs of a school.

Director means the Director of the Office of Indian Education Programs in the Bureau of Indian Affairs.

Interested parties means the affected tribe, tribal governing body, designated local school board, or other affected recognized educational organizations.

Secretary means the Secretary of the Interior or a designee.

Substantial curtailment means reducing the fundamental structure or scope of a school by, for example, eliminating Bureau-funded grades, eliminating residential services, or removing core academic services. This term does not include eliminating discretionary programs.

§ 48.2 Can the Secretary close, consolidate, or substantially curtail a Bureau-funded school?

Yes, the Secretary can close, consolidate, or substantially curtail a Bureau-funded school:

(a) If facility conditions constitute an immediate hazard to health and safety pursuant to 25 U.S.C. 1125(e);

(b) If the tribal governing body or local school board requests the closure, consolidation, or substantial curtailment; and

(c) If neither paragraphs (a) or (b) of this section apply, by following the procedures in § 48.3.

§ 48.3 What must the Secretary do before closing, consolidating, curtailing, or transferring a Bureau-funded school, without the tribal governing body's approval?

Before closing, consolidating, or substantially curtailing a Bureau-funded school, without the approval of the tribal governing body, the Secretary and the Director of the Office of Indian Education Programs must take the following actions:

(a) Within 30 days of actively considering closure, consolidation, substantial curtailment, or transferring any school to an authority other than BIA, the Director must send a notice that meets the requirements of § 48.4;

(b) Within 90 days of sending the letter required by paragraph (a) of this section, the Director must mail and publish a second notice as required by § 48.5;

(c) The Director will provide to interested parties a monthly status report that includes updates on any items, new developments and changes in the timetables, or procedures;

(d) The Director must allow 90 days following the receipt of the notice under paragraph (b) of this section for submission of written comments from the tribe, tribal governing body, local school board, school administrator, or parents;

(e) Within 180 days receipt of the notice under paragraph (b) of this section, the Director must initiate a consultation process that meets the requirements of § 48.6; and

(f) The Secretary will prepare and distribute a report as required by section 1121(d)(5) of the No Child Left Behind Act that meets the requirements of § 48.7.

§ 48.4 What requirements must the first notice meet?

The notice required by § 48.3(a) must meet all requirements of this section.

(a) The Director must send the notice to the interested parties;

(b) The notice required by § 48.3(a) must include all of the following:

(1) The name and address of the school that is under active consideration of the proposed action;

(2) The nature of the action that is under active consideration;

(3) The reasons for the active consideration of the proposed action.

(4) An outline of future actions that OIEP will take; and

(5) The name and contact information for an OIEP liaison and a request for a designated tribal liaison.

§ 48.5 What requirements must the second notice meet?

The notice required by § 48.3(b) must meet all requirements of this section.

(a) The Director of OIEP must send the notice to:

(1) The tribe, tribal governing body, local school board, school administrator;

(2) Parents; and

(3) The appropriate committees of Congress.

(b) The notice must include the following:

(1) A statement of the history of the conditions that led to the proposed action, including a statement of known attempts to remedy that condition;

(2) Alternatives to the proposed action that have been considered, including what happens to students;

(3) A timetable for conducting the student impact study;

(4) A description of the process for commenting on the proposed action; and

(5) A timetable and procedures for consultation and regular communication.

§ 48.6 How must consultation on school closure be conducted?

The consultation process required by § 48.3(e) must include the following:

(a) At least one public meeting in the attendance area served by the school to gather information from the community about the proposed action, including alternatives to remedy the conditions that led to the proposed action;

(b) At least one public meeting at which the Director presents information to support the proposed action and any alternatives to remedy the conditions that led to the proposed action;

(c) Additional public meetings for discussions with identified alternative service provider;

(d) A meeting in a single location with the tribal governing bodies of all tribes served by the school; and

(e) Additional opportunity to submit written comments.

§ 48.7 What must the Department's report contain?

The report required by § 48.3(f) must meet all requirements of this section.

(a) The Department must submit the report to interested parties and the appropriate committees of Congress.

(b) The report must contain all of the following:

(1) A study of the impact of the proposed action on the student population;

(2) A description of the affected students with particular educational and social needs;

(3) Recommendations to ensure that alternative services are available to such students; and

(4) A description of the consultation conducted between the potential service provider, current provider, tribal representatives and the tribes or tribes involved, and the Director of OIEP.

§ 48.8 What happens when the Secretary decides to close, consolidate, or substantially curtail a Bureau-funded school or dormitory?

If the Secretary makes a formal decision to close, consolidate, or substantially curtail a Bureau-funded school or dormitory, the Secretary must notify interested parties at least 180 days before the end of the school year preceding the proposed closure date. Copies of the notice must be submitted to the appropriations committee and be published in the **Federal Register**.

§ 48.9 What is the earliest date that the Secretary can implement the formal decision?

The Secretary can close, transfer to another authority, consolidate, or substantially curtail a Bureau-funded school or dormitory, only after the end of the first full academic year after the report required by § 48.3(f) is made.

[FR Doc. 04-15832 Filed 7-8-04; 3:16 pm]

BILLING CODE 4310-6W-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AL-112L-2004-1-FRL-7786-1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Pulp Mills; State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the Alabama Department of Environmental Management (ADEM) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. In the rules section of this **Federal Register**, EPA is granting ADEM the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA