

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

Submit written requests for single copies of the guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS-300), 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:**

*For questions relating to Current Good Manufacturing Practices (CGMP), Hazard Analysis, and Risk-Based Preventive Controls for Human Food:* Jenny Scott, Center for Food Safety and Applied Nutrition (HFS-300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2166.

*For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals:* Jeanette Murphy, Center for Veterinary Medicine (HFV-200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-402-6246.

*For questions relating to Foreign Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals:* Charlotte Christin, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-7526.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

We are announcing the availability of a guidance for industry entitled "Temporary Policy Regarding Preventive Controls and FSVP Food Supplier Verification Onsite Audit Requirements During the COVID-19 Public Health Emergency." We are issuing this guidance consistent with our good guidance practices regulation

(§ 10.115). In accordance with § 10.115(g)(2), we are implementing the guidance immediately because we have determined that prior public participation is not feasible or appropriate. Although the guidance document is immediately in effect, FDA will accept comments at any time. The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

This guidance document concerns certain supplier verification requirements contained in three of the seven foundational regulations that we have established in Title 21 of the Code of Federal Regulations (CFR) as part of our implementation of the FDA Food Safety Modernization Act (Pub. L. 111-353). The three final regulations are entitled "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food" (part 117 (21 CFR part 117)) (<https://www.fda.gov/food/guidanceregulation/fsma/ucm334115.htm>); "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals" (part 507 (21 CFR part 507)) (<https://www.fda.gov/food/guidanceregulation/fsma/ucm366510.htm>); and "Foreign Supplier Verification Programs for Importers of Food for Humans and Animals" (part 1, subpart L (21 CFR part 1, subpart L)) (<https://www.fda.gov/food/guidanceregulation/fsma/ucm361902.htm>). In brief, each of these regulations requires a supply-chain or supplier verification program in certain circumstances when a supplier is controlling a hazard. In addition, each of these regulations provides for onsite audits of suppliers under certain circumstances to verify that the hazard is being controlled.

The purpose of the guidance is to state the current intent of FDA, in certain circumstances related to the impact of the coronavirus, not to enforce requirements in the three regulations to conduct onsite audits of food suppliers when other supplier verification methods are used to provide sufficient assurance that hazards have been significantly minimized or prevented, during the period of onsite audit delay.

**II. Paperwork Reduction Act of 1995**

This guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The collections of information in part 117 have been approved under OMB control number 0910-0751. The collections of information in part 507 have been approved under OMB control number 0910-0789. The collections of information in part 1, subpart L have been approved under OMB control number 0910-0752.

**III. Electronic Access**

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/FoodGuidances> or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: March 17, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 30**

**[190D0102DR/DS5A300000/DR.5A311.IA000119]**

**RIN 1076-AF13**

**Standards, Assessments, and Accountability System**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Education (BIE) is finalizing a rule developed using a negotiated rulemaking process, as required by the Elementary and Secondary Education Act of 1965 (ESEA or the Act), as amended by 2015 Every Student Succeeds Act (ESSA), for implementation of the Secretary of the Interior's (Secretary) responsibility to establish requirements for standards, assessments, and an accountability system for BIE-funded schools.

**DATES:** This rule is effective on April 27, 2020.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background

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## I. Background

On June 10, 2019, BIE published a proposed rule to govern how the Secretary will establish requirements for standards, assessments, and an accountability system for BIE-funded schools consistent with ESEA section 1111 on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools. See 84 FR 26785. During the 60-day public comment period, BIE held six tribal consultation sessions: July 11, 2019, in Albuquerque, New Mexico; July 16, 2019, in Window Rock, Arizona; July 18, 2019, in Kyle, South Dakota; July 23, 2019, in Bloomington, Minnesota; July 26, 2019, via teleconference; and July 30, 2019, in Olympia, Washington. The public comment period on the proposed rule ended on August 9, 2019.

## II. Overview of the Final Rule

This Standards, Assessments, and Accountability System final rule replaces the 25 CFR part 30 regulations concerning Adequate Yearly Progress (AYP) published in the **Federal Register** on April 28, 2005, effective May 31, 2005 pursuant to the requirements of ESEA, as amended by the No Child Left Behind Act, Public Law 107–110. See 70 FR 22178. This final rule is being published pursuant to the requirements of ESEA, as amended by ESSA, Public Law 114–95. It is the intent of this final rule to provide simplicity, certainty, clarity, and consistency for the 174 BIE-funded schools, the students served by those schools, the parents of those students, school administrators, Tribes, and the Indian communities served by BIE-funded schools.

Among other things, in this final rule, the BIE:

- Added a definition of “School Year” and added language to § 30.112 to clarify a general effective date for approved alternative requirements that will allow sufficient time for planning and implementation;
  - Replaced the term “*Standards, Assessments, and Accountability System Plan (SAAP)*” with the term “*Agency Plan (AP)*” throughout the rule to avoid potentially negative connotations that may be associated with the acronym “SAAP,” as well as to reflect that the agency plan is intended to be a living document that will not only encompass the Bureau’s standards, assessments, and an accountability system, but will also cover a broader range of topics including the Bureau’s guidance on Native American language content assessments, alternative requirements, and school comprehensive support and improvement activities;
    - Added language to § 30.100 similar to that previously located at § 30.103(e) of the proposed rule describing the ability of tribal governing bodies or school boards to create their own Native American language academic standards and Native American language assessments that specifically references the sovereign right to use Native American languages as a medium of instruction;
      - Added language at the end of § 30.103(a), similar to language recommended by the BIE’s Standards, Assessments, and Accountability System Negotiated Rulemaking Committee (Committee) previously located at § 30.111(b)(7) of the proposed rule, indicating that the Secretary must periodically review and revise the requirements for the accountability system established pursuant to this part;
        - Amended and clarified language in § 30.103(c) regarding consultation with stakeholders to reference the Department of the Interior’s (Department) Consultation Policy;
          - Revised the language in § 30.104(a) and (b) for consistency with ESEA section 1111(b)(1);
          - Revised the language in § 30.104(c) to clarify this paragraph applies to content standards versus achievement standards;
            - Added a new paragraph (h) to § 30.105 similar to 34 CFR 200.6, (j)–(k) regarding assessments for students in Native American language schools or programs throughout the BIE-funded school system; and
            - Added language to § 30.111 and §§ 30.120 through 30.124 for consistency with ESEA section 1111(c)–(d) and to clarify requirements regarding school comprehensive support and

improvement activities as well as targeted support and improvement activities.

## III. Public Comments on the Proposed Rule and Responses to Comments

The BIE sought public comment on the proposed rule, as well as tribal input through a series of tribal consultation sessions. Overall, BIE heard from a wide variety of stakeholders including tribal leaders, school board members, educators, national organizations, and the public. BIE also received over 40 written comment submissions. All public comments received in response to the proposed rule are available for public inspection. To view all comments, search by Docket Number “BIA–2016–0005” in <https://www.regulations.gov>. The BIE has decided to proceed to the final rule stage after careful consideration of all comments. The BIE’s responses to such comments are detailed below.

### A. Comments in General

The BIE received a wide range of comments expressing concerns about the condition of facilities, lack of communication, the need for up-to-date computer equipment, and the various challenges that affect the everyday lives of students served by the BIE-funded schools. BIE addresses these general comments below.

*Comment:* Numerous commenters expressed concern that there had been a lack of communication from the BIE about the negotiated rulemaking process. Commenters also expressed a concern that the Tribes and schools were not notified in a timely manner about the tribal consultation sessions and that they had been scheduled during the summer months when schools are not in session. Commenters also expressed concern that insufficient time had been provided by the Department to review and comment on the proposed rule, nor was information provided on the details of the BIE’s plans for implementing the BIE’s standards, assessments and accountability plan, that will undergo a separate tribal consultation process.

*Response:* Establishment of this negotiated rulemaking committee occurred over the course of several years and the Bureau alerted the public of its establishment through several notices in the **Federal Register**, including those requesting nominations to the committee and providing notice of meetings. See, 82 FR 43199 (September 14, 2017); 82 FR 5473 (January 18, 2017); 83 FR 16806 (April 17, 2018); 83 FR 37822 (August 2, 2018); and 84 FR 3135 (February 11, 2019). The Bureau

hosted five in-person and one teleconference sessions at which stakeholders were welcomed to join. The Bureau provided advance notice of the all sessions through a listing in the proposed rule and in a letter to tribal leaders dated June 10, 2019. See 84 FR 26785, 26792 (June 10, 2019). Specifically, per the Department of the Interior's tribal consultation policy, the Bureau provided 30-days advanced notification to tribal leaders through a *Dear tribal leader* letter of the upcoming consultation sessions. Other stakeholders were welcomed to join the sessions in-person, with an option of attending the one webinar session. The proposed rule also followed the requirements of the Administrative Procedures Act by publishing the proposed rule in the **Federal Register**. See 84 FR 26785. As published, the proposed rule provided for a 60-day comment period, with a deadline for submission of comments through one of several means by the close of business on August 9, 2019. The tribal consultation sessions began 30 days into this 60-day comment period. The proposed rule was posted on both the [www.bia.gov](http://www.bia.gov) and [www.bie.edu](http://www.bie.edu) web pages. The BIE sent an all employee email on July 10, 2019, notifying staff of the upcoming tribal consultation sessions. Finally, the BIE will hold further consultations regarding the BIE's Agency Plan, which will provide stakeholders further opportunity to be involved in shaping the implementation of the BIE's requirements for standards, assessments, and accountability system.

*Comment:* In-person and electronic comments stated concern with the amount of time it took to establish a Negotiated Rulemaking Committee.

*Response:* As indicated in the **Federal Register** dated September 14, 2017, the BIE re-initiated the process to form the negotiated rulemaking committee to allow the then-incoming Administration to participate fully in the process. See 82 FR 43199.

*Comment:* Commenters expressed their concern that the Committee was not afforded adequate time to adequately address the full scope of the work with which they were tasked to complete within four meetings. In addition, some expressed great concern that the Committee was unable to reach consensus on the entire assessments section due to insufficient time.

*Response:* The Committee met four times over the period of September 2018 to March 2019. The Committee was originally scheduled to have three in-person meetings over the time period of September 2018 through December 2018. A fourth meeting was added at the

request of the Committee held in March 2019. In addition to the four public meetings, Committee members met numerous times via teleconference as subcommittees focused on different aspects of the work of the Committee (e.g., standards, assessments, accountability system). These subcommittees then reported on their work to the full Committee. During both subcommittee and formal Committee meetings, Committee members heard from experts and developed an understanding of the more technical aspects of standards, assessments, and accountability requirements outlined in ESEA section 1111 (section 1111). The Committee submitted a *Standards, Assessment, and Accountability System Negotiated Rulemaking Committee Final Consensus Report*, dated April 1, 2019, to the BIE Director providing the recommendations of the Committee. While the Committee did not come to consensus on language regarding assessments, they did identify specific provisions from the regulations of the Department of Education that they considered important to consider including in the rule, and there was general agreement on including language from 34 CFR 200.6(g), (j)–(k). The BIE included some of the provisions identified for consideration by the Committee in its final rule, taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools. The BIE has also incorporated language similar to 34 CFR 200.6(g), (j)–(k), also taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools. With this diligent work, the Committee met the purpose for which it was established.

*Comment:* During the work of the Committee, there had been some discussion that the BIE would need to implement a rule in the 2019–2020 school year. This caused confusion and concern with an unrealistic timeframe to communicate with all BIE-funded schools and Tribes to implement a unified system.

*Response:* After the final Committee meeting, it became clear that it would not be feasible to implement requirements established pursuant to this final rule for the 2019–2020 school year. The Bureau, in consultation with the Department of Education, determined that consistent with ESEA section 1111(k), schools would continue to follow existing State requirements from the 2019–2020 school year and that the BIE should implement requirements effective for the 2020–2021 school year. In school year 2020–

2021, the BIE will implement a transitional accountability system using the status quo assessments (i.e., 23-state's assessments) to determine academic achievement and progress, progress in English Language Proficiency, graduation rates, and decide on a school quality student success indicator. In fall of 2020, the BIE will transition its English Language standards and assessments and begin providing professional development and support to schools. In September 2020, the BIE will issue school accountability determinations letters to all BIE-funded schools. A three-year timeline for implementation of the BIE's Standards, Assessments, and Accountability System will be available after the final rule is published and tribal consultation and analysis of comments on the Agency Plan has been completed.

*Comment:* There was overall support for the Committee's recommendation to undergo additional negotiated rulemaking processes to address the full range of issues addressed by the No Child Left Behind Act (NCLB) Negotiated Rulemaking Committee in 2003. These issues included: 25 CFR part 36, Minimum Graduation Requirements; 25 CFR part 37, Geographic Boundaries; 25 CFR part 39, The Indian School Equalization Program; 25 CFR part 39, Eligibility for Special Education Funding; 25 CFR part 42, Student Rights; 25 CFR part 44, Grants under the Tribally Controlled School Act; and 25 CFR part 47, Uniform Direct Funding and Support for Bureau Operated Schools.

*Response:* NCLB included amendments to the *Education Amendments of 1978*, Public Law 95–561, Title XI. These amendments required the Secretary to engage in negotiated rulemaking on various subjects, including recommendations on the definition of Adequate Yearly Progress (AYP) and a formula for the equitable distribution of funds for school replacement and new construction, prior to publishing any proposed regulations authorized under the *Education Amendments of 1978*, Public Law 95–561, as amended, or the *Tribally-Controlled Schools Act of 1988*, Public Law 100–297, as amended. The ESEA as amended by ESSA did not include similar amendments. Instead, ESEA as amended directed the Secretary to undergo a rulemaking process to develop regulations to govern requirements for standards, assessments, and an accountability system at BIE-funded schools. As such, the Committee was tasked with developing a recommendation on such a rule. However, the BIE recognizes the

need to review the regulations identified by the Committee to determine what further rulemaking may be necessary and will undergo additional rulemaking procedures and tribal consultation as appropriate.

*Comment:* Numerous commenters stated their concern with the Memorandum of Agreement (MOA) between the Department of Education and the Department. In particular, tribal representatives felt that the Departments should engage in a tribal consultation process prior to the two agencies making an agreement.

*Response:* Interior and the Department of Education will jointly engage in tribal consultation on a new MOA under ESEA section 8204(a).

*Comment:* During in-person tribal consultations, several commenters expressed concern about the lack of certified teachers available for rural schools, as well as teachers for certain content areas, where competing salaries offered by the local public schools may impact the ability of BIE-funded schools to recruit and retain science, mathematics, and Native American language teachers, as well as special education teachers.

*Response:* The BIE acknowledges and recognizes the need for effective and certified teachers. Title II, Part A funds may be used to support reform efforts with entities that oversee educator preparation, standards, certification, licensure, and tenure.

*Comment:* Numerous commenters expressed support of the continued use of the Northwest Education Association (NWEA) assessment instruments as they reflect years of data on American Indian students. The NWEA assessment instruments provide for an interim assessment that provides teachers and schools data points to measure growth three times a year.

*Response:* The BIE contracted with NWEA as an interim assessment for all BIE-funded schools for over 10 years and recognizes the value of the data generated using such assessments. The BIE's contract with NWEA ended September 2019, and the BIE will follow the required government procurement processes that emphasize competition in acquisitions to acquire assessment instruments. This rule does not prohibit a BIE-funded school from conducting an interim assessment outside of the Agency Plan.

*Comment:* Several commenters inquired about how the BIE's requirements for standards, assessments, and an accountability system would be funded to ensure fiscal allocations would be available to

operate at the school level to implement a Bureau-wide unified system.

*Response:* As a Federal agency, the amount of funding available to the BIE is subject to the availability of appropriations as provided by Congress through the annual appropriations process. The BIE receives funding from several strands of Federal funding, including funds appropriated by Congress to the Department of Education under Title I of ESEA.

*Comment:* Quite a few commenters voiced serious concerns around the effects of trauma, and the epidemic of substance abuse and suicide, which seriously impact the teaching and learning environment of students in their respective communities.

*Response:* The BIE recognizes and shares such concerns that are felt across Indian Country, and has made addressing such matters a priority within the Bureau's Strategic Direction, which emphasizes a need to define ways to support student health, wellness, and safety. The BIE is developing programs and supports for student behavioral health and providing needed technical assistance to schools so that they can implement comprehensive behavioral health plans, programs, and interventions that foster an encouraging and supportive learning environment.

#### Comments Directly Related to the Proposed Rule

*Comment:* Several commenters expressed concern that the BIE intended to restrict the use of Native American languages in the proposed rule.

*Response:* It was not the intention of the BIE to convey such a message or raise such concerns. The BIE honors the unique and important status of Native American languages and is committed to the preservation, protection, and promotion of the right and freedom of Native Americans to use, practice, and maintain Native American languages. The BIE is committed to encouraging and supporting the use of Native American languages as a medium and mode of instruction, and to provide for comprehensive multicultural and multilingual educational program, including the production and use of instructional materials, culturally appropriate methodologies, and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories. The right to use Native American languages as a medium of instruction is enshrined in several authorities outside of this part, including the *Native American Languages Act of 1990*, 25 U.S.C. 2901

*et seq.*, and 25 CFR part 32, which has the status of codified law through 25 U.S.C. 2003 and requires a comprehensive multicultural and multilingual education program.

In order to address concerns, the BIE has added language to § 30.100 specifically referencing rights under statutes such as the *Native American Languages Act of 1990*. This addition also responds to commenters who wanted to see the language of the existing § 30.102 retained specifying, among other things, that nothing in this part is intended to effect, modify, or diminish the sovereign rights of Indian Tribes. BIE has also added language in new 30.105(h) similar to the language of 34 CFR 200.6 (j)–(k) regarding Native American language assessments at Native American immersion schools. As described below regarding comments on peer review, the BIE has also added language in a new 30.105(h) indicating that, where Native American languages are used for academic assessments, those assessments are valid and reliable for the purposes for which they are intended. The BIE intends to promulgate guidance in cooperation with the Department of Education, Tribes, and other stakeholders on the use of content assessments in a Native American language for Title I compliance purposes. The BIE has also modified the language in § 30.101 defining the term “English learners” to clarify that the definition of “English learner” is not intended to restrict the use of Native American languages as a medium of instruction. Finally, the BIE acknowledges that Native American language content assessments may be used independent of the waiver and alternative proposal process. In addition, although we intend to issue further guidance on the use of content assessments in Native American languages for Title I purposes, nothing in these regulations prevents the use of assessments of proficiency in a Native American language for schools that teach a Native American language.

*Comment:* Some commenters recommended including specific provisions in the final rule governing the use of Native American languages as a medium of instruction.

*Response:* The changes described above provide more clarity on the use of Native American language content assessments. The BIE does not want to unintentionally restrict the use of Native American languages. The use of Native American languages as a medium of instruction is a complicated and important topic, and BIE wants to ensure that the topic is addressed carefully, thoughtfully, and in

coordination with the Department of Education (on Native American language content assessments), Tribes, and other stakeholders. For instance, while formal peer review of Native American language content assessments might be difficult, there are ways to demonstrate that the assessments are valid and reliable for the purposes for which they are intended, and that will ensure a high-quality education for students in schools or programs using a Native American language as a medium of instruction. While the BIE intends to promulgate guidance outside of this rule, the BIE has incorporated language into the final rule specifically recognizing the right to use Native American languages as a medium of instruction and has included language in § 30.105(e) specifying the development of guidance regarding assessments.

*Comment:* A few commenters expressed an interest in incorporating 34 CFR 200.6(j) and (k) into 25 CFR part 30 regulations.

*Response:* The BIE has added language similar to 34 CFR 200.6(g), (j), and (k) but modified to meet the unique circumstances and needs of BIE-funded schools as opposed to States, and to recognize the sovereign rights to use Native American language as a medium of instruction. Further, instead of referencing “peer review,” the language added by the BIE refers to “technical validity and reliability” to support the uniqueness of Native American language assessments, as well as to ensure those assessments are proper for the uses in which they are administered.

*Comment:* Several commenters offered suggestions with regard to Native American languages. For example, some commenters argued that a provision in Title III, section 3127, of the Act regarding students in schools in Puerto Rico and in Native American language programs provides a special exemption from Title I assessment requirements.

*Response:* The BIE appreciates the detailed analysis accompanying such comments. However, the provisions of section 3127 only apply to entities that receive Title III funds. Title III formula grants are provided to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. See ESEA sections 3111 and 8104(48). In addition, BIE-funded schools are individually eligible for Title III discretionary grant funding. ESEA section 3112 provides that the following are eligible entities for the Title III Native American or “NAM” program: Indian Tribes; Tribally sanctioned educational authorities;

Native Hawaiian and Native American Pacific Islander native language educational organizations; BIE-operated or funded schools; schools operated under a grant or contract in consortium with another such school or tribal or community organization; and BIE-operated schools and institutions of higher education in consortium with grant or contract schools. However, the BIE does not receive Title III funding and there is no set-aside or other provision in Title III applicable to the BIE itself. Thus, arguments linking BIE to Title III are not persuasive. Therefore the BIE has made no changes to the final rule in response to such comments.

*Comment:* A few commenters expressed concern with the definition of “Native American language” included in the proposed rule and either recommended alternatives or suggested defining the term in relation to the Native American Languages Act of 1990.

*Response:* The BIE has modified the definition of “Native American language” in the final rule to include a citation to the Native American Languages Act of 1990.

*Comment:* Several commenters asked about references in the proposed rule to “peer review,” in particular as to its use in the proposed § 30.105(e), which would have provided that “all required BIE assessments” undergo peer review to ensure that the assessments meet all applicable requirements.

*Response:* The BIE has added a definition of “peer review” that clarifies that the term “peer review,” as used in the proposed rule, refers to a process through which an entity demonstrates the technical soundness of an assessment system, including its validity and reliability for the purposes for which the assessments are intended. The BIE has further revised § 30.105(e) to clarify that the peer review requirement, as defined in the proposed rule, does not apply to Native American language assessments. As noted above, and as provided in the revised § 30.105(e), the BIE will promulgate guidance on the use of Native American language assessments in consultation with the Department of Education, Tribes, and other stakeholders to ensure that such assessments are technically valid and reliable for the purposes for which they are intended.

*Comment:* There was considerable support for the Committee’s recommendation, as reflected in the proposed rule, for the BIE to develop a Standards, Assessments, and Accountability Plan (SAAP) in accordance with ESEA section 1111 and for including this expectation of the BIE

in the final rule as proposed in § 30.103(b).

*Response:* The BIE recognizes this support and will keep the plan in the final rule as proposed in § 30.103(b). The BIE is changing the name of the plan in the final rule from “Standards, Assessments, and Accountability System Plan (SAAP)” to “Agency Plan (AP).” The name change is a non-substantive change intended to clarify the plan is by a Federal agency and parallels the State Plans of States. Plans developed by State Departments of Education describe how such departments will meet Federal education requirements pursuant to ESEA. The Agency Plan is intended to be a living document that will not only encompass the Bureau’s standards, assessments, and accountability system, but will also cover a broader range of topics including the Bureau’s guidance on Native Languages, waivers, and school support and improvement.

*Comment:* Numerous comments questioned the use of the term “alternative proposal” as applied to the waiver and alternative requirements process in subpart B of the proposed rule, §§ 30.112 to 30.119. Others asked for clarity as to who has the authority to waive the Secretary’s requirements and propose alternative requirements.

*Response:* In response to these comments, the BIE added language to the definition of “alternative proposal” and revised it to “Proposal for alternative requirements” to provide clarity of the authority of school boards relative to the government-to-government relationship between Tribes and the BIE. The BIE has also split the definitions of “tribal governing body or school board,” and added to the definition of “waiver” to provide further clarity. These definitions incorporate definitions from the BIE’s underlying statutory authorities. These definitions further provide that in the case of a conflict between a tribal governing body’s proposal for alternative requirements and a school board’s proposal for alternative requirements, consistent with the government-to-government relationship and the right to the exercise of sovereignty in education, a tribal governing body’s proposal has precedence.

*Comment:* A few commenters requested clarification on the use of the term “English learner” since the proposed rule included an entire section on English learners, and others sought clarity on the effect that this definition would have on Native American language learners.

*Response:* In response to such comments, the BIE has added the

definition of “*English learner*” from section 8101(20) of the ESEA. The addition should clarify the differences between an English language learner and Native American language learner. The definition of “*English learner*” also now includes a note explaining that the definition is not intended to affect the right to use Native American language as a medium of instruction. However, as required by Federal law and as provided in § 30.105(h)(2), English learners must still receive English language services. This requirement would not apply to other students at schools that use a Native American language as the medium of instruction who are not English learners.

*Comment:* There was overwhelming support for an extended-year cohort graduation rate as allowing schools to assist students in completing their coursework when there is a need for additional years beyond a 4-year cohort and preventing school graduation rates from being negatively impacted.

*Response:* The BIE added a definition of “extended-year cohort graduation rate” in § 30.111 that recognizes that there are high schools that prefer a 5-year cohort. The use of the extended-year cohort graduation rate will be addressed further in the BIE Agency Plan on which the BIE will consult with Tribes and stakeholders prior to finalizing.

*Comment:* Multiple commenters expressed concern with how technical assistance will be provided by the Bureau and indicated that technical assistance should not only be explicit in the waiver subpart, but the Bureau should also provide clarity throughout the proposed rule.

*Response:* The Bureau added a definition of “technical assistance” in the final rule to provide clarity on the types of technical assistance available relative to support and improvement activities, waivers, and the development of alternative proposals.

*Comment:* Several commenters expressed concern that technical assistance was not mentioned in other sections of the proposed rule other than subpart B.

*Response:* The BIE has added language in the final rule to provide technical assistance as requested in writing in §§ 30.108(a)(3)(i), 30.109(c)(3), and 30.110(h).

*Comment:* Commenters were overwhelmingly supportive of the Committee’s recommendation for the inclusion of stakeholder consultation, as reflected in proposed §§ 30.103(c) and 30.111(b) introductory text and (b)(7), because consultation is essential to fulfilling the purpose of these rules to

define the standards, assessments, and an accountability system.

*Response:* The BIE agrees with the Committee that meaningful engagement with stakeholders is critical to the success of the BIE’s education mission. The BIE has added a definition of “tribal consultation” that incorporates tribal consultation as described in the Department’s Tribal Consultation Policy. The BIE has further added language at the end of § 30.103(a) to incorporate language recommended by the Committee that was previously located at § 30.111(b) introductory text and (b)(7) of the proposed rule, indicating the Secretary must periodically review and revise the requirements for the accountability system in consultation with Tribes and other stakeholders, to combine a virtually identical concept in proposed § 30.103(a) regarding the periodic review and revision of requirements. This change avoids the possibility that different kinds of processes might apply to different requirements established pursuant to this part.

*Comment:* There were many comments regarding the Committee’s recommendation, as reflected in the proposed rule, to include tribal civics as a topic for instruction and to be phased in for children from grades K–12. Numerous commenters were in support of inclusion of the concept of tribal civics in the final rule. Some tribal representatives stated that it should be up to the individual Tribes to teach tribal civics given each Tribe’s unique history and relationship with the United States.

*Response:* The BIE is retaining tribal civics in the final rule. In accordance with the Committee’s recommendation, requirements for tribal civics will be phased in to the BIE’s requirements for standards, assessments, and an accountability system. Details of how the BIE will address the implementation of tribal civics will be addressed in the Agency Plan and will be included as a topic in tribal consultation on such Agency Plan. The BIE understands and is cognizant of the concerns raised by some tribal representatives. The BIE anticipates developing requirements for tribal civics in a way that would focus on the relationship between the United States and Tribes broadly, and that would not supplant a Tribe’s role in teaching its own unique history.

*Comment:* Some commenters requested clarity on the 1% cap on the use of alternate assessments for students with the most significant cognitive disabilities, in the proposed rule in § 30.108.

*Response:* The BIE added language to § 30.108(a)(2)(ii) in the final rule to clarify that the 1% cap applies to all BIE-funded schools, and that information from the individualized education program (IEP) team submitted through the BIE’s student information system will be used to justify exceeding the 1% cap.

*Comment:* Several commenters expressed support for including both science and tribal civics in the BIE accountability system.

*Response:* This final rule provides that both science and tribal civics will be phased into the BIE accountability system, starting as a School Quality or Student Success (SQSS) indicator, and that their inclusion as an SQSS indicator will be revisited as the new accountability system is implemented with the possibility that the method of their inclusion in the accountability system may change in the future.

*Comment:* Several commenters requested clarity regarding comprehensive school support and improvement activities and targeted support and improvement activities as this was not clear in the proposed rule.

*Response:* As described above, the BIE has added language to § 30.111 of the final rule to provide clarity and to reflect language within section 1111(c)–(d) of ESEA in regard to school support and improvement activities, taking into account the unique circumstances and needs of BIE-funded schools and the students served by BIE-funded schools. Changes were similarly applied to final subpart C, §§ 30.120 through 30.124.

*Comment:* Numerous comments expressed support of the inclusion of § 30.112(g) (now § 30.113) as recommended by the Committee, allowing a tribal governing body or school board to remain with the State standards and assessments outside of the process for waiver and approval of alternative requirements. At least one commenter opined that the proposed option would not work to fix accountability issues at BIE-funded schools.

*Response:* This language was recommended by the Committee in response to a specific concern expressed by a Committee member regarding a specific school that might lose academic funding provided by a State if it did not use the State’s requirements. The language was also recommended by the Committee at a time when there was an expectation that the BIE would be required to implement its standards, assessments, and accountability system during the 2019–2020 school year, which caused concerns for effective implementation of such requirements

on such a short timeline. The cause of such concerns has since been removed. The BIE has removed the language recommended by the Committee. The BIE supports tribal sovereignty in education and is mindful of those commenters who felt that to remove this language and require tribal governing bodies or school boards to follow the process for waivers and alternative proposals would be onerous. However, the BIE believes that if a tribal governing body or school board proposes to use requirements that have already been approved by the Secretary of Education, such as a State's requirements, the approval process should be as close to automatic as possible, provided that the State agrees to the use of their requirements. The BIE further anticipates that if a tribal governing body or school board works with entities capable of providing technical assistance prior to submitting a proposal for alternative requirements that such alternative requirements should likewise experience expedited processing.

The BIE further notes that the process described in the Committee's recommendation for § 30.112(g) and the process for waivers and alternative proposals in subpart B of the proposed rule, §§ 30.112 to 30.119 and in ESEA section 8204(c), only differ in requiring a tribal governing body or school board to also notify the Secretary of Education. The BIE notes that this change in the final rule conforms to the understanding underlying the Committee's recommendation that BIE-funded schools would generally follow the BIE's requirements as part of a system of unified requirements. Finally, the proposed language ignores the statutory role of the Secretary of Education in the process of approving requirements alternative to those implemented pursuant to this final rule.

*Comment:* Some commenters requested more certainty in the waiver and alternative proposal process, such as specific timelines and milestones endorsed by some Committee members.

*Response:* The Committee ultimately recommended that the BIE and the Department of Education work together to develop a timeline for review of alternative proposals. The final rule includes the statutory requirement that alternative proposals be submitted within 60 days of a tribal governing body or school board's decision to waive the requirements developed and implemented by the BIE. The regulations provide flexibility, including that a tribal governing body or school board may request an indefinite extension of this time. Additionally, the

final rule advises a tribal governing body or school board to seek technical assistance prior to waiving the requirements developed and implemented by the BIE in order to maximize the time available to develop alternative proposals. Until such alternative proposals have been approved, a tribal governing body or school board must continue to follow the Secretary's requirements. The final rule explains that the BIE will provide a status update within 120 days of receipt of an alternative proposal, and every 30 days thereafter. Since ESEA, as amended, does not provide the Secretary with the authority to regulate the conduct of the Secretary of Education regarding waivers and approval of alternative proposals, these provisions in the final rule are only binding on the BIE. However, in practice, the BIE and the Department of Education work closely on such matters.

*Comment:* Two commenters suggested a mechanism for the automatic approval of alternative proposals if the Secretary and the Secretary of Education do not timely respond to alternative proposals.

*Response:* Section 8204(c) of the Act does not provide for automatic approval, and ESEA, as amended, does not provide the Secretary of the Interior with the authority to regulate the Secretary of Education regarding the approval of alternative proposals. As such, while the Part 30 regulations could provide for the automatic approval of the Secretary of the Interior, these regulations could not provide for automatic approval by the Secretary of Education. In any case, while the BIE respects tribal sovereignty in education, the BIE also has a statutory obligation to ensure that the programs of the BIE-funded school system are of the highest quality and provide for the basic elementary and secondary academic services to students served at BIE-funded schools, including meeting the unique educational and cultural needs of such students. Consistent with such obligations, the BIE believes that caution needs to be exercised when determining the requirements that are used at BIE-funded schools. While the BIE is concerned that procedures for the automatic approval of alternative proposals may not be in the best interest of students served by BIE-funded schools, the BIE is committed to providing expeditious reviews of submitted and compliant waivers and alternative proposals.

*Comment:* Several commenters sought clarity on what could be waived and what alternative proposals might look like.

*Response:* Section 8204(c)(2) of the Act provides that the requirements developed and implemented may be waived by a tribal governing body or school board in part or in whole. The BIE believes that this language, combined with flexibility implied by the words "taking into account the unique circumstances and needs of such schools and the students served" could encompass a wide variety of possibilities, including potentially innovative proposals as well as those responsive to unique cultural and linguistic needs. As such, it would be difficult and potentially restrictive of such innovative approaches to attempt to quantify such possibilities in the part 30 regulations. However, the final rule explains that BIE will collaborate with the Department of Education to develop templates consistent with the requirements of the Act, as amended, to guide tribal governing bodies or school boards. This is consistent with prior practice, as is the promulgation of guidance.

*Comment:* One commenter suggested that the waiver and alternative proposal process described in the proposed rule was onerous and burdensome.

*Response:* Section 8204(c) of the Act provides the basic contours of the procedures for waiver and approval of proposals for requirements alternative to those developed and implemented by the BIE. Section 8204(c) provides that a tribal governing body or school board may waive, in part or in whole, the requirements established by the Secretary, where the requirements are determined by a tribal governing body or school board to be inappropriate. If such requirements are waived, Section 8204(c)(2) requires the tribal governing body or school board to submit to the Secretary within 60 days a proposal for alternative standards, assessments, and accountability system, if applicable, consistent with section 1111, that takes into account the unique circumstances and needs of such school or schools and the students served. Such alternative requirements will be approved by the Secretary and the Secretary of Education unless the Secretary of Education determines that the proposed alternative requirements do not meet the requirements of section 1111, taking into account the unique circumstances and needs of such school or schools and the students served. As this process is described in statute, the BIE is unable to change the procedures in the final rule. While the BIE will not create a mechanism for the automatic approval of alternative proposals as other commenters had requested, the BIE is committed to providing expeditious

reviews of submitted and compliant waivers and alternative proposals.

*Comment:* Some commenters suggested that alternative requirements (also known as waivers) developed and approved under ESEA as amended by the No Child Left Behind Act of 2001 should not have to transition to the requirements developed by the BIE pursuant to the Part 30 regulations developed in response to ESEA as amended by the ESSA.

*Response:* The BIE is working with the Department of Education on an orderly transition for the two Tribes with approved alternative requirements. Such alternative requirements will need to meet the requirements of section 1111 of the Act, as amended.

#### IV. Section-by-Section Analysis

This portion of the preamble previews the final rule and highlights certain aspects of the rule that may benefit from additional explanation.

This final rule amends part 30 as a whole. The title of part 30 will change from “Adequate Yearly Progress” to “Standards, Assessments, and Accountability System.” This final rule describes rules for establishing requirements for a unified standards, assessments, and an accountability system for BIE-funded schools consistent with section 1111 on a national basis, taking into account the unique circumstances and needs of such schools and the students served by such schools. This final rule also describes rules for waiver of such requirements in part or in whole and approval of alternative proposals for requirements; and further provides rules for school comprehensive support and improvement activities. This final rule also recognizes the unique status and importance of Native American languages and the sovereign right of Tribes to use such languages as a medium of instruction.

*What is the purpose of this part?*  
(§ 30.100)

This section has been modified from the proposed rule. As recommended by some commenters, the section adapts language from the old 25 CFR 30.102 and provides that nothing in part 30 shall be construed to affect, modify, or diminish the sovereign rights of Tribes, statutory rights under law, the Secretary of the Interior’s trust responsibility for Indian education, nor the trust responsibility of the United States to Indian Tribes or individual Indians. In response to other commenters concerned that a lack of language concerning the use of Native American languages as a medium of instruction,

this section also specifically enumerates the Native American Languages Act of 1990 and the right to use Native American languages as a medium of instruction. Since this section recognizes the right to use Native American languages as a medium of instruction, language recommended by the Committee for § 30.103(e) concerning Native American language assessments has been removed. The BIE has added language to § 30.105(h) concerning the use of assessments in Native American languages for Title I compliance purposes and has attempted to distinguish such assessments in the final rule from others such as assessments of proficiency in a Native American language or for other purposes. The BIE has also incorporated language from 25 CFR 32.4(h) concerning the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes, and Alaska Native entities may utilize at their discretion.

*What definitions apply to terms in this part?* (§ 30.101)

As indicated in Section II and III above, the BIE modified and added definitions in response to commenters to clarify terms used in the rule. In response to comments, the BIE has added definitions for “agency,” “agency plan,” and “English learner.” The definition of “peer review” has been modified to explain that peer review means a process through which the technical soundness of an assessment, including its validity and reliability is demonstrated. The BIE has added language to § 30.105(e)(2) explaining that it will develop non-regulatory guidance, in collaboration with the Department of Education, on the use of Native American language content assessments in consultation with Tribes and other stakeholders. The definition of “Native American language” has been modified to include a reference to the definition of the same in 25 U.S.C. 2021(20).

In response to comments and for clarity within the rule, BIE has added a definition of “technical assistance” and describes two types of technical assistance: Technical assistance with regard to comprehensive support and improvement and technical assistance with regard to proposals for alternate assessments. In response to requests for clarity on the authority to exercise the right to waive the BIE’s requirements and submit proposals for requirements

alternative to such requirements, the BIE has split the definition of “tribal governing body or school board” into two separate definitions for “tribal governing body” and “school board.” The BIE has modified the definitions of “alternative proposal” and “waiver” for similar reasons. The BIE has also added a definition of “academic school year” to establish a timeframe for acquiring alternate assessments, if applicable. The BIE has further modified the definition of “Tribally controlled school” to incorporate language from 25 U.S.C. 2511(9). The BIE has added a definition of “tribal consultation” to add clarification to how the BIE meaningfully and timely consults with Tribes and other stakeholders.

*Standards, Assessments, and Accountability System Requirements (Subpart A)*

This subpart in the rule outlines how the Secretary will develop or implement requirements for standards, assessments, and an accountability system at BIE-funded schools.

*What does the Act require of the Secretary?* (§ 30.102)

This section contains non-substantive changes from the proposed rule for clarity through the inclusion of the words “by such schools” at the end of paragraph (b) and the words “that seeks a waiver described in paragraph (b).”

*How will the Secretary implement standards, assessments, and accountability system requirements?*  
(§ 30.103)

This section includes language to support the periodic review and revision of the Secretary’s requirements. The BIE has removed language recommended by the Committee for this section at § 30.111(b) regarding the periodic review and revision of the accountability system in use at BIE-funded schools since this language is redundant in light of § 30.103(a)–(b). For consistency with the text of similar language in section 1111(a)(6)(A)(ii) providing that State plans shall “be periodically reviewed and revised as necessary . . . to reflect changes in the State’s strategies and programs,” the BIE has incorporated some of the language of § 30.111(b)(7) into § 30.103(a).

The BIE replaced a reference to a “Standards, Assessments and Accountability Plan (SAAP)” with a reference to an “Agency Plan” to clarify the plan is by a Federal agency and parallels the State Plans of States. The Agency Plan term also reflects that the plan is intended to be a living document that will encompass the Bureau’s



standards, assessments, and accountability system, but will also cover topics including the Bureau's guidance on Native Languages and waivers. The BIE deleted some language recommended by the Committee describing ongoing consultation with clear description of meaningful consultation with American Indian Tribes and Alaska Native villages, schools, parents, and other stakeholders for consistency with the Department's existing tribal consultation policy regarding tribal consultation. Since § 30.100 recognizes the right to use Native American languages as a medium of instruction, and has added § 30.105(h) regarding the use of Native American language assessments for Title I compliance purposes, language recommended by the Committee for a paragraph (e) has been removed.

*How will the Secretary implement requirements for standards? (§ 30.104)*

This section retains the proposed provision reflecting the Committee's recommendation to include a requirement for academic standards in tribal civics. The BIE has modified the language of paragraphs (a) and (b) of this section for clarity and consistency with section 1111 of the Act. Paragraph (c) of this section has been modified to add the word "content" in front of the word "standards" in the first instance in which it is used. The BIE has also specified a requirement in paragraph (f) for English language proficiency standards. The BIE has also made other non-substantive changes to this section.

*How will the Secretary implement requirements for academic content assessments? (§ 30.105)*

The section includes certain non-substantive changes. Consistent with the concept of phasing tribal civics into BIE's requirements, § 30.105(a) has been modified to provide that tribal civics assessments will be developed as funding becomes available. The BIE has incorporated into paragraph (b)(9)(i)(C) of this section a suggestion from the comments on the proposed rule to include a reference to the definition of "children with disabilities" as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*). In paragraph (c) the BIE has added references to "end of course" assessments. Paragraph (e) has been modified in response to comments regarding the use of Native American languages to acknowledge the difficulty of peer review of Native American language assessments. The language now clarifies that the peer review requirement does not apply to tribal

civics and non-content Native American language assessments. However, consistent with the new definition of "Peer review," Native American language assessments in "content" areas intended for Title I compliance purposes must be technically valid and reliable for the purposes for which they are intended.

In response to both comments expressing concern that the proposed rule restricted the use of Native American language assessments and comments supporting the inclusion of a provision like that in the Department of Education's regulations at 34 CFR 200.6, paragraphs (j) and (k), the BIE has added a new paragraph (h). The language is similar to that in the regulations of the Department of Education but modified to reflect the difficulty of peer review of Native American language assessments, and to change requirements for peer review to a requirement that such assessments be technically valid and reliable for the purposes for which they are intended.

*How will the Secretary provide for the inclusion of all students in assessments? (§ 30.106)*

This section contains no changes from the proposed rule.

*How will the Secretary include students with disabilities in assessments? (§ 30.107)*

This section contains no changes from the proposed rule.

*How will the Secretary provide for alternate assessments for students with the most significant cognitive disabilities? (§ 30.108)*

The BIE has included some non-substantive changes to this section and has fixed an error in word choice identified by commenters. In response to comments, the BIE has clarified that the one (1) percent cap referred to in paragraph (a)(1) of this section refers to one (1) percent of the total number of "all" students in "all" BIE-funded schools for each subject who take an alternate assessment aligned with alternate academic achievement standards. In response to comments, the BIE has added language to paragraph (a)(2)(ii) to explain that information explaining the alternate assessments to be used consistent with a student's individualized education plan (IEP) will be uploaded to the BIE's student information system. This information will be used to justify exceeding the 1% cap. In response to comments, BIE has also added language to paragraph (a)(3)(i) specifying that BIE will provide technical assistance upon written

request with regard to individualized education program (IEP) teams.

*How will the Secretary include English learners in academic content assessments? (§ 30.109)*

The BIE has made some non-substantive changes to this section. In response to comments, the BIE has added language to paragraph (c) of this section specifying that the BIE will provide technical assistance upon written request to BIE-funded schools and parents in regard to English language learners.

*How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners? (§ 30.110)*

The BIE has added language to paragraph (a) of this section to clarify that annual assessments in English proficiency must be valid and reliable. In response to comments, the BIE has also added a new paragraph (h) specifying that the BIE will provide technical assistance, including training teachers on how to administer assessments, upon written request to support BIE-funded schools with the BIE's alternate English language proficiency assessments.

*How will the Secretary implement requirements for an accountability system? (§ 30.111)*

The BIE has removed language recommended by the Committee and incorporated into the proposed rule at § 30.111(b) language regarding consultation and the periodic review and revision of the accountability system in use at BIE-funded schools because that language was redundant to § 30.103(a)–(b). For consistency with the text of similar language in section 1111(a)(6)(A)(ii) providing that State plans shall "be periodically reviewed and revised as necessary . . . to reflect changes in the State's strategies and programs," the BIE has incorporated some of the language of § 30.111(b)(7) into § 30.103(a).

The BIE supports the Committee's recommendation that science and tribal civics be incorporated into the requirements for an accountability system. To this end, the BIE has consolidated subsections (c) and (d) of this section as it existed in the proposed rule and has provided that both science and tribal civics requirements will be phased into the accountability system as School Quality or Student Success (SQSS) indicators. This new paragraph further provides, consistent with the language recommended by the

Committee concerning tribal civics, that the use of both science and tribal civics in the accountability system will be revisited as the accountability system is implemented. The BIE has added language throughout this section in response to comments seeking clarity on school comprehensive and targeted support and improvement activities consistent with section 1111(c)–(d) regarding support and improvement activities. In response to comments, the BIE has also added language to § 30.111(h)(2) specifying that the BIE will provide technical assistance to schools identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support upon request in writing.

BIE also added an explanation of the term “extended-year cohort graduation rate” to this section to recognize that it may be appropriate to consider for purposes of accountability, in addition to schools’ four-year adjusted cohort graduation rate, one or more extended-year rates (*i.e.*, a 5-year adjusted cohort graduation rate). The use of the extended-year cohort graduation rate will be addressed further in the BIE Agency Plan on which the BIE will consult with Tribes and stakeholders prior to finalizing.

*Accountability, Waiver of Requirements, Technical Assistance, and Approval of Alternative Requirements (Subpart B)*

*May a tribal governing body or school board waive the Secretary’s requirements for the standards, assessments, and accountability system? (§ 30.112)*

In response to comments regarding when alternative requirements will be effective, the BIE has added language to this section clarifying that alternative requirements will generally be effective in the school year following the school year in which such alternative requirements have been approved. The final rule specifies a general effective date in “the school year following the school year” to provide time for proper implementation. The final rule uses the word “generally” to reflect the fact that in some circumstances it may not be feasible to implement alternative requirements in the next school year, such as due to a lack of appropriated funds. The use of the word “generally” is also intended to signify that there may be some circumstances in which alternative requirements could be implemented during the school year in which they have been approved, and also recognizes that in some circumstances plans for alternative

requirements might themselves contemplate a gradual phasing in of such requirements.

*How does a tribal governing body or school board waive the Secretary’s requirements? (§ 30.113)*

The BIE has made some non-substantive changes to this section. In order to address concerns over accountability regarding the BIE’s responsiveness to notices of waivers, the BIE has added language to paragraph (b) to specify that technical assistance must be requested in writing. The BIE has similarly specified in paragraph (d) that a request for extension of the statutory 60-day deadline for submission of a proposal for alternative requirements should be in writing. Such specification in both subsections (b) and (d) should help to create a paper trail for accountability purposes. Such specification further should be broad enough to accommodate tribal laws concerning official tribal government action.

*What should a tribal governing body or school board include in a proposal for alternative requirements? (§ 30.114)*

This section contains no changes from the proposed rule.

*May proposed alternative requirements use parts of the Secretary’s requirements? (§ 30.115)*

This section contains no changes from the proposed rule.

*Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking to develop alternative requirements? (§ 30.116)*

This section has been modified from the proposed rule to specify that requests for technical assistance regarding the development of alternative proposals should be submitted in writing to the Director.

*What is the process for requesting technical assistance? (§ 30.117)*

This section has been modified from the proposed rule to provide that requests for technical assistance regarding the development of alternative proposals should be sent to the Department of Education as well as the BIE. This change acknowledges the statutory requirement for both Departments to provide technical assistance in this capacity.

*When should a tribal governing body or school board request technical assistance? (§ 30.118)*

This section has been modified from the proposed rule to specify that a

request for technical assistance regarding the development of alternative proposals should be in writing.

*How does the Secretary review and approve alternative requirements? (§ 30.119)*

This section contains no changes from the proposed rule.

*Support and Improvement (Subpart C)*

Both in response to comments seeking clarity on support and improvement activities, and considering a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this subpart.

*How will the Secretary notify BIE-funded schools that they have been identified for school support and improvement activities? (§ 30.120)*

This section has been modified from the proposed rule to reference support and improvement activities in the context of requirements for accountability system described in § 30.111(g).

*How will the Secretary implement requirements for comprehensive support and improvement activities? (§ 30.121)*

Both in response to comments seeking clarity on comprehensive support and improvement activities, and considering a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section.

*How will the Secretary implement requirements for targeted support and improvement activities? (§ 30.122)*

Both in response to comments seeking clarity on support and improvement activities, and considering a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section.

*How will the Secretary implement requirements to identify schools for additional targeted support? (§ 30.123)*

In response to comments, this section has been modified from the proposed rule to clarify that the lowest-performing 5% percent of schools referenced in the section refers to the lowest-performing 5% of schools identified for comprehensive support and improvement. Both in response to comments seeking clarity on support and improvement activities, and in light of a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section. The BIE has further added a reference back to a requirement for a system of annual meaningful differentiation in § 30.111(f).

*How will the Secretary implement continued support for BIE-funded schools and school improvement? (§ 30.124)*

Both in response to comments seeking clarity on comprehensive and targeted support and improvement activities, and in light of a need for consistency with section 1111(c)–(d), the BIE has added clarifying language to this section.

*Responsibilities and Accountability (Subpart D)*

This rule describes “Responsibilities and Accountability” in regard to the BIE and this part.

*What is required for the Bureau to meet its report responsibilities? (§ 30.125)*

This section contains no changes from the proposed rule.

*What information collections have been approved? (§ 30.126)*

The BIE will receive the OMB Control Number for the new information collection regarding the waiver process.

**V. Procedural Requirements**

*A. Regulatory Planning and Review (E.O. 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The BIE has developed this rule in a manner consistent with these requirements. In addition, section 8204 of the ESEA, as amended, directs the Secretary of the Interior, in consultation with the Secretary of Education, if so requested, to use a negotiated rulemaking process to develop regulations for implementation of the Secretary of the Interior’s obligation to establish

requirements for the standards, assessments and an accountability system for BIE-funded schools. This rule is also part of the Department’s commitment under the Executive order to reduce the number and burden of regulations.

*B. Reducing Regulations and Controlling Regulatory Costs (E.O. 13771)*

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this rule.

*C. Regulatory Flexibility Act*

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

*D. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more because it is the responsibility and goal for the Federal Government to provide comprehensive education programs and services for Indian Tribes and Alaska Natives.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal or local government agencies, or geographic regions because this rule affects only the children served at BIE-funded schools.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only the children served at BIE-funded schools.

*E. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

*F. Takings (E.O. 12630)*

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule does not impose conditions or limitations on the use of any private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable “taking.” A takings implication assessment is not required.

*G. Federalism (E.O. 13132)*

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule does not substantially and directly affect the relationship between the Federal and State government. The Secretary of the Interior is responsible for managing BIE-funded schools and interacting with tribal governments or tribal organizations operating Tribally-controlled grant and contract schools. Because this rule does not alter that relationship, a federalism summary impact statement is not required.

*H. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be writing to minimize litigation.

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*I. Consultation With Indian Tribes (E.O. 13175)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty.

Under the Department’s consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it would have no tribal implications that would impose substantial direct compliance costs on Indian tribal governments.

Also, under this consultation policy and Executive order criteria with Indian Tribes and other individual stakeholders, BIE added language recommended by the Committee indicating the Secretary must

periodically review and revise the requirements established pursuant to this part and consult with Tribes and other stakeholders on necessary changes. In addition the BIE will hold further consultations regarding the BIE's Agency Plan, which will provide opportunities for stakeholders to be involved in shaping the implementation of the BIE's requirements for standards, assessments, and an accountability system. The BIE and the Department of Education will also hold consultations regarding the memorandum of agreement between the Departments required in ESEA section 8204(a).

#### *J. Paperwork Reduction Act*

This rule contains information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Department is seeking approval for a new OMB Control Number.

*OMB Control Number:* 1076–0191.

*Title:* Standards, Assessments, and Accountability System Waiver.

*Brief Description of Collection:* This information collection is necessary to implement the requirements of ESEA, as amended by ESSA. The ESEA requires all schools, including BIE-funded and operated schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic standards and aligned assessments. In order to accomplish these goals, the Secretary will develop or implement standards, assessments, and an accountability system requirements for BIE-funded schools. Tribal governing bodies and school boards are able to waive the Secretary's requirements, in part in or whole. However, such entities are required to submit a proposal for alternative requirements for approval by the Secretary and the Secretary of Education prior to implementation of such alternative requirements.

*Type of Review:* Existing collection in use without OMB control number.

*Respondents:* Indian Tribes and BIE-funded school boards.

*Number of Respondents:* Two on average (each year).

*Number of Responses:* Two on average (each year).

*Frequency of Response:* On occasion.

*Estimated Time per Response:* 500 hours.

*Estimated Total Annual Hour Burden:* 1,000 hours.

*Estimated Total Non-Hour Cost:* \$0.

#### *K. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the

quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(f) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: (f)–(i). We have also determined that this rulemaking is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*L. Effects on the Energy Supply (E.O. 13211)*

This rule would not be a significant energy action under the definition in Executive Order 13211, and therefore, would not require a Statement of Energy Effects.

#### **List of Subjects in 25 CFR Part 30**

Elementary and secondary education, Grant programs-Indians, Indians-education, Schools.

For the reasons set forth in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises 25 CFR part 30 to read as follows:

#### **PART 30—STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM**

Sec.

30.100 What is the purpose of this part?

30.101 What definitions apply to terms in this part?

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30.102 What does the Act require of the Secretary?

30.103 How will the Secretary implement Standards, Assessments and Accountability System requirements?

30.104 How will the Secretary implement requirements for standards?

30.105 How will the Secretary implement requirements for academic content assessments?

30.106 How will the Secretary provide for the inclusion of all students in assessments?

30.107 How will the Secretary include students with disabilities in assessments?

30.108 How will the Secretary provide for alternate assessments for students with the most significant cognitive disabilities?

30.109 How will the Secretary include English learners in academic content assessments?

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30.111 How will the Secretary implement requirements for an accountability system?

#### **Subpart B—Accountability, Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements**

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30.113 How does a tribal governing body or school board waive the Secretary's requirements?

30.114 What should a tribal governing body or school board include in a proposal for alternative requirements?

30.115 May proposed alternative requirements use parts of the Secretary's requirements?

30.116 Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking to develop alternative requirements?

30.117 What is the process for requesting technical assistance?

30.118 When should the tribal governing body or school board request technical assistance?

30.119 How does the Secretary review and approve alternative requirements?

#### **Subpart C—Support and Improvement**

30.120 How will the Secretary notify BIE-funded schools that they have been identified for school support and improvement activities?

30.121 How will the Secretary implement requirements for comprehensive support and improvement activities?

30.122 How will the Secretary implement requirements for targeted support and improvement activities?

30.123 How will the Secretary implement requirements to identify schools for additional targeted support?

30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

#### **Subpart D—Responsibilities and Accountability**

30.125 What is required for the Bureau to meet its reporting responsibilities?

30.126 What information collections have been approved?

**Authority:** Pub. L. 114–94, 129 Stat. 1312, 20 U.S.C. 6311 *et seq.*; 20 U.S.C. 7824(c).

#### **§ 30.100 What is the purpose of this part?**

(a) This part establishes regulations regarding standards, assessments, and an accountability system at BIE-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. The Act requires the Secretary to develop or implement requirements for standards, assessments, and an accountability system for BIE-funded schools.

(b) Nothing in this part may be construed to affect, modify, or diminish the sovereign rights of Indian Tribes; statutory rights under law, including the right to use Native American languages as a medium of instruction as described in the *Native American Languages Act*,

Public Law 101–477; the Secretary’s trust responsibility for Indian education; nor the trust responsibility of the United States to Indian Tribes or individual Indians. In carrying out the education mission of the Department, the BIE has an obligation to provide for a comprehensive multicultural and multilingual education program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve, and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes and Alaska Native entities may utilize at their discretion.

(c) In carrying out activities under this part, the Secretary will be guided by the policies stated in 25 CFR part 32.

**§ 30.101 What definitions apply to terms in this part?**

*Act* means the *Elementary and Secondary Education Act of 1965*, as amended by the *Every Student Succeeds Act*, Public Law 114–95, enacted December 10, 2015.

*Agency Plan* means a BIE document that will provide Indian Tribes, parents, and stakeholders with quality, transparent information about how standards, assessments, and an accountability system will be implemented at a BIE-funded school.

*BIE-funded school(s)* means a school funded by the Bureau of Indian Education and includes Bureau-operated schools and tribally controlled schools.

*Bureau* or *BIE* means the Bureau of Indian Education.

*Bureau-operated school* means a school operated by the Bureau of Indian Education.

*Department* means the Department of the Interior.

*Director* means the Director of the Bureau of Indian Education.

*English learner* means an individual:

- (1) Who is aged three (3) through twenty-one (21);
- (2) Who is enrolled or preparing to enroll in an elementary school or secondary school;
- (3)(i) Who was not born in the United States or whose native language is a language other than English;
- (ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and
- (B) Who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or
- (iii) Who is migratory, whose native language is a language other than

English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual;

(i) The ability to meet the challenging academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society.

(5) This definition is not intended to affect the right to use Native American language as a medium of instruction.

*Foster care* means 24-hour substitute care for children placed away from their parents and for whom the agency under title IV–E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

*Native American language* means the historical, traditional languages spoken by members of federally recognized Indian Tribes, as defined in 25 U.S.C. 2021(20).

*Peer review* means, for purposes of this part, the process through which an entity demonstrates the technical soundness of an assessment system, including its validity and reliability for the purposes for which the assessments are intended.

*Proposal for alternative requirements* means a proposal submitted by a tribal governing body or school board for requirements, in whole or in part, alternative to the ones adopted by the Secretary for standards, assessments, or an accountability system at BIE-funded schools except that an alternative proposal for a Bureau-operated school does not include any actions that would affect BIE’s authority over inherently Federal functions as defined in 25 U.S.C. 2021(12).

*Secretary* means the Secretary of the Interior or a designated representative.

*School board* means, with respect to waiver and submission of alternative proposals for a BIE-funded school, either an “agency school board” as

defined in 25 U.S.C. 2021(1), or a “local school board” as defined in 25 U.S.C. 2021(14).

*School year* means the academic school year as described by a school in the BIE’s student information system.

*Subgroup of students* means:

- (1) Economically disadvantaged students;
- (2) Students from major racial and ethnic groups;
- (3) Children with disabilities; and
- (4) English learners.

*Technical assistance* means with regard to:

(1) Comprehensive or targeted support and improvement or additional targeted support, subject to the availability of appropriations, assistance from the BIE to address issues impacting a school’s or one or more subgroups within a school’s ability to meet the BIE’s academic goals and indicators developed or implemented in accordance with this part, including assistance to extend technical capabilities and training opportunities;

(2) Proposals for alternative requirements, technical assistance means, subject to the availability of appropriations, assistance from the BIE and the Department of Education in the development of alternative requirements for standards, assessments, and an accountability system in part or in whole, including assistance in understanding what options may be available to enhance the exercise of sovereignty in education and address the unique circumstances and needs of BIE-funded schools and the students served at such schools.

(3) English language proficiency assessments and alternate English language proficiency assessments, assistance including training teachers on how to administer such assessments.

*Tribal consultation* means consultation conducted in accordance with the tribal consultation policy of the Department of the Interior.

*Tribal governing body* means with respect to waiver and submission of alternative proposals for:

- (1) Tribally controlled schools, the entity authorized under applicable tribal law to waive the Secretary’s requirements and propose alternative requirements; and
- (2) A BIE-operated school, the recognized governing body of the Indian Tribe involved that represents at least ninety (90) percent of the students served by such school.

*Tribally controlled school* means, for the purposes of this part, a school operated under a Public Law 93–638 contract or Public Law 100–297 grant that is:

(1) Operated by an Indian Tribe or a tribal organization, enrolling students in Kindergarten through grade twelve (12) of schools that may have varying structure, including a preschool;

(2) Not a local education agency as defined in 25 U.S.C. 2511(5); and

(3) Not directly administered by the Bureau of Indian Education.

*Waiver* means the exercise of authority by a tribal governing body or school board for a BIE-funded school to elect to implement requirements, in part or in whole, alternative to the ones adopted by the Secretary pursuant to this part at schools that are under the tribal governing body's or school board's jurisdiction following approval of the proposal for alternative requirements by the Secretary and the Secretary of Education pursuant to section 8204 of the Act, except that a tribal governing body's decision to exercise waiver authority under this part takes priority over a school board decision to exercise waiver authority under this part.

#### **Subpart A—Standards, Assessments, and Accountability System Requirements**

##### **§ 30.102 What does the Act require of the Secretary?**

(a) The Act requires the Secretary to define standards, assessments, and accountability system, consistent with section 1111 of the Act, for schools on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of the schools and the students served, using regulations developed through a negotiated rulemaking process.

(b) If a tribal governing body or school board determines that the requirements described in paragraph (a) of this section are inappropriate, it may waive these requirements, in part or in whole, and propose alternative requirements for standards, assessments, and an accountability system that meets the requirements of section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served by such schools.

(c) The Secretary and the Secretary of Education will provide technical assistance, upon request, either directly or through a contract, to a tribal governing body or school board that seeks a waiver and alternative requirements described in paragraph (b) of this section.

##### **§ 30.103 How will the Secretary implement Standards, Assessments, and Accountability System requirements?**

(a) The Secretary, through the Director, must describe requirements for

standards, assessments, and an accountability system for use at BIE-funded schools in accordance with this part. The Director must periodically review and revise these requirements, as necessary, but review will occur not less often than every four (4) years beginning with the school year for which the requirements become effective.

(b) The Director will develop an Agency Plan that will provide Indian Tribes, schools, parents, and other stakeholders with quality, transparent information about how the Act will be implemented at BIE-funded schools, including the requirements that have been established for standards, assessments, and an accountability system for BIE-funded schools.

(c) The Secretary will engage in meaningful consultation with Indian Tribes and Alaska Native Villages, schools, parents, and other stakeholders, when developing and revising requirements for standards, assessments, and an accountability system for BIE-funded schools.

(d) The Secretary may voluntarily partner with States, or another Federal agency, in the development of challenging academic standards and assessments.

##### **§ 30.104 How will the Secretary implement requirements for standards?**

(a) The Secretary will implement requirements for academic standards for BIE-funded schools by adopting:

(1) Challenging academic content standards; and

(2) Aligned academic achievement standards consisting of at least three levels of achievement defined in the Agency Plan.

(b) Combined, both academic content standards and academic achievement standards are hereinafter collectively referred to as “challenging academic standards.”

(c) The academic content standards will apply to all BIE-funded schools and the students served at those schools. Such academic content standards will include:

(1) Mathematics;

(2) Reading or Language Arts;

(3) Science;

(4) Tribal civics, as appropriations become available; and

(5) Any other subject determined by the Secretary.

(d) The academic content standards must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards.

(e) The Secretary must, through a documented and validated standards-

setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities that:

(1) Are aligned with the challenging academic content standards under paragraphs (a) and (b) of this section;

(2) Promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*);

(3) Reflect professional judgment as to the highest possible standards achievable by the students;

(4) Are designated in the individualized education program developed under section 614(d)(3) of IDEA (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and

(5) Are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014.

(f) The Secretary will adopt English language proficiency standards that:

(1) Are derived from the four (4)

recognized domains of speaking, listening, reading, and writing;

(2) Address the different proficiency levels of English learners; and

(3) Are aligned with the challenging academic standards.

##### **§ 30.105 How will the Secretary implement requirements for academic content assessments?**

(a) *Academic assessments.* The BIE will implement a set of high quality student academic assessments in mathematics, reading or language arts, and science. As appropriations become available, BIE will implement an assessment in tribal civics.

(b) *Requirements for academic assessments.* The academic assessments must:

(1) Except with respect to alternate assessments for students with the most significant cognitive disabilities, be:

(i) The same academic assessments used to measure the achievement of all BIE-funded school students; and

(ii) Administered to all BIE-funded school students, including the following highly-mobile student populations:

(A) Students with status as a migratory child;

(B) Students with status as a homeless child or youth;

(C) Students with status as a child in foster care;

(D) Students with status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty;

(2) Be aligned with the BIE's challenging academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;

(3) Be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards; objectively measure academic achievement, knowledge, and skills; and use tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information, except that this provision does not preclude the use of:

(i) Constructed-response, short answer, or essay questions; or

(ii) Items that require a student to analyze a passage of text or to express opinions;

(4) Be of adequate technical quality for each purpose required under the Act and consistent with the requirements of this section, the evidence of which will be made public, including on the BIE website;

(5) Be administered:

(i) In the case of mathematics and reading or language arts:

(A) In each of grades three (3) through eight (8); and

(B) At least once in grades nine (9) through twelve (12);

(ii) In the case of science, not less than one time during:

(A) Grades three (3) through five (5);

(B) Grades six (6) through nine (9); and

(C) Grades ten (10) through twelve (12); and

(iii) In the case of any other subject chosen by the BIE, at the discretion of the BIE;

(6) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills, such as critical thinking, reasoning, analysis, complex problem solving, effective communication, and understanding of challenging content, which may:

(i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;

(7) At the BIE's discretion, be administered through:

(i) A single summative assessment; or

(ii) Multiple Bureau-wide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(8) Produce individual student interpretive, descriptive, and diagnostic reports, consistent with paragraph (b)(3) of this section, regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(9) Enable results to be disaggregated:

(i) Within the Bureau and each BIE-funded school by:

(A) Each major racial and ethnic group;

(B) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(C) Children with disabilities as defined in section 602(3) of the IDEA compared to children without disabilities;

(D) English proficiency status;

(E) Gender;

(F) Migrant status;

(G) Status as a homeless child or youth as defined in section 725(2) of title VII, subtitle B of the McKinney-Vento Homeless Assistance Act, as amended;

(H) Status as a child in foster care; and

(I) Status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty.

(ii) Disaggregation is not required in the cases in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

(10) Enable itemized score analyses to be produced and reported, consistent with paragraph (b)(3) of this section, to BIE-funded schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students' achievement on assessment items; and

(11) Be designed and developed:

(i) To be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) To the extent practicable, using the principles of universal design for

learning. For the purposes of this section, "universal design for learning" means a scientifically valid framework for guiding educational practice that:

(A) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and English learners.

(c) *Exception for advanced mathematics in middle school.* The BIE will determine the use of this exemption in the Agency Plan.

(d) *Computer adaptive assessments.*

(1) BIE retains the right to develop and administer computer adaptive assessments as the assessments described in this section, provided the computer adaptive assessments meet the requirements of this section, except that:

(i) The requirement that the same academic assessments must be used to measure the achievement of all BIE-funded school students and that the assessments must be administered to all BIE-funded school students may not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items; and

(ii) Such assessment:

(A) Must measure, at a minimum, each student's academic proficiency based on the challenging academic standards for the student's grade level and growth toward such standards; and

(B) May measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of the accountability system.

(2) In developing and administering computer adaptive assessments for students with the most significant cognitive disabilities and English learners:

(i) The BIE will ensure that the computer adaptive assessments for students with the most significant cognitive disabilities:

(A) Assess a student's academic achievement based on the challenging academic content standards for the grade in which the student is enrolled;

(B) Meet the requirements of this section and §§ 30.106 through 30.110, including § 30.108, except the assessments are not required to meet the requirements of paragraph (d)(1)(ii) of this section; and

(C) Assess the student's academic achievement to measure, in the subject being assessed, whether the student is

performing at the student's grade level; and

(ii) The BIE may provide for the use of computer adaptive assessments that:

(A) Meet the requirements §§ 30.106 through 30.110 except the assessments are not required to meet the requirements of paragraph (d)(1)(ii) of this section; and

(B) Assess the student's English language proficiency, which may include growth towards such proficiency, in order to measure the student's acquisition of English.

(e) *Peer review and future guidance on academic assessments.* (1) The BIE assessments required by these regulations must undergo peer review with the exception of tribal civics and non-content Native American language academic assessments.

(2) BIE will develop guidance on the use of academic assessments in a Native American language for purposes of compliance with these regulatory requirements, including evidence of technical validity and reliability, in consultation with the Department of Education, Tribes, and other stakeholders.

(f) *Rule of construction on parental rights.* Nothing in this section may be construed as preempting tribal law at a tribally controlled school regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph (f).

(g) *Limitation on assessment time.* The Secretary may set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.

(h) *Students in Native American language schools or programs.* The BIE is not required to assess, using an assessment written in English, student achievement in meeting the BIE's challenging State academic standards in reading/language arts, mathematics, or science for a student who is enrolled in a school or program that provides instruction primarily in a Native American language if:

(1) The program or school provides an assessment in the Native American language to all students in the program or school and:

(i) Submits evidence to the BIE according to BIE guidelines developed under paragraph (e)(2) of this section regarding such assessment's technical validity and reliability for the purposes for which it is intended; and

(ii) BIE submits this evidence to Department of Education for approval; and

(2) For an English learner the BIE continues to assess the English language proficiency of such English learner, using the annual English language proficiency assessment required under § 30.110, and provides appropriate services to enable him or her to attain proficiency in English.

**§ 30.106 How will the Secretary provide for the inclusion of all students in assessments?**

The Secretary will provide assessment instruments that allow for:

(a) The participation of all students, generally;

(b) The participation of students with disabilities, as detailed in §§ 30.107 and 30.108; and

(c) The participation of English learners, as detailed in § 30.109.

**§ 30.107 How will the Secretary include students with disabilities in assessments?**

(a) The BIE and BIE-funded schools must ensure that students with disabilities have the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for students with disabilities, including students with the most significant cognitive disabilities, necessary to measure the academic achievement of such children relative to the BIE's challenging academic standards or alternate academic achievement standards described in § 30.104(d) and (e).

(b) The Secretary must include students with disabilities in all assessments, with appropriate accommodations. For purposes of this section, students with disabilities, collectively, are:

(1) All children with disabilities as defined under section 602(3) of the IDEA;

(2) Students with the most significant cognitive disabilities who are identified from among the students in paragraph (a) of this section; and

(3) Students with disabilities covered under other acts, including:

(i) Section 504 of the Rehabilitation Act of 1973, as amended; and

(ii) Title II of the Americans with Disabilities Act (ADA), as amended.

(c) Appropriate accommodations for those students described in paragraph (b) of this section will be determined by:

(1) For each student under paragraphs (b)(1) and (2) of this section, the student's IEP team;

(2) For each student under paragraph (b)(3)(i) of this section, the student's placement team; or

(3) For each student under paragraph (b)(3)(ii) of this section, the individual or team designated by the school to make these decisions.

(d)(1) Except as provided in paragraph (d)(2) of this section, a student with a disability must be assessed with an assessment aligned with the BIE's challenging academic standards for the grade in which the student is enrolled.

(2) A student with the most significant cognitive disabilities may be assessed with:

(i) The general assessment under § 30.106(b); or

(ii) The alternate assessment under § 30.108 aligned with the BIE's challenging academic content standards for the grade in which the student is enrolled and the BIE's alternate academic achievement standards.

(e) The BIE and school must ensure that general and special education teachers, paraprofessionals, teachers of English learners, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments, and know how to make use of appropriate accommodations during assessment for all students with disabilities, consistent with section 1111(b)(2)(B)(vii)(III) of the Act.

(f) The BIE and school must ensure that the use of appropriate accommodations under paragraph (c) of this section does not deny a student with a disability:

(1) The opportunity to participate in the assessment; and

(2) Any of the benefits from participation in the assessment that are afforded to students without disabilities.

**§ 30.108 How will the Secretary provide for alternate assessments for students with the most significant cognitive disabilities?**

(a) *Alternate assessments aligned with alternate academic achievement standards.* The BIE will provide for alternate assessments aligned with the challenging academic content standards for the grade in which the student is enrolled and alternate academic achievement standards described in § 30.104(d) and (e) for students with the most significant cognitive disabilities. The BIE must:

(1) Consistent with paragraph (b) of this section, ensure that, for each subject, the total number of students assessed in the subject using the alternate assessments does not exceed one (1) percent of the total number of all students in all BIE-funded schools who are assessed in the subject;

(2) With regard to the percentage of students assessed under this paragraph (a):

(i) Not prohibit a BIE-funded school from assessing more than one (1)



percent of its assessed students in any subject for which assessments are administered with an alternate assessment aligned with alternate academic achievement standards;

(ii) Require that the BIE-funded school submit by October 1 information into the BIE's student information system regarding what assessment the student is to take and which must be consistent with the individualized education program (IEP);

(iii) Provide appropriate oversight of a BIE-funded school that is required to submit information to the BIE; and

(iv) Make the information submitted by a BIE-funded school under paragraph (a)(2)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student;

(3) With regard to IEP teams:

(i) Establish clear and appropriate guidelines, consistent with section 612(a)(16)(C) of the IDEA, and provide technical assistance as requested in writing, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards. Such guidelines must include a BIE definition of "students with the most significant cognitive disabilities" that addresses factors related to cognitive functioning and adaptive behavior, such that:

(A) The identification of a student as having a particular disability as defined in the IDEA or as an English learner does not determine whether a student is a student with the most significant cognitive disabilities;

(B) A student with the most significant cognitive disabilities is not identified solely on the basis of the student's previous low academic achievement, or the student's previous need for accommodations to participate in general BIE assessments; and

(C) A student is identified as having the most significant cognitive disabilities because the student requires extensive, direct individualized instruction and substantial supports to achieve measurable gains on the BIE's challenging academic content standards for the grade in which the student is enrolled; and

(ii) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of BIE and BIE-funded school

policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(4) Ensure that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)));

(i) That their child's academic achievement will be measured based on the alternate academic achievement standards; and

(ii) How participation in the assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(5) Promote, consistent with the IDEA (20 U.S.C. 1400 *et seq.*), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;

(6) Describe the steps the Bureau has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;

(7) Describe that general and special education teachers, and other appropriate staff:

(i) Know how to administer the alternate assessments; and

(ii) Make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph (a);

(8) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with significant cognitive disabilities:

(i) Participating in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Who are tested based on the BIE's challenging academic standards for the grade level in which the student is enrolled; and

(9) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(b) *Responsibility under IDEA.* Subject to the authority and requirements for the IEP team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C.

1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the BIE and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(a)(16)(C)) and paragraph (a)(1) of this section, will determine when a child with a significant cognitive disability may participate in an alternate assessment aligned with the alternate academic achievement standards.

#### **§ 30.109 How will the Secretary include English learners in academic content assessments?**

(a) *English learners.* English learners must be:

(1) Assessed in a valid and reliable manner; and

(2) Provided appropriate accommodations on assessments administered including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what the students know and can do in academic content areas, until the students have achieved English language proficiency, consistent with standardized BIE-determined exit procedures.

(b) *Language or form of assessment.* Notwithstanding paragraph (a)(2) of this section, BIE-funded schools must provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States for three (3) or more consecutive school years, except that if the BIE-funded school determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what the student knows and can do, the BIE-funded school may make a determination to assess the student in the appropriate language other than English for a period that does not exceed two (2) additional consecutive years, provided that the student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on tests (written in English) of reading or language arts. This requirement does not permit either the BIE or BIE-funded schools to exempt English learners from participating in the BIE's assessment system.

(c) *BIE responsibilities.* The BIE must:

(1) Disseminate information and resources regarding English learners to, at a minimum, BIE-funded schools, and parents;

(2) Promote the use of accommodations for English learners to ensure that all English learners are able to participate in academic instruction and assessments; and

(3) Provide technical assistance when requested in writing.

(d) *Exception for recently arrived English learners.* With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than twelve (12) months, the BIE may choose to:

(1) Exclude:

(i) The English learner from one administration of the reading or language arts assessment required under § 30.105; and

(ii) The English learner's results on any of the assessments required under § 30.105(b)(5)(i) or § 30.110 for the first year of the English learner's enrollment in the school for the purposes of the BIE-determined accountability system under § 30.111; or

(2) Assess, and report the performance of:

(i) The English learner on the reading or language arts and mathematics assessments required under § 30.105(b)(5)(i) in each year of the student's enrollment in such a school; and

(ii) For the purposes of the BIE-determined accountability system:

(A) For the first year of the student's enrollment in the school, exclude the results on the assessments described in paragraphs (d)(1)(i) and (ii) of this section;

(B) Include a measure of student growth on the assessments described in paragraphs (d)(1)(i) and (ii) of this section in the second year of the student's enrollment in the school; and

(C) Include proficiency on the assessments in reading or language arts and mathematics described in this paragraph (d) in the third year of the student's enrollment in such a school, and each succeeding year of enrollment.

(e) *English learner subgroup.* With respect to a student previously identified as an English learner and for not more than four (4) years after the student ceases to be identified as an English learner, the BIE may include the results of the student's academic content assessments within the English learner subgroup of the subgroups of students as defined in § 30.101 for the purposes of the BIE-determined accountability system.

**§ 30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?**

(a) The BIE will ensure that BIE-funded schools will administer a valid and reliable annual assessment of English proficiency to all English

learners in the schools served by the BIE.

(b) The BIE will require BIE-funded schools to use the assessment to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in kindergarten through grade twelve (12).

(c) The English language proficiency assessment must be aligned with the BIE's English language proficiency standards described in § 30.104(f).

(d) The assessment will be implemented, developed, and used consistent with the requirements of this section.

(e) The assessment will provide coherent and timely information about each student's attainment of the BIE's English language proficiency standards to parents.

(f) If an English learner has a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment such that there are no appropriate accommodations for the affected domain(s) (e.g., a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment), as determined, on an individualized basis, by the student's IEP team, 504 team, or by the individual or team designated by the BIE-funded school to make these decisions under title II of the ADA, then the BIE must assess the student's English language proficiency based on the remaining domains in which it is possible to assess the student.

(g) The BIE must provide for an alternate English language proficiency assessment for English learners with the most significant cognitive disabilities who cannot participate in the assessment under this paragraph (g) even with appropriate accommodations.

(h) BIE will provide technical assistance, including training teachers on how to administer assessments, in regard to English language proficiency assessments and alternate English language proficiency assessments to BIE-funded schools as requested in writing.

**§ 30.111 How will the Secretary implement requirements for an accountability system?**

(a) The Secretary will define accountability system for BIE-funded schools consistent with this section and subpart C of this part, including provisions for a single Bureau-wide accountability system and system of support and improvement activities, taking into account the unique circumstances and needs of BIE-funded

schools and the students served by BIE-funded schools.

(b) To improve student academic achievement and school success among all elementary and secondary schools within the BIE-funded school system, the Secretary will develop and implement a single, Bureau-wide accountability system that:

(1) Is based on the Bureau's challenging academic standards and academic assessments;

(2) Is informed by ambitious long-term goals and measurements of interim progress;

(3) Includes all the accountability indicators described paragraph (e) of this section;

(4) Takes into account the achievement of all elementary and secondary school students within the BIE-funded school system;

(5) Is the same accountability system used to annually, meaningfully differentiate all schools within the BIE-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement; and

(6) Includes the process that the Bureau will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all schools within the BIE-funded school system accountable for student academic achievement and school success.

(c) The inclusion of science and tribal civics will be phased into the Secretary's requirements for accountability system starting as a school quality or student success indicator and their continued use in such manner will be revisited as the accountability system is implemented.

(d) For all students and separately for each subgroup of students within the BIE-funded school system, the BIE will establish long-term goals and measurements of interim progress that will include, at a minimum, improved academic achievement, as measured by proficiency on the Bureau's annual assessments in mathematics and reading or language arts under § 30.105(b)(5)(i), and high school graduation rates, including the four (4)-year adjusted cohort graduation rate, or at BIE's discretion one or more extended year graduation cohorts, and that will:

(1) Use the same multi-year length of time for all students and for each subgroup of students within the BIE-funded school system to meet the goals; and

(2) Take into account, for subgroups of students who are behind on the measurements of academic achievement

and high school graduations rates, the improvement necessary to make significant progress in closing Bureau-wide proficiency and graduation rate gaps.

(e) For all students and separately for each subgroup of students within the BIE-funded school system, the BIE will include a long-term goal and measurements of interim progress for increases in the percentage of English learner students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under § 30.110 within a timeline determined by the Bureau.

(f) For all students and separately for each subgroup of students the Bureau will establish and annually measure the following accountability indicators:

(1) For all schools, based upon the long-term goals established under paragraphs (b)(2) and (d) of this section, academic achievement:

(i) As measured by proficiency on the annual assessments of mathematics and reading or language arts described in § 30.105(b)(5)(i); and

(ii) At the BIE's discretion, for each high school, growth, as measured by such annual assessments.

(2) For elementary and secondary schools that are not high schools:

(i) A measure of student growth, if determined to be appropriate by the BIE; or

(ii) Another valid and reliable Bureau-wide academic indicator that allows for meaningful differentiation in school performance.

(3) For high schools, based upon the long-term goals established under paragraphs (b)(2) and (d) of this section:

(i) The four (4)-year adjusted cohort graduation rate; and

(ii) At the BIE's discretion, the extended-year adjusted graduation cohort rate, as defined in paragraph (j) of this section.

(4) For all schools, progress in achieving English language proficiency, as defined by the BIE and measured by the assessments of English language proficiency described in § 30.110, within a BIE-determined timeline for all English learners:

(i) In each of grades three (3) through eight (8); and

(ii) In the high school grade for which such English learners are otherwise assessed in mathematics and reading or language arts.

(5) For all schools, not less than one indicator of school quality or student success that:

(i) Allows for meaningful differentiation in school performance;

(ii) Is valid, reliable, comparable, and Bureau-wide (with the same indicator or

indicators used for each grade span, as such term is determined by the BIE); and

(iii) May include one or more of the following measures:

(A) Student or Educator engagement;

(B) Chronic absenteeism;

(C) Student access to and completion of advanced coursework;

(D) Postsecondary readiness;

(E) School climate and safety; and

(F) Any other indicator the BIE

chooses that meets the requirements of this section.

(g) The BIE will establish a system for meaningfully differentiating, annually, all schools that will:

(1) Be based on all indicators described paragraph (f) of this section for all students and for each subgroup of students; and

(2) With respect to paragraphs (f)(1) through (4) of this section, afford:

(i) Substantial weight to each such indicator;

(ii) In the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the BIE and described in paragraph (f)(5) of this section, in the aggregate; and

(iii) Include differentiation of any such school in which any subgroup of students is consistently underperforming, as determined by the BIE, based on all indicators described in paragraph (f) of this section.

(h) Based on the system of meaningful differentiation described in paragraph (g) of this section, the BIE will establish a methodology to identify:

(1) Beginning with the first full school year following April 27, 2020, and at least once every three (3) years thereafter, one (1) BIE-wide category of schools for comprehensive support and improvement, which will include:

(i) Not less than the lowest-performing five (5) percent of all schools receiving Title I funding;

(ii) All high schools failing to graduate one third ( $\frac{1}{3}$ ) or more of their students; and

(iii) All schools identified for additional targeted support and improvement that receive ESEA Title I funding and do not meet exit criteria as provided in § 30.124(a)(2).

(2) The BIE will provide technical assistance to all schools identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support.

(i) The Bureau's accountability system will annually measure the achievement of at least ninety-five (95) percent of all students, and ninety-five (95) percent of each subgroup of students, who are enrolled in a school within the BIE-

funded school system on the Bureau's assessments. The denominator for the purpose of measuring, calculating, and reporting on the academic achievement indicator will be the greater of:

(1) Ninety-five (95) percent of all students, or ninety-five (95) percent of each subgroup of students; or

(2) The number of students participating in the assessments.

(j) The performance of students that have not attended the same BIE-funded school for at least half ( $\frac{1}{2}$ ) of a school year will not be included in the academic achievement, other academic, progress in achieving English language proficiency, or school quality or student success indicators for that school year, but will be used for the purpose of reporting on the Bureau and school report cards for that school year.

(k) Extended-year adjusted cohort graduation rate means the fraction—

(1) The denominator of which consists of the number of students who form the original cohort of entering first-time students in grade nine (9) enrolled in the high school, adjusted by—

(i) Adding the students who joined that cohort, after the date of the determination of the original cohort; and

(ii) Subtracting only those students who left that cohort, after the date of the determination of the original cohort, as described in paragraph (l) of this section; and

(2) The numerator of which—

(i) Consists of the sum of—

(A) The number of students in the cohort, as adjusted under paragraph (k)(1) of this section, who earned a regular high school diploma before, during, or at the conclusion of—

(1) One or more additional years beyond the fourth year of high school; or

(2) A summer session immediately following the additional year of high school; and

(B) All students with the most significant cognitive disabilities in the cohort, as adjusted under paragraph (k)(1) of this section, assessed using the alternate assessment aligned to alternate academic achievement standards under § 30.108 and awarded an alternate diploma that is—

(1) Standards-based;

(2) Aligned with the requirements for the regular high school diploma; and

(3) Obtained within the time period for which the BIE ensures the availability of a free appropriate public education under 20 U.S.C. 1412(a)(1); and

(ii) Does not include any student awarded a recognized equivalent of a diploma, such as a general equivalency

diploma, certificate of completion, certificate of attendance, or similar lesser credential.

(l) To remove a student from a cohort, a school or local educational agency must require documentation, or obtain documentation from the BIE, to confirm that the student has transferred out, immigrated to another country, transferred to a prison or juvenile facility, or is deceased.

(m) For purposes of this paragraph (m), the term “transferred out” has the meaning given the term in ESEA section 8101(25)(C).

(n) For those high schools that start after grade nine (9), the original cohort will be calculated for the earliest high school grade students attend no later than the date by which student membership data is collected annually by the BIE.

### **Subpart B—Accountability, Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements**

#### **§ 30.112 May a tribal governing body or school board waive the Secretary’s requirements for standards, assessments, and an accountability system?**

Yes. A tribal governing body or school board may waive the Secretary’s requirements for standards, assessments, and an accountability system in part or in whole, and the tribal governing body or school board’s alternative requirements will apply if they meet the requirements of section 1111, taking into account the unique circumstances and needs of the applicable school or schools and the students served by such school or schools, and are approved by the Secretary and the Secretary of Education. If the Secretary and the Secretary of Education do not approve the tribal governing body or school board’s proposal for alternative requirements, the Secretary’s requirements under this part continue to apply. Depending on the nature and content of such proposals for alternative requirements, and subject to the availability of appropriations, alternative requirements will generally be effective in the school year following the school year they are approved. Where a tribal governing body or school board proposes to use existing State requirements, approval of the use of such requirements is dependent upon the agreement of the applicable State.

#### **§ 30.113 How does a tribal governing body or school board waive the Secretary’s requirements?**

(a) A tribal governing body or school board may waive the Secretary’s

requirements for standards, assessments, and an accountability system, in part or in whole.

(b) The tribal governing body or school board must notify the Secretary and the Secretary of Education in writing of the decision to waive the Secretary’s requirements in part or in whole.

(c) Within sixty (60) days of the decision to waive the Secretary’s requirements in part or in whole, the tribal governing body or school board must submit to the Secretary for review and, in coordination with the Secretary of Education, approval, a proposal for alternative requirements that are consistent with section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served. The Secretary encourages a tribal governing body or school board to request and receive technical assistance well in advance of submission of a plan to the Secretary for review. The tribal governing body or school board must continue to follow the Secretary’s requirements for standards, assessments, and an accountability system until a proposal for alternative requirements has been approved and until alternative requirements become effective.

(d) A tribal governing body or school board may request in writing an extension of the sixty (60) day deadline for the provision of technical assistance.

(e) A tribal governing body or school board must use this process anytime a tribal governing body or school board proposes alternative requirements for standards, assessments, and an accountability system, or proposes changes to approved alternative requirements.

(f) The Secretary will work with the Secretary of Education to develop and make available templates for proposals for alternative requirements that tribal governing bodies and school boards may use to assist in the development of such proposals for alternative requirements.

#### **§ 30.114 What should a tribal governing body or school board include in a proposal for alternative requirements?**

Proposals for alternative requirements must include an explanation of how the alternative proposal meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools.

#### **§ 30.115 May proposed alternative requirements use parts of the Secretary’s requirements?**

Yes, a tribal governing body or school board may use the Secretary’s requirements in part or in whole. Alternative proposals must clearly identify any retained portions of the Secretary’s requirements.

#### **§ 30.116 Will the Secretary provide technical assistance to tribal governing bodies or school boards seeking to develop alternative requirements?**

The Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract, to a tribal governing body or a school board that seeks to develop alternative requirements. A tribal governing body or school board seeking such assistance must submit a request in writing to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.

#### **§ 30.117 What is the process for requesting technical assistance?**

(a) Requests for technical assistance must be in writing from a tribal governing body or school board to the Director of BIE and the Department of Education’s Assistant Secretary of the Office of Elementary and Secondary Education.

(b) The Director, or designee, will acknowledge receipt of a request for technical assistance.

(c) No later than thirty (30) days after receiving the original request, the Director will identify a point-of-contact and begin the process of providing technical assistance. The Director and requesting tribal governing body or school board will work together to identify the form, substance, and timeline for the assistance.

#### **§ 30.118 When should the tribal governing body or school board request technical assistance?**

A tribal governing body or school board may request technical assistance in writing at any time. A tribal governing body or school board is welcomed and encouraged to request technical assistance before formally notifying the Secretary of its intention to waive the requirements established by the Secretary in order to maximize the time available for technical assistance.

#### **§ 30.119 How does the Secretary review and approve alternative requirements?**

(a) The Secretary and the Secretary of Education will jointly approve plans for alternative requirements for standards, assessments, and an accountability system or determine that the proposed

alternative requirements do not meet the requirements of section 1111 of the Act.

(1) The Secretary will consult with the Secretary of Education through the review of a proposal for alternative requirements.

(2) Upon receipt of a proposal for alternative requirements for standards, assessments, and an accountability system, in part or in whole, the Secretary will begin coordination with the Secretary of Education on review and approval of the proposal.

(3) The Secretary will provide a status update regarding the processing of the proposal within 120 days of receipt of the proposal and every thirty (30) days thereafter to discuss the stage of the review process.

(b) If the Secretary and the Secretary of Education approve a proposal for alternative requirements, the Secretary will:

(1) Promptly notify the tribal governing body or school board; and

(2) Indicate the date for which the alternative proposal will be effective.

(c) If a proposal for alternative requirements is not approved, the tribal governing body or school board will be notified that:

(1) The proposal has not been approved; and

(2) The reasons why the alternative proposal was not approved.

(d) If a proposal for alternative requirements is not approved, the Secretary will provide technical assistance to the tribal governing body or school board to help to overcome the reasons why the alternative proposal was not approved.

(e) If a proposal for alternative requirements is not approved, or is not moving forward, then Tribes may individually request formal consultation with the Secretary and Secretary of Education.

### Subpart C—Support and Improvement

#### § 30.120 How will the Secretary notify BIE-funded schools that they have been identified for school support and improvement activities?

The Secretary will notify each BIE-funded school that has been identified for comprehensive support and improvement as described in § 30.111(h).

#### § 30.121 How will the Secretary implement requirements for comprehensive support and improvement activities?

(a) Once notified that it has been identified for comprehensive support and improvement, each BIE-funded school is required to develop and implement, in partnership with stakeholders (including principals and

other school leaders, teachers, and parents), a comprehensive support and improvement plan to improve student outcomes that:

(1) Is informed by all indicators described in § 30.111(f), including student performance against BIE-determined long-term goals described in § 30.111(d);

(2) Includes evidence-based interventions;

(3) Is based on a school-level needs assessment;

(4) Identifies resource inequities, which may include a review of school-level budgeting, to be addressed through implementation of such comprehensive support and improvement plan;

(5) Is approved by the school and the BIE; and

(6) Upon approval and implementation, is monitored and periodically reviewed by the BIE.

(b) In regard to high schools that have been identified as having failed to graduate one-third or more of their students, the BIE may:

(1) Permit differentiated improvement activities that use evidence-based interventions in the case of a school that predominantly serves students:

(i) Returning to education after having exited secondary school without a regular high school diploma; or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements; and

(2) In the case of a school that has a total enrollment of fewer than 100 students, permit the BIE-funded school to forego implementation of improvement activities.

#### § 30.122 How will the Secretary implement requirements for targeted support and improvement activities?

(a) Using the system of annual meaningful differentiation of schools described in § 30.111(b)(5) and (f), the BIE will notify each BIE-funded school in which any subgroup of students is consistently underperforming in accordance with § 30.111(g)(2)(iii).

(b) Each school that has been notified must develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a school-level targeted support and improvement plan to improve student outcomes based on the BIE's indicators for each subgroup of students that was the subject of such notification that:

(1) Is informed by all indicators described in § 30.111(f), including performance against long-term goals described in § 30.111(d);

(2) Includes evidence-based interventions;

(3) Is approved by the BIE prior to implementation of such plan;

(4) Is monitored by the BIE, upon submission and implementation; and

(5) Results in additional action following unsuccessful implementation of such plan after a number of years determined by the BIE.

#### § 30.123 How will the Secretary implement requirements to identify schools for additional targeted support?

(a) The BIE will identify for additional support and improvement each school with one (1) or more subgroups that is performing as poorly as the lowest-performing five (5) percent of all Title I schools identified for comprehensive support and improvement in the BIE system using the BIE's system of annual meaningful differentiation of schools described in § 30.111(g).

(b) Each school identified for additional targeted support and improvement must develop and implement a school-level targeted support and improvement plan and identify resource inequities (which may include a review of BIE-funded school level budgeting), to be addressed through implementation of the plan.

#### § 30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

(a) The Secretary will establish exit criteria for:

(1) Schools identified for comprehensive support and improvement, which, if not satisfied within a BIE-determined number of years (not to exceed four (4) years), will result in more rigorous BIE-determined action, such as implementation of interventions (which may include addressing school-level operations); and

(2) Schools identified for additional targeted support, which, if not satisfied within a BIE-determined number of years, will, in the case of schools receiving Title I funds, result in identification of the school by the BIE for comprehensive support and improvement.

(b) The Secretary will also periodically review resource allocation to support school improvement.

### Subpart D—Responsibilities and Accountability

#### § 30.125 What is required for the Bureau to meet its reporting responsibilities?

The Bureau is required to prepare and disseminate widely to the public an annual report card for the BIE-funded school system as a whole, and also report cards for individual BIE-funded schools, consistent with the requirements of section 1111(h) of the

Act. The BIE's annual report card will be made available on the internet along with all BIE-funded school report cards.

**§ 30.126 What information collections have been approved?**

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0191. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: December 20, 2019.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on March 19, 2020.

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG–2020–0058]

RIN 1625–AA00

**Safety Zone; Monongahela River Mile 23.8 to Mile 26.0, Pittsburgh, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of the Monongahela River from mile 23.8 to mile 26.0. This action is necessary to protect persons, vessels, and the marine environment from potential hazards associated with power line work across the river near Elrama Power Plant, Pittsburgh, PA, during an electrical conductor pull from March 23, 2020 through April 6, 2020. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

**DATES:** This rule is effective without actual notice from March 26, 2020 through April 6, 2020. For the purposes of enforcement, actual notice will be used from March 23, 2020 through March 26, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://*

*www.regulations.gov*, type USCG–2020–0058 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST2 Trevor Vannatta, Waterways Management U.S. Coast Guard; telephone 412–221–0807, email *Trevor.J.Vannatta@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port Marine Safety Unit Pittsburgh  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

On November 12, 2019, the Duquesne Light Company notified the Coast Guard that it will be conducting an electrical conductor pull on March 23, 2020, in order to replace existing electrical conductor with new higher ampacity electrical conductor. The conductor pull will take place between mile 23.8 and mile 26 on the Elrama Power Plant side of the Monongahela River. In response, on February 3, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled USCG–2020–0058\_NPRM\_D8 (85 FR 5909). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this conductor pull project. During the comment period that ended March 4, 2020, we received no comments.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Pittsburgh (COTP) has determined that potential hazards from the conductor pull include danger to the navigability of the waterway due to obstruction by equipment. The Captain of the Port (COTP) Marine Safety Unit Pittsburgh has determined that potential hazards associated with ongoing work would be a safety concern for anyone transiting the river during the maintenance activity. Possible hazards include risks of injury or death from near or actual contact among working vessels and mariners traversing through the safety zone.

**IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published

February 3, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from March 23, 2020 through April 6, 2020. The safety zone would cover all navigable waters from mile 23.8 to mile 26.0 on the Monongahela River near Pittsburgh, PA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after a scheduled maintenance activity at the Elrama Power Plant. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. They may be contacted on VHF–FM Channel 16 or by telephone at (412) 221–0807. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative. Breaks in the conductor pull will occur during the enforcement periods, which will allow vessels to pass through the safety zone. The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

**V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.