

available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0623 to read as follows:

§ 165.T01–0623 Regulated Navigation Area: Thames River New London, CT.

(a) *Location.* The following area is a regulated navigation area: All navigable waters of the Thames River adjacent to Fort Trumbull State Park in New London, CT, from surface to bottom bounded to the north by a line connecting the following points: Point “1”, 41°20′40″ N, 072°05′32″ W east to point “2”, 41°20′40″ N, 072°05′15″ W then southeast to point “3”, 41°20′31.8″ N, 072°05′03″ W then south to point “4”, 41°20′28″ N, 072°05′03″ W then east to point “5”, 41°20′30″ N, 072°04′48″ W; bounded to the east by following the shoreline south from point “5” to point “6”, 41°20′19″ N, 072°04′46″ W; bounded to the south by a line connecting the following points: point “6” west to point “7”, 41°20′17″ N, 072°05′13″ W then north to point “8”, 41°20′27.2″ N, 072°05′15″ W then northwest to point “9”, 41°20′29.5″ N, 072°05′17″ W then west to point “10”, 41°20′29.5″ N, 072°05′30″ W then northwest to point “11”, 41°20′31″ N, 072°05′34″ W; bounded to the west by following the shoreline north from point “11” back to the start, point “1”.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Long Island Sound (COTP) or the COTP’s designated representative.

(3) During periods of enforcement, a “Slow-No-Wake” speed limit will be in effect. Vessels may not produce more than a minimum wake and may not

attain speeds greater than six knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it would create a danger of injury to persons, or damage to vessels or structures.

(4) During periods of enforcement, SECURITE calls must be made by all persons and vessels conducting crane or dive operations.

(5) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP’s designated representative.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) Persons and vessels may request permission to enter the zone during periods of enforcement on VHF–16 or via phone at 203–468–4401.

(8) Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR Part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(c) *Effective period.* This rule is effective until October 31, 2014.

(d) *Enforcement period.* (1) Except when suspended in accordance with paragraph (d)(2) of this section, this regulated navigation area is in force 24 hours a day until October 31, 2014.

(2) Notice of suspension of enforcement: The COTP may suspend enforcement of the regulated navigation area. If enforcement is suspended, the COTP will cause notice of the suspension of enforcement to be made by all appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notifications will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Violations of this regulated navigation area must be reported to the COTP, at 203–468–4401 or on VHF’s—Channel 16. Persons in violation of this regulated navigation area may be subject to civil or criminal penalties.

Dated: October 24, 2012.

J.B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012–27489 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0950]

RIN 1625–AA11

Regulated Navigation Area; East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels; New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is temporarily establishing a regulated navigation area (RNA) comprising all waters between the New York City Department of Sanitation Marine Transfer Stations (MTSs) on Gowanus Bay and Flushing Bay. While the temporary interim rule is in effect, the Coast Guard may restrict or prohibit vessel traffic within the RNA to accommodate the load-out and transit of four gantry cranes that will pose an imminent hazard to vessels operating in the area.

DATES: This rule is effective with actual notice for purposes of enforcement from November 1, 2012 through November 30, 2012, and effective in the Code of Federal Regulations from November 13, 2012 through November 30, 2012.

Comments and related material must be received by the Coast Guard on or before November 30, 2012. Requests for public meetings must be received by the Coast Guard on or before November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2012–0950. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on “Open Docket Folder” on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division at Coast Guard Sector New York, telephone (718) 354-4195, email Jeff.M.Yunker@uscg.mil or Lieutenant Isaac Slavitt, First Coast Guard District Waterways Management Division, Boston, MA, telephone (617) 223-8385, email Isaac.M.Slavitt@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

APA Administrative Procedure Act
 DHS Department of Homeland Security
 FR **Federal Register**
 MTS New York City Department of Sanitation Marine Transfer Station
 NPRM Notice of Proposed Rulemaking
 RNA Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your

comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 553(b) provides that a general notice of proposed rulemaking (NPRM) must be published "unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law." This rule identifies the persons who will be subject to the RNA regulations: mariners in or seeking to enter a defined area of the Port of New York and New Jersey between November 1, 2012, and November 30, 2012. Each of these persons will be given actual notice of any restrictions or prohibitions imposed on them by this rule. Section 553(b)(B) authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because the Coast Guard received the specific request to establish a no-wake zone around the load out and transits from the contractor on September 6, 2012. There was insufficient time and therefore it was impracticable to issue an NPRM and conduct a prior notice and comment period. This rule is necessary to protect the safety of both the gantry crane load out and transit crews and the waterway users operating in the vicinity of the RNA. The proposed movement of the gantry cranes creates a significant hazard for waterway users and crane workers. Any delay or cancellation of the ongoing New York City Department of Sanitation MTS facility upgrades would be contrary to the public interest as it would delay necessary operations and increase costs to the public. Additionally, the dynamic nature of the gantry crane loading and transit operations necessitate that all mariners navigate at a safe speed within the RNA, as the barge and gantry crane and construction equipment at the two MTS facilities will change on a daily basis. In order to address any further public concerns, this rule is available for public comment until November 30, 2012.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The offloading and transit of gantry cranes involves large machinery and construction vessel operations above and in the navigable waters of the Port of New York and New Jersey. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crews. In order to mitigate the inherent risks involved in these operations, it is necessary to control vessel movement through the area.

The purpose of this rule is to ensure the safety of waterway users, the public, and construction workers for the duration of the gantry crane load-outs and transits during the effective period. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit at No-wake speed.

D. Discussion of the Interim Rule

The New York City Department of Sanitation is upgrading Marine Transfer Stations throughout the City to containerized operations. This upgrade requires installation of gantry cranes at the Gowanus Bay and Flushing Bay MTS facilities. Four gantry cranes will be delivered to the Red Hook Container Terminal in Brooklyn, NY on Buttermilk Channel. Two of these gantry cranes will be delivered by the Chesapeake 1000 to the Gowanus Bay MTS on Gowanus Bay, approximately 3.0 nautical miles to the southeast. The other two gantry cranes will be offloaded onto barges for transit and offloading to the Flushing Bay MTS on Flushing Bay, approximately 13.0 nautical miles to the northeast.

The load out and transit of these gantry cranes involves large machinery and construction vessel operations above and upon the navigable waters between Gowanus Bay, Red Hook and Buttermilk Channels, East River, and Flushing Bay. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial vessel traffic and the barge and load out crews.

In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

This action is intended to restrict vessel traffic on a portion of the waterways between Gowanus Bay and Flushing Bay in the Port of New York and New Jersey while gantry cranes are loaded onto barges at Red Hook Container Terminal on Buttermilk Channel and transit to the MTS facilities on Gowanus and Flushing Bays.

These operations are tentatively scheduled to take place starting on November 1, 2012 and lasting several days, but this rule will be made effective through November 30, 2012 to account for any unforeseen delays. Vessels will be required to transit at No Wake speed when meeting or overtaking the vessels carrying these gantry cranes.

The Coast Guard will notify mariners of planned waterway transit restrictions via Marine Information Broadcasts, Coast Guard Advisory Notices, and at <http://homeport.uscg.mil/newyork>.

The Sector New York Captain of the Port will cause notice of enforcement or suspension of enforcement, of this RNA to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Marine Information Broadcasts, Coast Guard Advisory Notices, and at <http://homeport.uscg.mil/newyork>.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b)

that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of the Gowanus Bay, Red Hook and Buttermilk Channels, East River, and Flushing Bay during the effective period.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will only require vessels to transit at No-wake speed when meeting or over-taking the Chesapeake 1000 crane barge or other barges used to carry the gantry cranes from the Red Hook Container Terminal to the MTSs on Gowanus and Flushing Bays. The RNA will only be in effect for approximately three hours for operations between Red Hook Container Terminal and Gowanus Bay and for approximately seven hours between Red Hook Container Terminal and Flushing Bay. Although the RNA would apply to the entire width of the waterways, traffic would be allowed to pass through the RNA at No Wake speed. Before the activation of the zone, we will issue maritime advisories widely available to users of the port.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area which requires vessels to transit at No Wake speed. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.104–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0950 to read as follows:

§ 165.T01–0950 Regulated Navigation Area; East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels; New York, NY.

(a) *Regulated area.* The following area is a regulated navigation area: All navigable waters of the East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels, between the New York City Department of Sanitation Marine Transfer Station (MTS) at 40°40′09.48″ N, 073°59′55.75″ W (about 260 yards south of the Hamilton Avenue Bridge) on Gowanus Bay and the MTS at 40°46′11.00″ N, 073°50′58.75″ W (about 270 yards south of the Cape Ruth) on Flushing Bay.

(b) *Effective dates and enforcement periods.* This rule is effective and enforceable with actual notice from November 1, 2012 through November 30, 2012.

(c) *Definitions.* The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.11, 33 CFR 165.13, as well as the following regulations, apply.

(2) During periods of enforcement, all vessels must transit at a No-wake speed to minimize surge when transiting past the Weeks Marine and Witte Barges carrying the gantry cranes.

(3) During periods of enforcement, all persons and vessels given permission to enter or operate in the regulated area must comply with the instructions of the COTP or the designated representative. Upon being hailed by an

official patrol vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area must contact the COTP or the designated representative via VHF channel 16 or 718-354-4088 (Sector New York Vessel Traffic Center) to obtain permission to do so.

Dated: October 26, 2012.

J.B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012-27490 Filed 11-9-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF EDUCATION

34 CFR Part 280

[Docket ID ED-2010-OII-0003]

RIN 1855-AA07

Magnet Schools Assistance Program

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

ACTION: Final regulations.

SUMMARY: This document adopts as final a March 2010 interim final rule by which the Secretary amended the regulations governing the Magnet Schools Assistance Program (MSAP) to provide greater flexibility to school districts designing MSAP programs for the FY 2010 competition. The amendments removed 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. We sought comments on the amendments because we adopted them through an interim final rule. We have reviewed the comments we received and retain the amendments without change for competitions going forward.

DATES: These regulations are effective December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Brittany Beth, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W252, Washington, DC 20202. Telephone: (202) 453-6653 or via email: brittany.beth@ed.gov.

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

Accessible format: Individuals with disabilities may obtain this document in

an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On March 4, 2010, the Department published an interim final rule (IFR) with a request for public comment in the **Federal Register** (75 FR 9777). The IFR, applicable only to the FY 2010 competition, removed provisions in the MSAP regulations at 34 CFR 280.2(b)(2), 280.4(b), and 280.20(g) that required districts to use binary racial classifications and prohibited 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. The IFR explained that these changes were necessary to permit MSAP applicants “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*).”

In the IFR, the Department also invited comments on the removal of the regulatory provisions, noting that any changes made to the IFR in light of comments received would govern future MSAP grant competitions.

Analysis of Comments and Changes

In response to the Secretary’s invitation in the IFR, three parties submitted comments on the proposed regulations. We make no further amendments to the regulations in response to the comments; however, an analysis of the comments follows.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize the Secretary to make.

Comments: The commenters agreed with the decision to remove the provisions of the regulations in light of the Supreme Court’s decision in *Parents Involved*, but they expressed concern about the use of case-by-case decision-making when evaluating proposed MSAP voluntary desegregation plans. The commenters requested additional guidance from the Department about permissible ways for applicants to voluntarily reduce minority group isolation after the Court’s decision in *Parents Involved*. The commenters suggested replacing the removed provisions with more specific language in order to assist school districts in designing legally permissible voluntary desegregation plans.

Discussion: In the IFR, the Department removed the definition of “minority group isolation” in 34 CFR 280.4(b). Under the definition, the term meant, in reference to a school, “a condition in which minority group children constitute more than 50 percent of the enrollment of the school.” We removed the definition because it required 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 IFR stated—

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 Department agrees that at the time of publication of the IFR there was some confusion for applicants about whether the case-by-case analysis would be an effective way to evaluate voluntary plans under the MSAP. The Department recognized the need for additional guidance about ways that districts can voluntarily reduce minority group isolation and promote diversity in school districts in light of *Parents Involved*. On December 2, 2011, the Departments of Education and Justice jointly issued guidance that explains how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Titles IV and VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and current case law. The “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools” (Guidance) is available on the Department’s Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>.

In light of this Guidance, and based on the Department’s experience in awarding FY 2010 grants under the regulations as amended by the IFR, the Department has concluded that it is not necessary to propose provisions to replace those that were removed by the IFR. Applicants are encouraged to use the Guidance when designing voluntary desegregation plans.

The Department continues to believe that case-by-case decision-making is