Dated: February 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4424 Filed 3–3–10; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN 1855–AA07

[Docket ID ED–2010–OII–0003]

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP) to provide greater flexibility to school districts designing MSAP programs for the Fiscal Year (FY) 2010 grant competition announced in a notice inviting applications for new awards published elsewhere in this issue of the **Federal Register**. These changes remove provisions in the regulations that require districts to use binary racial classifications and prohibit the creation of magnet schools that result in minority group enrollments in magnet and feeder schools exceeding the district-wide average of minority group students. This new flexibility is necessary to permit school districts interested in receiving funds under this program to determine how best to meet program requirements while also taking into account intervening Supreme Court case law, including the Court's decision in *Parents Involved in Community Schools* v. *Seattle School District No 1 et al.,* 551 U.S. 701 (2007) (*Parents Involved*).

DATES: These regulations are effective March 4, 2010. We must receive your comments by April 5, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://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 "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Anna Hinton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Anna Hinton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202. Telephone: (202) 260–1816 or by e-mail: *FY10MSAPCOMP@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 may 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:

Invitation To Comment

We invite you to submit comments regarding the removal of the regulatory provisions in these interim final regulations. The MSAP regulations in 34 CFR part 280, as amended by these interim final regulations, will govern the FY 2010 MSAP competition. Any changes made to these interim final regulations in light of comments would govern the next MSAP competition in FY 2013. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each of your comments addresses and to arrange your comments in the same order as the interim final regulations. We also are considering issuing a notice of proposed rulemaking (NPRM) that would propose provisions to replace those that are removed by these interim final regulations, although we are not soliciting comments on an NPRM at this time. Again, any changes subsequent to these interim final regulations would apply to the next MSAP competition, which the Department anticipates conducting in FY 2013.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these interim final regulations. Please let us know of any further opportunities we should take to 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 these interim final regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 4W229, 400 Maryland Avenue, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, please contact Anna Hinton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202. Telephone: (202) 260–1816 or by e-mail: *FY10MSAPCOMP@ed.gov.*

Background

The MSAP is a discretionary grant program that provides funds to local educational agencies (LEAs) for "the elimination, reduction, or prevention of minority group isolation in elementary and secondary schools" with substantial proportions of minority students, and "the development and design of innovative educational methods and practices that promote diversity." 20 U.S.C. 7231; 34 CFR 280.1. The Department awards grants to LEAs for magnet schools that are "part of an approved desegregation plan" and "designed to bring students from different social, economic, ethnic, and racial backgrounds together." 20 U.S.C. 7231b; 34 CFR 280. There are two types of MSAP desegregation plans: (1) Required desegregation plans ordered by a Federal or State court or agency of competent jurisdiction;[1] and (2)

[1] The revisions in these interim final regulations do not affect how the Department treats required desegregation plans under the MSAP.

voluntary desegregation plans that must be approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 (Title VI). *See* 20 U.S.C. 7231c; 34 CFR part 280.

The Supreme Court's Decision in Parents Involved

On June 28, 2007, the Supreme Court in *Parents Involved* found the voluntary desegregation plans in the Seattle, Washington, and Louisville, Kentucky school districts unconstitutional in part because the districts failed to adequately show that they considered race-neutral alternatives prior to using individual racial classifications in assigning students to schools.[2] In *Parents Involved,* five justices affirmed that avoiding racial isolation—one of the purposes of the MSAP program—is a compelling governmental interest. However, the majority opinion found each plan's use of only two categories in defining race problematic. The Seattle school district used "white" and "nonwhite" and the Louisville school district used "black" and "other." The *Parents Involved* Court also rejected the achievement of racial balance, (*i.e.,* a student enrollment that mirrors the racial composition of a school district, as a basis for the use of race in a voluntary desegregation plan.) *Parents Involved* at 722.

The MSAP Regulations

The current regulations governing the MSAP are in 34 CFR part 280. In light of guidance provided by the Supreme Court in *Parents Involved,* we are changing three provisions of these regulations to provide districts greater flexibility in how they demonstrate that their magnet or feeder schools will eliminate, reduce, or prevent minority group isolation and that their voluntary desegregation plans are adequate under Title VI. Each of these provisions and the changes we are making are described in the following paragraphs.[3]

The current regulations in 34 CFR 280.4(b) define the term *minority group isolation,* in reference to a school, to mean "a condition in which minority group children constitute more than 50 percent of the enrollment of the school." 34 CFR 280.4(b). We are removing the definition of *minority group isolation* through these interim final regulations because the definition requires the use of only two racial classifications of students—"minority group" and "nonminority group" students. In the absence of a definition of *minority group isolation,* the Department will determine on a case-by-case basis whether a district's voluntary plan meets the statutory purpose of reducing, eliminating, or preventing minority group isolation in its magnet or feeder schools, considering the unique circumstances in each district and school. For example, the Department may consider whether there is a substantial proportion of students from any minority group enrolled in a school, looking at the student enrollment numbers of the district and the targeted schools disaggregated by race.

The current regulations in 34 CFR 280.2(b)(2) and 280.20(g) provide for the use of a district-wide percentage of minority students as an absolute limitation on student enrollment in magnet or feeder schools. Specifically, section 280.2(b)(2) provides for the Secretary to approve a voluntary plan as adequate under Title VI if the establishment of the magnet school will not result in an increase of minority enrollment, at the magnet school or at any feeder school, above the district-wide percentage of minority group students in the LEA's schools at the grade levels served by the magnet school. Similarly, section 280.20(g), related to the information that an applicant must include in its application, provides, in part, that an applicant seeking approval of a voluntary plan as adequate under Title VI that cannot provide the information required for review of its application may submit other information to demonstrate that—

> the creation or operation of its proposed magnet school * * * would not result in an increase of minority student isolation at one of the applicant's schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school.

The Department is removing the language requiring use of the district-wide percentage limitations in both of these sections. Section 280.2(b)(2) is removed in its entirety, and section 280.20(g) is revised to remove the language regarding district-wide percentage for minority students. This amended provision reads as follows:

> An applicant that does not have an approved desegregation plan, and demonstrates that it cannot provide some portion of the information requested under paragraphs (f)(4) and (5) of this section, may provide other information (in lieu of that portion of the information not provided in response to paragraphs (f)(4) and (5) of this section) to demonstrate that the creation or operation of its proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's schools.

The Department will determine on a case-by-case basis whether the voluntary plans are adequate under Title VI of the Civil Rights Act of 1964 and whether the proposed magnet schools will reduce, eliminate or prevent minority group isolation within the period of the grant award, for the purposes of sections 280.2(b) and 280.20(g). This will include an examination of the factual basis for any proposed increases in minority enrollment at district schools rather than the use of the absolute district-wide percentage limitation found in the current regulations. For example, the Department may consider whether a plan to reduce, eliminate or prevent minority group isolation at a magnet school or at a feeder school would significantly increase minority group isolation at any magnet or feeder school in the project at the grade levels served by the magnet school. In cases in which a school district is subject to a desegregation order that prohibits magnet or feeder schools from exceeding the district-wide average of minority group students, the district would, of course, continue to be bound by that order.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section 553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. Although these regulations are subject to the APA's notice-and-comment requirements, the Secretary has determined that it would be contrary to the public interest and impracticable to conduct notice-and-comment rulemaking.

This determination is based on the need to provide school districts

[2] In evaluating these challenges to the districts' use of individual racial classifications, the Court applied the two part strict scrutiny standard which requires a compelling governmental interest for the use of race and that any use of race be narrowly tailored to further the compelling interest.

[3] We are not removing a fourth regulatory provision in the selection criterion *Quality of project design* at 34 CFR 280.31(c)(2)(v) that provides for the Secretary to determine the extent to which each magnet school for which funding is sought will improve the racial balance of students in the applicant's schools, because we are not using this factor in the FY 2010 grant competition.

flexibility in determining how to meet the MSAP's statutory requirements (*i.e.,* that magnet schools eliminate, reduce, or prevent minority group isolation and that voluntary plans are adequate under Title VI) while taking into account the Supreme Court's decision in *Parents Involved.* It would be impracticable for the Department to conduct notice-and-comment rulemaking and then promulgate final regulations in time to make new awards for FY 2010 funding prior to September 30, 2010, the date by which FY 2010 funds must be obligated under the MSAP program. The application submission and review process for this program normally takes seven to eight months, without any rulemaking activity, and we anticipate that conducting notice-and-comment rulemaking would require at least an additional four months. More specifically, given the complexity of the application, LEAs need 60 days to submit their applications, which is the time that has been provided in the past, and which, in our experience, is the minimum amount of time LEAs need. The peer review of the applications will take at least two months, if done on an expedited basis. And, the Department will need significant additional time to review the most competitive applications to determine, as required by the MSAP statute, whether each applicant will meet its assurances of non-discrimination, and whether each voluntary plan is adequate under Title VI of the Civil Rights Act of 1964. Finally, we must allow time in September to negotiate and award the grants. Given these time frames, even expediting the application review process, we could not conduct both notice-and-comment rulemaking and make awards before the end of the fiscal year. Based upon these considerations, therefore, the Secretary is issuing these interim final regulations without first publishing proposed regulations for public comment.

Although the Department is adopting these regulations on an interim final basis, the Department requests public comment on these changes in the MSAP regulations for future grant competitions. After consideration of public comments, the Secretary will publish final regulations applicable to the next grant competition.

The APA also requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). For the reasons outlined in the preceding paragraphs, the Secretary has determined that a delayed effective date for these interim final regulations is unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date.

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 order. The Secretary has determined that this regulatory action is significant under section 3(f) of the Executive order.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the regulations are those resulting from Supreme Court action and those we have determined to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

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

Summary of Potential Costs and Benefits

Because the Secretary has chosen to regulate only to the extent necessary to reflect changes required by the Supreme Court's decision in *Parents Involved,* LEAs have considerable flexibility in implementing the provisions of the MSAP. Consequently, the potential costs associated with this regulatory action are minimal.

Benefits of the regulations include providing LEAs greater latitude in the design of projects, the removal of the restriction of using a binary classification in the definition of minority group isolation, and removing the district-wide average limitation in the MSAP regulation.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

These regulations do not require the collection of new information subject to the Paperwork Reduction Act of 1995. The existing MSAP student enrollment data forms approved under control number OMB–1855–0011, require districts to report current and projected racial and ethnic student enrollment data using the binary classifications of minority and non-minority. In order to conform to the change in the regulations removing the definition of minority group isolation, the required data will now be reported in a different manner by applicants. The forms have been changed to remove the requirement that applicants report racial and ethnic data using the minority and non-minority racial and ethnic classifications. Applicants will now be required to report racial and ethnic data disaggregated by the racial and ethnic categories used by the district for reporting such racial and ethnic data to the Department for the 2009–2010 school year. Although the Department has made changes to these student enrollment data forms, we do not anticipate that these changes will alter the current burden because the same racial and ethnic data will be collected by districts, even though it will be reported in a different manner.

In the October 2007 Guidance on Collecting, Maintaining and Reporting Data by Race or Ethnicity (Guidance) (72 FR 59266 (Oct. 19, 2007), at *http://www.ed.gov/legislation/FedRegister/other/2007–4/101907c.html,* the Department established new requirements for the collection and

reporting of racial and ethnic data under the programs we administer. The Department also announced that districts must begin reporting data using the new collection procedures and aggregate reporting categories no later than for data about the 2010–2011 school year. Under the Guidance, for upcoming grant applications, which would include applications for new MSAP funds, districts are permitted to report data using the racial and ethnic categories used in their district for the 2009–2010 school year.

This means that districts have two options for reporting the required data in disaggregated categories in their MSAP applications.

For districts that have already converted to the revised categories, racial and ethnic student enrollment data should be reported and projected using the revised forms that disaggregate student enrollment data by race and ethnicity using the following categories: Hispanic/Latino, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, and Two-or More Races.

For districts that have not already converted to the revised categories, racial and ethnic student enrollment data should be reported and projected using the revised forms that disaggregate student enrollment data by race and ethnicity using the following categories: American Indian or Alaskan Native, Asian or Pacific Islander, Black (Not of Hispanic Origin), Hispanic, and White.

Two versions of the forms will be included in the application package.

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.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/magnet/applicant.html.*

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(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program)

List of Subjects in 34 CFR Part 280

Elementary and secondary education, Equal educational opportunity, Grant programs—education, Reporting and recordkeeping requirements.

Dated: February 25, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

■ For the reasons discussed in the preamble, the Secretary amends part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

■ 1. The authority citation for part 280 continues to read as follows:

Authority: 20 U.S.C. 7231–7231j, unless otherwise indicated.

§ 280.2 [Amended]

■ 2. Section 280.2 is amended by revising paragraph (b) to read as follows:

§ 280.2 Who is eligible to apply for a grant?

* * * * *

(b) The Secretary approves a voluntary plan under paragraph (a)(2) of this section only if he determines that for each magnet school for which funding is sought, the magnet school will reduce, eliminate, or prevent minority group isolation within the period of the grant award, either in the magnet school or in a feeder school, as appropriate.

* * * * *

§ 280.4 [Amended]

■ 3. Section 280.4 is amended by removing the definition of *minority group isolation* in paragraph (b).

■ 4. Section 280.20(g) is revised to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(g) An applicant that does not have an approved desegregation plan, and demonstrates that it cannot provide some portion of the information requested under paragraphs (f)(4) and (5) of this section, may provide other information (in lieu of that portion of the information not provided in response to paragraphs (f)(4) and (5) of this section) to demonstrate that the creation or operation of its proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's schools.

* * * * *

[FR Doc. 2010–4415 Filed 3–3–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R10–OAR–2009–0799; FRL–9123–1]

Technical Amendment to the Outer Continental Shelf Air Regulations Consistency Update; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document contains technical corrections to the final regulations, which were published in the **Federal Register** of Thursday January 21, 2010. The regulations related to the Consistency Update of the Outer Continental Shelf Air Regulations for Alaska.

DATES: Effective on March 22, 2010.

FOR FURTHER INFORMATION CONTACT: Natasha Greaves, Federal and Delegated Air Programs Unit, Office of Air, Waste, and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101; telephone number: (206) 553–7079; e-mail address: *greaves.natasha@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents