

Hampshire Ave., Bldg. 66, rm. 3521, Silver Spring, MD 20993-0002. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of such district offices. Upon request, verification of a registration number or location of a registered establishment will be provided.

(b) The following listing information will not be available for public inspection or posted on the FDA Web site:

(1) For contract manufacturers, contract sterilizers, and private label manufacturers, the proprietary or brand name(s) under which a device is marketed and the FDA-assigned premarket submission number, if this information would reveal a confidential business relationship;

(2) FDA-assigned listing numbers.

■ 17. Revise the heading of subpart C to read as set forth below:

#### **Subpart C—Procedures for Foreign Device Establishments**

■ 18. Amend § 807.40 by revising paragraphs (a) and (c) and by adding paragraph (d) to read as follows:

#### **§ 807.40 Establishment registration and device listing for foreign establishments importing or offering for import devices into the United States.**

(a) Any establishment within any foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of a device that is imported or offered for import into the United States shall register such establishment and list such devices using the FDA electronic device registration and listing system in conformance with the procedures in this section, § 807.41, and subpart B of this part. The official correspondent for the foreign establishment shall facilitate communication between the foreign establishment's management and representatives of FDA for matters relating to the registration of device establishments and the listing of device products.

\* \* \* \* \*

(c) No device may be imported or offered for import into the United States unless it is the subject of a device listing as required under subpart B of this part and is manufactured, prepared, propagated, compounded, or processed at a registered foreign establishment; however, this restriction does not apply to devices imported or offered for import under the investigational use provisions of part 812 of this chapter.

(d) The device establishment registration and device listing information shall be in the English language.

■ 19. Add § 807.41 to subpart C to read as follows:

#### **§ 807.41 Identification of importers and persons who import or offer for import.**

(a) Upon initial registration, annually, and at the time of any changes, each foreign establishment required to register and list as provided in § 807.40(a) must, using the FDA electronic device registration and listing system, submit the name, address, telephone and fax numbers, email address, and registration number, if any has been assigned, of any importer (defined in § 807.3(x)) of the establishment's devices that is known to the foreign establishment. The foreign establishment must also specify which of the establishment's listed products each importer receives from the foreign establishment.

(b) Upon initial registration, annually, and at the time of any changes, each foreign establishment required to register and list as provided in § 807.40(a) must, using the FDA electronic device registration and listing system, submit the name, address, telephone and fax numbers, email address, and registration number, if any has been assigned, of each person who imports or offers for import the establishment's devices into the United States. The term "person who imports or offers for import," which is defined in § 807.3(y), includes agents, brokers, or other parties used by the foreign establishment to facilitate the import of its device into the United States.

(c) For each individual or organization identified by the foreign establishment under paragraphs (a) and (b) of this section, the foreign establishment must submit to FDA electronically the current FDA premarket submission number and any other identifying information that is known to the establishment for each device being imported or offered for import by the named individuals or organizations.

Dated: July 27, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

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## **DEPARTMENT OF EDUCATION**

### **34 CFR Chapter III**

#### **Final Priorities and Definitions; State Personnel Development Grants**

*CFDA Number: 84.323A.*

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

**ACTION:** Final priorities and definitions.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces two priorities for State Personnel Development Grants (SPDGs): Effective and Efficient Delivery of Professional Development (Priority 1) and Targeting Teachers' Professional Development Needs Based on Student Growth (Priority 2). The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2012 and later years. The Assistant Secretary also announces definitions applicable to this program and these priorities. We take this action to assist State educational agencies (SEAs) to make their systems of professional development more effective and efficient by providing evidence-based and ongoing professional development that uses technology to support the implementation of evidence-based practices and to assist local educational agencies (LEAs) in providing professional development targeted to meet the specific needs of teachers identified by teacher evaluation systems that take into account student growth as a significant factor in determining performance levels. We intend to use these priorities to improve educational services and outcomes for children with disabilities.

**DATES:** *Effective Date:* These priorities and definitions are effective September 4, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW., room 4097, Potomac Center Plaza (PCP), Washington, DC 20202-2600. Telephone: (202) 245-6673 or by email: [jennifer.coffey@ed.gov](mailto:jennifer.coffey@ed.gov).

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

**SUPPLEMENTARY INFORMATION:** This notice announces definitions and two priorities that the Office of Special Education Programs (OSEP) intends to use for the SPDG competition in FY 2012 and possibly later years. However, nothing precludes OSEP from publishing additional priorities,

requirements, definitions, or selection criteria, if needed. Furthermore, OSEP is under no obligation to make an award for these priorities. The decision to make an award will be based on the quality of applications received and available funding.

*Purpose of Program:* The purpose of this program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

*Statutory Requirements:* Applicants under the SPDG program must meet the statutory requirements in sections 651 through 654 of the Individuals with Disabilities Education Act (IDEA), including the application requirements in section 653 and the use of funds requirements in section 654. Because the priorities and definitions in this notice supplement these statutory requirements, applicants should familiarize themselves with the statutory requirements they must also meet to receive funding under this program.

In addition, section 651(b) of the IDEA defines the term “personnel” as it is used in connection with the SPDG program. This definition applies to the priorities in this notice as well. “Personnel” means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

*Program Authority:* 20 U.S.C. 1451–1455.

We published a notice of proposed priorities and definitions for the SPDG program in the **Federal Register** on April 13, 2012 (77 FR 22306). That notice contained background information and our reasons for proposing these particular priorities and definitions.

*Public Comment:* In response to our invitation in the notice of proposed priorities and definitions, 11 parties submitted comments.

We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priorities and definitions.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priorities or definitions

since publication of the notice of proposed priorities and definitions follows.

### General Comments

*Comment:* Two commenters recommended that we include all school personnel in both priorities. One commenter recommended that OSEP use the term “school personnel” instead of “teacher” throughout the two priorities to ensure that all school personnel, as the IDEA defines the term, have access to evidence-based professional development.

*Discussion:* For Priority 1, we are using the definition of “personnel” from section 651(b) of the IDEA because Priority 1 is designed broadly to focus on the effective and efficient delivery of professional development using evidence-based professional development practices. This priority would apply to all personnel defined in section 651(b) of the IDEA, not just to teachers. Priority 2, however, is limited to the specific professional development needs of general and special education teachers identified by teacher evaluation systems that take into account student growth as a significant factor in determining performance levels. Therefore, it would not be appropriate to apply the definition of “personnel” in section 651(b) of the IDEA to Priority 2.

*Changes:* None.

*Comment:* One commenter noted that rural school personnel would especially benefit from using technology to provide professional development in the form of coaching.

*Discussion:* OSEP agrees that the use of technology can improve the delivery of professional development in rural areas and that technology could provide a means of coaching school personnel in rural areas in using and maintaining new skills. These activities can be supported under Priority 1.

*Changes:* None.

*Comment:* One commenter recommended that OSEP add to the priorities a focus on personnel preparation.

*Discussion:* The primary focus of the SPDG program is to improve professional development for personnel so that they have the knowledge and skills to improve results for children with disabilities. High-quality, comprehensive professional development programs are essential to ensure that school personnel possess the skills and knowledge necessary to address the early intervention, educational, and related services needs of infants, toddlers, and children with disabilities. The Department’s intent in publishing this priority is to allow

States to make their systems of professional development for personnel serving children with disabilities more effective and efficient through the use of evidence-based practices. OSEP appreciates the commenter’s suggestion to expand Priority 1 to include a focus on personnel preparation. However, OSEP believes that other funding opportunities can address States’ personnel preparation needs, such as grants under section 662 of IDEA, and that the more limited resources under the SPDG program, 90 percent of which must be used for professional development as provided for in section 654(d)(1) of the IDEA, should be used primarily for professional development activities.

*Changes:* None.

*Comment:* Several commenters requested that Priority 1 include particular practices as areas for professional development. For example, some commenters recommended including references to universal design for learning, multi-tiered systems of support, and positive behavioral interventions and supports to the description of evidence-based professional development practices.

*Discussion:* The primary focus of this priority is on the use of evidence-based professional development practices that increase the implementation of evidence-based instructional practices to improve outcomes for children with disabilities. Accordingly, applicants that wish to address particular practices in their proposed projects may do so, provided they can demonstrate that these practices are evidence-based and will improve outcomes for children with disabilities.

*Changes:* None.

### Priority 1—Effective and Efficient Delivery of Professional Development

*Comment:* Multiple commenters supported the focus in Priority 1 on evidence-based and ongoing professional development that makes use of technology to reach school personnel. However, one commenter stated that the definition of technology is unclear and asked for clarification regarding the “newer technologies” referred to under the “Use of Technology” in the background section for Priority 1. This commenter stated that the background section refers to the use of bug-in-the ear technology for coaching and distance education technology for providing professional development to remote areas.

*Discussion:* OSEP appreciates commenters’ support for the use of technology under Priority 1 to more efficiently and effectively provide

ongoing evidence-based professional development to personnel. The discussion on the use of technology in the background section of the notice was intended to highlight the fact that the introduction of new technologies (e.g., online project management tools, wikis for communication and collaboration, and Web cast programs) has greatly enhanced the capacity to provide ongoing professional development and that applicants should consider the use of these technologies to increase the efficiency and effectiveness of their professional development. However, applicants may propose to use the technologies that best suit their needs in providing more efficient and effective professional development.

*Changes:* None.

*Comment:* One commenter requested that the Department clarify the intent of the language in the background section of the notice of proposed priorities, published at 77 FR 22306 regarding the importance of high quality professional development to improve the skills of personnel who work with infants and toddlers. The commenter was concerned that this language focused the priority on the provision of professional development for early intervention and early childhood educators.

*Discussion:* We believe that the language of the priority is clear and that no further clarification is needed. The purpose of Priority 1 is to ensure that personnel possess the skills and knowledge necessary to address the early intervention, educational, and related services needs of infants, toddlers, and children with disabilities and is not intended to focus only on providers of early childhood or early intervention services. In addition, it is not necessary to change the background section because it is not included in the final priority.

*Changes:* None.

*Comment:* One commenter described the importance of providing professional development that helps school personnel become culturally competent.

*Discussion:* OSEP agrees that providing professional development to help school personnel gain cultural competence is important. Under this priority, applicants may propose a project that helps school personnel serving children with disabilities to become culturally competent, provided the project is designed to improve professional development in this area through the use of evidence-based practices.

*Changes:* None.

### **Proposed Priority 2—Targeting Teachers' Professional Development Needs Based on Student Growth**

*Comment:* One commenter expressed concern that using student growth data to determine professional development needs would exclude teachers whose responsibilities are not related to subjects that are part of the statewide assessment system. The commenter recommended that Priority 2 allow for the use of other types of data, such as staff surveys, supervisory conferencing, and observations, to determine professional development needs.

*Discussion:* The teacher evaluation systems implemented by States and LEAs use multiple measures of professional practice and student growth to determine performance levels and identify professional development needs. In particular, States and LEAs may use other measures of student learning in addition to the State's assessment data under the Elementary and Secondary Education Act of 1965, as amended (ESEA) (see the definition of "student achievement" in the Definitions section of this notice). For teachers of non-tested grades or subjects, alternative measures of student learning and performance can be used, such as student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments, and other measures of student achievement that are rigorous and comparable across schools. States and their LEAs may use other sources of data in addition to student growth data, as a part of their teacher evaluation system, to assist in determining professional development needs.

*Changes:* None.

*Comment:* One commenter approved of this priority because it encourages school personnel to analyze student performance data using objective measures to assess growth in student achievement. The commenter stated that these data could be useful at a school and district level for planning professional development and coaching. However, the commenter expressed concerns about student performance data being part of a teacher evaluation system, stating there is insufficient evidence to prove that teacher performance significantly affects student achievement.

*Discussion:* We appreciate the comment; however, we disagree that there is no evidence demonstrating that teacher performance has an effect on student achievement. There is a substantial body of evidence that teacher performance significantly affects student achievement. Please see Chetty,

Friedman, & Rockoff, 2011; Hanushek, 2010; Hanushek, 2011; Hanushek & Rivkin, 2010; Kane & Staiger, 2008; Kane, Taylor, Tyler, & Wooten, 2010; Rockoff 2004.

*Changes:* None.

*Comment:* One commenter stated that there is no evidence that student growth can be effectively measured through an alternate assessment or testing with accommodations.

*Discussion:* Under section 612(a)(16)(B) of the IDEA, States must develop guidelines for the provision of appropriate accommodations for students with disabilities, and those accommodations may not operate to invalidate test results. States must ensure that teachers and other staff know how to administer assessments, including how to use appropriate accommodations, for students with the most significant cognitive disabilities. Appropriate accommodations that do not interfere with the testing construct can serve as a component of a well-designed assessment system to measure student growth. In addition, an alternate assessment that meets established technical adequacy requirements for test reliability and validity can provide data that can be included as a component of a well-designed assessment system to measure student growth.

The Department is currently funding the development of two alternate assessments for students with the most significant cognitive disabilities. The assessments will measure the knowledge and skills of those students against a common set of college- and career-ready content standards in mathematics and English language and will provide an accurate measure of student growth over a full academic year or course. These alternate assessments developed with General Supervision Enhancement Grants (GSEG) will permit the assessment of all eligible students with significant cognitive disabilities, and they will produce data (including student achievement data and student growth data) that can be used to inform (a) Determinations of school effectiveness; (b) determinations of individual principal and teacher effectiveness for purposes of evaluation; (c) determinations of principal and teacher professional development and support needs; and (d) teaching, learning, and program improvement.

*Changes:* None.

*Comment:* Multiple commenters shared concerns that their States would not be eligible for this priority because their data systems do not currently have the ability to link student performance to teacher performance.

*Discussion:* The Department understands that some States and their LEAs may need time to make the changes in their data systems necessary to use student growth data for decision-making purposes. Accordingly, the Department has revised Priority 2 to provide greater flexibility for States currently in the planning or initial stages of implementing teacher evaluation systems.

Revised Priority 2 will allow States to begin using the results from their teacher evaluation systems to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period. To meet this priority, an applicant must include, as part of its application, a plan describing how it will use the results of teacher evaluation systems to identify the professional development needs of teachers of students with disabilities and the applicant's timeline for using the results. We believe it is important to have a competitive preference priority in this area to encourage States to build their capacity to use their evaluation systems to identify and better target the professional development needs of teachers of students with disabilities and help them to develop the knowledge and skills required to deliver evidence-based instruction.

*Changes:* Priority 2 has been revised to allow States to begin using their evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant's project period rather than at the beginning of the project period.

*Comment:* One commenter asked whether the teacher evaluation system must already be fully functional at the school, LEA, and State levels in order for the applicant to be eligible to receive competitive preference under this priority.

*Discussion:* If LEAs have teacher evaluation systems that meet State guidelines, it would be appropriate for the SPDG project to work with these LEAs. As stated in the discussion in response to the previous comment, the State must be able to use teacher evaluation systems that take into account student growth as a significant factor in determining performance levels to identify professional development needs by the beginning of the third year of the grant.

*Changes:* Priority 2 has been revised to allow States to begin using their evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year

of the grant's project period rather than at the beginning of the project period.

*Comment:* One commenter noted the difficulty in ascribing the performance of a student with disabilities to a particular teacher because the student will likely be served by multiple professionals (i.e., a regular education teacher, a special education teacher, and a related services provider).

*Discussion:* While it can be difficult to ascribe the growth of students with disabilities to individual teachers, States are taking different approaches and working to ensure that their evaluation systems validly and reliably ascribe growth data to individual teachers. States and LEAs also have developed more sophisticated data systems that link teacher and student data and that are able to identify with more specificity the amount of time that teachers serve individual students.

*Changes:* None.

*Comment:* One commenter recommended that we provide in the priority that SPDG projects in States whose LEAs do not have teacher evaluation systems that take into account student growth (as defined in the notice) be allowed to establish these evaluation systems in order to determine teacher performance levels and target professional development to the specific needs of each of the teachers in participating schools or districts.

*Discussion:* We do not believe that SPDG funds should be used to develop or implement systems to evaluate special education teachers using student growth data. States participating in the State Fiscal Stabilization Fund (SFSF) program committed to establishing longitudinal data systems that would have the ability to link data on students and teachers. Currently, 45 States have reported they have such a system in place. The remaining five participating States have until the end of 2013 to establish their systems. Also, many States committed to measuring student growth for particular teachers and linking those data back to teacher preparation programs. While we recognize the wide variation among States in the use of longitudinal and other data on student outcomes to evaluate teacher performance, especially special education teacher performance, and there is considerable work to be done, we do not think that SPDG funds should be used to match student and teacher data or to conduct teacher evaluations.

Instead, these projects should focus on the use of teacher evaluation information to identify and address professional development needs. Under

section 654(a) of the IDEA, funds could be used by projects to help LEAs to target their professional development, including identifying the type of professional development that would be most useful for their teachers. In addition, we encourage SPDG project staff to participate in State efforts to improve and expand evaluative systems to ensure their design facilitates the use of teacher performance information, which is linked to student outcome data, to identify special education teachers' professional development needs.

Under section 654(b) of the IDEA, SPDG funds can be used for purposes other than professional development, such as developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers, and could potentially be used to enhance a State's teacher evaluation system that uses student growth data for students with disabilities. However, these funds should not be used by schools or districts to gather performance information or conduct evaluations of individual teachers.

*Changes:* None.

#### Definitions

*Comment:* Three commenters recommended that OSEP strengthen the definition of "evidence-based practices" to include causality and the demonstration of effect on student outcomes.

*Discussion:* The definition of "evidence-based practices" was taken from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). OSEP appreciates the commenter's concerns, but the Department has developed the definition to be applicable to a broad range of programs, and it was previously the subject of public comment. Therefore, OSEP does not believe it is necessary to alter the definition in this notice.

*Changes:* None.

*Comment:* Two commenters recommended that OSEP strengthen its definition of "fidelity" and stated that fidelity to the components of a practice or program is key to improving student outcomes.

*Discussion:* Although we agree with the commenters that fidelity to the components of a program or practice is key to improving student outcomes, we believe that the current definition is sufficient in this regard. In the NPP, we

explained that we based the proposed definition of “fidelity” on a definition that is widely accepted in the field (Gresham, MacMillan, Boebe-Frankenberger, & Bocian, 2000), and we believe this definition is sufficient for the purposes of this program.

*Changes:* None.

*Comment:* Two commenters recommended that OSEP change the definition of “student achievement” to ensure that student achievement data is comparable not only across schools but also across districts within a State.

*Discussion:* The definition of “student achievement” is taken from the Department’s notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). The Department has developed this definition to be applicable to a broad range of programs, and it was previously the subject of public comment. To be consistent with the definition being used across the Department, we are using this definition without change.

*Changes:* None.

### Final Priorities

#### *Priority 1—Effective and Efficient Delivery of Professional Development*

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to assist SEAs in reforming and improving their systems for personnel (as that term is defined in section 651(b) of the IDEA) preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities.

In order to meet this priority an applicant must demonstrate in the SPDG State Plan it submits as part of its application under section 653(a)(2) of the IDEA that its proposed project will—

(1) Use evidence-based (as defined in this notice) professional development practices that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Provide ongoing assistance to personnel receiving SPDG-supported professional development that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas

and to other populations, such as personnel in urban or high-need LEAs (as defined in this notice).

#### *Priority 2—Targeting Teachers’ Professional Development Needs Based on Student Growth*

The Assistant Secretary establishes a priority for projects that are designed to provide professional development targeted to meet specific needs of teachers identified by teacher evaluation systems that take into account student growth (as defined in this notice) as a significant factor in determining performance levels.

To meet this priority, an applicant must include, as part of its application, a plan describing how it will use the results of teacher evaluation systems to identify the professional development needs of teachers of students with disabilities to ensure that such teachers develop the knowledge and skills required to deliver evidence-based instruction to students with disabilities. The teacher evaluation systems used to make these determinations must be based on student growth in significant part, and must include students with disabilities.

The plan must describe the applicant’s timeline for using the results of evaluation systems to identify the professional development needs of teachers of students with disabilities. Under this timeline, the applicant must begin using the evaluation system results to identify the professional development needs of teachers of students with disabilities no later than the beginning of the third year of the grant’s project period.

#### Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly

interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

### Final Definitions

The Assistant Secretary establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

*Evidence-based* refers to practices for which there is strong evidence or moderate evidence of effectiveness.

*Fidelity* means the delivery of instruction in the way in which it was designed to be delivered.

*High-need LEA* means, in accordance section 2102(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

*Student achievement* means—

(a) For tested grades and subjects: (1) A student’s score on the State’s assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

*Student growth* means the change in student achievement (as defined in this notice) for an individual student between two or more points in time.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities and definitions, we invite applications through a notice in the **Federal Register**.

**Executive Orders 12866 and 13563***Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this 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 loan programs or the rights and obligations of recipients thereof; or

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

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

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

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

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

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

We are issuing these final priorities and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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.

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

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

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

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–

7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

*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: [www.gpo.gov/fdsys](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.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 30, 2012.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–18907 Filed 8–1–12; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R03–OAR–2011–0866; FRL–9705–5]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Preconstruction Requirements-Prevention of Significant Deterioration and Nonattainment New Source Review**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving several revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of the Environment (MDE). These revisions pertain to preconstruction requirements under the Prevention of Significant Deterioration (PSD) and non-attainment New Source Review (NSR) programs. The SIP revisions satisfy the following required SIP elements: NSR Reform, oxides of nitrogen (NO<sub>x</sub>) as a precursor to ozone, PM<sub>2.5</sub>, and Greenhouse Gases (GHGs). Additionally, EPA is approving, as a separate action, Maryland’s submittals for purposes of meeting the infrastructure requirements of the Clean Air Act (CAA) which relate to