

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

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

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 500 yards of navigable waters of an aground barge in the St. Marys River. It is categorically excluded from further review under paragraph L[60(d)] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

### G. Protest Activities

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

### List of Subjects in 33 CFR Part 165

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

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

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T09-0339 to read as follows:

#### § 165.T09-0339 Safety Zone; Barge PML2501, St. Marys River, De Tour Village, MI.

(a) *Location.* The following area is a safety zone: All navigable water within 500 yards of the Barge PML2501 in the lower St. Marys River, in the vicinity of Sweets Point.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his designated representative.

(2) Before a vessel operator may enter or operate within the safety zone, they must obtain permission from the Captain of the Port, Sault Sainte Marie, or his designated representative via VHF Channel 16 or telephone at (906) 635-3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his designated representative.

(d) *Enforcement period.* This section will be enforced from June 10, 2020 to June 24, 2020.

Dated: June 10, 2020.

**P.S. Nelson,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.*

[FR Doc. 2020-12878 Filed 6-15-20; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

[Docket ID ED-2019-OSERS-0134]

#### Final Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data

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

**ACTION:** Final priority and requirements.

**SUMMARY:** The Department of Education (Department) announces a funding priority and requirements under the Technical Assistance on State Data Collection program, Catalog of Federal Domestic Assistance (CFDA) number 84.373F. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Parts B and C of the Individuals with Disabilities Education Act (IDEA).

#### **DATES:**

*Effective Date:* This priority and these requirements are effective July 16, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Finch, U.S. Department of Education, 400 Maryland Avenue SW, Room 5016C, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-6610. Email: [Jennifer.Finch@ed.gov](mailto:Jennifer.Finch@ed.gov).

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

**SUPPLEMENTARY INFORMATION:**

**Purpose of Program:** The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve not more than 1/2 of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the capacity of States to meet the data collection requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for the implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA (from funds reserved under section 611(c)(1)), where needed, to improve the capacity of States to meet the data collection requirements under Parts B and C of IDEA, which include the data collection and reporting requirements in sections 616 and 618 of IDEA.

Additionally, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; and the Further Consolidated Appropriations Act, 2020 give the Secretary the authority to use funds reserved under section 611(c) to “administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.” Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Div. B, Title III of Public Law 115-245, 132 Stat. 3100 (2018); Further Consolidated Appropriations Act, 2020,

Div. A, Title III of Public Law 116-94, 133 Stat. 2590 (2019).

**Program Authority:** 20 U.S.C. 1411(c), 1416(i), 1418(c), and 1442; the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Div. B, Title III of Public Law 115-245, 132 Stat. 3100 (2018); Further Consolidated Appropriations Act, 2020, Div. A, Title III of Public Law 116-94, 133 Stat. 2590 (2019).

**Applicable Program Regulations:** 34 CFR 300.702.

We published a notice of proposed priority and requirements (NPP) for this program in the **Federal Register** on December 10, 2019 (84 FR 67395). The NPP contained background information and our reasons for proposing the priority and requirements.

There are no substantive differences between the proposed priority and requirements and the final priority and requirements, as discussed in the *Analysis of Comments and Changes* section of this document.

**Public Comment:** In response to our invitation to comment in the NPP, three parties submitted comments on the proposed priority and requirements.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priority and requirements.

**Analysis of Comments and Changes:** An analysis of the comments related to the priority and requirements follows. OSERS received comments on specific topics including support for the proposed center, recommendations for the funding of feasibility studies, and enhanced data collection and reporting. Each topic is addressed below.

**General Comments**

**Comment:** One commenter expressed support for the proposed Fiscal Data Center. The commenter further requested that additional resources be made available to support the Fiscal Data Center’s expanded scope addressing IDEA Part C fiscal data.

**Discussion:** The Department appreciates the commenter’s support. Centers funded under this program provide necessary and valuable technical assistance to States. The Department will establish a funding amount that is appropriate based on the outcomes and requirements outlined in this document.

**Changes:** None.

**Comment:** One commenter recommended that the Department support the implementation of

feasibility studies to evaluate strengths and weaknesses of State fiscal reporting structures to meet the reporting requirements of IDEA.

**Discussion:** The Department appreciates the comment, and notes that the purpose of the priority is to support States in collecting, reporting, and determining how to best analyze and use their IDEA Parts B and C fiscal data to establish and meet high expectations for each child with a disability. Additionally, the Fiscal Data Center will customize its TA and support to meet each State’s specific needs. This support frequently includes an evaluation of the strengths and weaknesses of State fiscal structures addressing IDEA fiscal reporting requirements.

**Changes:** None.

**Comment:** One commenter requested that the Department ensure an accurate count of students with disabilities, account for assistive technology utilization in classrooms, track student transitions for both the IDEA Part B and Part C programs, and invest in competitive integrated employment strategies.

**Discussion:** The Department appreciates the comment; however, we believe that the suggestions fall outside of the scope of the Fiscal Data Center. The commenter requested that the Department expand its data collection rather than indicating how the Fiscal Data Center can provide TA to States. We note that under IDEA section 618, the Department is required to collect from States their IDEA Part B and Part C annual child count data for infants, toddlers, and children with disabilities, and that, under IDEA sections 616 and 618, States report on IDEA Part B and Part C transitions through their exit data as well as their State Performance Plan (SPP) and Annual Performance Reports (APR).<sup>1</sup>

**Changes:** None.

**Final Priority:**

*National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data.*

The purpose of this priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data (Fiscal Data Center).

The Fiscal Data Center will provide TA to improve the capacity of States to meet the IDEA Parts B and C fiscal data

<sup>1</sup> SPP/APR data can be found at <https://osep.grads360.org/#program>. Section 618 Child Count and Exiting data can be found at <https://www2.ed.gov/programs/osepidea/618-data/collection-documentation/index.html>.

collection requirements under IDEA section 618 and increase States' knowledge of the underlying IDEA fiscal requirements and calculations necessary to submit valid and reliable data for the following collections: (1) Maintenance of State Financial Support (MFS) in Section V of the IDEA Part B Annual State Application; (2) Local Educational Agency (LEA) Maintenance of Effort (MOE) Reduction and Coordinated Early Intervening Services (CEIS); (3) Description of Use of Federal IDEA Part C Funds for the State Lead Agency (LA) and the Interagency Coordinating Council (ICC) in Section III of the IDEA Part C Annual State Application; and (4) Restricted Indirect Cost Rate/Cost Allocation Plan Information in Sections III and IV of the IDEA Part C Annual State Application. States will also receive TA from the Fiscal Data Center on the underlying fiscal requirements of IDEA related to these collections and how they impact the States' ability to meet IDEA fiscal data collection requirements.

**Note:** The Fiscal Data Center may neither provide TA to States on negotiating indirect cost rate agreements with their cognizant Federal agencies nor act as an agent or representative of States in such negotiations.

The Fiscal Data Center must be designed to achieve, at a minimum, the following outcomes:

- (a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B and Part C fiscal data;
- (b) Increased State knowledge of underlying statutory and regulatory fiscal requirements and the calculations necessary to submit valid and reliable fiscal data under IDEA Part B and Part C;
- (c) Improved fiscal infrastructure (e.g., sample interagency agreements, standard operating procedures and templates) by coordinating and promoting communication and effective fiscal data collection and reporting strategies among relevant State offices, including SEAs, LAs and other State agencies, LEAs, schools, and early intervention service (EIS) programs or providers;
- (d) Increased capacity of States to submit accurate and timely fiscal data to enhance current State validation procedures to prevent errors in State-reported IDEA data;
- (e) Increased capacity of States to train personnel to meet the IDEA fiscal data collection and reporting requirements under sections 616 and 618 of IDEA through development of effective tools and resources (e.g., templates, tools, calculators, and

documentation of State data processes); and providing opportunities for in-person and virtual cross-State collaboration about IDEA fiscal data collection and reporting requirements (required under section 618 of IDEA);

(f) Improved capacity of SEAs, LEAs, LAs, and EIS programs or providers to collect and use IDEA fiscal data to identify issues and address those issues through monitoring, TA, and stakeholder involvement; and

(g) Improved IDEA fiscal data validation using results from data reviews conducted by the Department to work with States and generate tools that can be used by States to accurately communicate fiscal data to local consumers (e.g., parents, LEAs, EIS programs or providers, the general public) and lead to improvements in the validity and reliability of fiscal data required by IDEA.

*Types of Priorities:*

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

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

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

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

*Final Requirements:*

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

*Requirements:*

Applicants must—

(a) Describe, in the narrative section of the application under “Significance,” how the proposed project will—

(1) Use knowledge of how SEAs, LAs, LEAs, and EIS programs and providers are meeting IDEA Part B and Part C fiscal data collection and reporting requirements and the underlying

statutory and regulatory fiscal requirements, as well as knowledge of State and local data collection systems, as appropriate;

(2) Examine applicable national, State, and local data to determine the current capacity needs of SEAs, LAs, LEAs, and EIS programs and providers to meet IDEA Part B and Part C fiscal data collection and reporting requirements;

(3) Train SEAs and LAs on how to use IDEA section 618 fiscal data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(4) Disseminate information regarding how SEAs and LAs are currently meeting IDEA fiscal data collection and reporting requirements and are using IDEA section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under “Quality of project services,” how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework. Include a copy of the conceptual framework in Appendix A;

**Note:** The following websites provide more information on logic models and conceptual frameworks: [www.osepideasthatwork.org/logicModel](http://www.osepideasthatwork.org/logicModel) and [www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework](http://www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework).

(4) Be based on current research and make use of evidence-based practices (EBPs).<sup>2</sup> To meet this requirement, the applicant must describe—

(i) The current research on fiscal data management and data system integration, and related EBPs; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on fiscal data management and data system integration and the underlying fiscal requirements of IDEA;

(ii) Its proposed approach to universal, general TA,<sup>3</sup> which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,<sup>4</sup> which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build

capacity at the State and local levels; and

(C) The process by which the proposed project will collaborate with the Office of Special Education Programs (OSEP)-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when such other centers are involved in a State; and

(iv) Its proposed approach to intensive, sustained TA,<sup>5</sup> which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to addressing States' challenges reporting high-quality IDEA fiscal data to the Department and the public, which should, at a minimum, include providing on-site consultants to the SEA or LA to—

(1) Assess all 57 IDEA Part C programs to determine LA organizational structure and their capacity to submit valid and reliable IDEA Part C fiscal data;

(2) Assess all 60 entities that receive IDEA Part B grants to determine their capacity to submit valid and reliable IDEA Part B fiscal data;

(3) Identify and document model practices for data management and data system integration policies, procedures, processes, and activities within the State;

(4) Develop and adapt tools and provide technical solutions to meet State-specific data needs; and

(5) Develop a sustainability plan for the State to continue the data management and data system integration work in the future;

(C) Its proposed approach to measure the readiness of SEAs and LAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local levels;

(D) Its proposed plan to prioritize States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting SEAs and LAs to build or enhance training systems that include

professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA fiscal data as well as fiscal data management and data system integration; and

(G) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.<sup>6</sup> The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and

<sup>2</sup> For the purposes of this priority, "evidence-based" means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

<sup>3</sup> "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>4</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>5</sup> "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

<sup>6</sup> A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under “Adequacy of resources,” how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project’s intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and how funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (i) Its actual indirect costs as determined by the grantee’s negotiated indirect cost rate agreement with its cognizant Federal agency; and (ii) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

**Note:** The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department’s Indirect Cost Unit. If a grantee’s allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under

“Quality of the management plan,” how—

(1) The proposed management plan will ensure that the project’s intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project’s intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period;

**Note:** Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee’s project director or other authorized representative;

(ii) A two- and one-half-day project directors’ conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project’s intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later

than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing intensive, sustained TA.

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

**Note:** This document does not solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

*Executive Orders 12866, 13563, and 13771*

#### Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule

as not a “major rule,” as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

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

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

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

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

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

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

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

We are issuing the final priority and requirements only on a reasoned

determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

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

#### Discussion of Potential Costs and Benefits

The potential costs associated with this final priority would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program—including improved capacity to collect, report, analyze, and use high-quality fiscal data—would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

#### Paperwork Reduction Act of 1995

The final priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the final priority and requirements do not affect the currently approved data collection.

*Regulatory Flexibility Act Certification:* The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of

operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the final priority and requirements will be limited to paperwork burden related to preparing an application and that the benefits of this final priority and these final requirements will outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the final priority and requirements will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a

strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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**Mark Schultz,**

*Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2020-11512 Filed 6-15-20; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No. PTO-P-2019-0019]

RIN 0651-AD38

#### Patent Term Adjustment Reductions in View of the Federal Circuit Decision in *Supernus Pharm., Inc. v. Iancu*.

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) is revising the rules of practice pertaining to patent term adjustment in view of the

decision by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Supernus Pharm., Inc. v. Iancu* (*Supernus*). The Federal Circuit in *Supernus* held that a reduction of patent term adjustment must be equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The USPTO is revising the provisions pertaining to reduction of patent term adjustment for alignment with the Federal Circuit decision in *Supernus*.

#### **DATES:**

**Effective date:** This final rule is effective on July 16, 2020.

**Applicability date:** The changes in this final rule apply to original utility and plant patents issuing from applications filed on or after May 29, 2000, in which a notice of allowance was mailed on or after July 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, at telephone number 571-272-7757.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

**Purpose:** The USPTO is revising the rules of practice pertaining to the patent term adjustment provisions of 35 U.S.C. 154(b) in view of the decision by the Federal Circuit in *Supernus Pharm., Inc. v. Iancu*, 913 F.3d 1351 (Fed. Cir. 2019). The Federal Circuit in *Supernus* held that a reduction of patent term adjustment under 35 U.S.C. 154(b)(2)(C) must be equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The regulations pertaining to a reduction of patent term adjustment due to a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application are set forth in 37 CFR 1.704. Several provisions in 37 CFR 1.704 (i.e., 37 CFR 1.704(c)(2), (3), (6), (9), and (10)) specify a period of reduction corresponding to the consequences to the USPTO of the applicant's failure to engage in reasonable efforts to conclude prosecution, rather than "the period from the beginning to the end of the applicant's failure to engage in reasonable efforts to conclude prosecution," as provided for in *Supernus*. 913 F.3d at 1359. Therefore, the USPTO is revising these provisions of 37 CFR 1.704 for consistency with the Federal Circuit's decision in *Supernus*.

**Summary of Major Provisions:** This rulemaking pertains to the patent term

adjustment regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application and resulting reduction of any patent term adjustment (37 CFR 1.704). This rulemaking specifically revises the period of reduction of patent term adjustment in the provisions of 37 CFR 1.704 pertaining to deferral of issuance of a patent (37 CFR 1.704(c)(2)), abandonment of an application (37 CFR 1.704(c)(3)), submission of a preliminary amendment (37 CFR 1.704(c)(6)), submission of papers after a decision by the Patent Trial and Appeal Board or by a Federal court (37 CFR 1.704(c)(9)), and submission of papers after a notice of allowance under 35 U.S.C. 151 (37 CFR 1.704(c)(10)) to specify a period of reduction corresponding to "the period from the beginning to the end of the applicant's failure to engage in reasonable efforts to conclude prosecution" (rather than corresponding to the consequences to the USPTO of the applicant's failure to engage in reasonable efforts to conclude prosecution) for consistency with the Federal Circuit's decision in *Supernus*. 913 F.3d at 1359. This rulemaking also revises 37 CFR 1.704(c)(10) to exclude after-allowance amendments or other after-allowance papers that are "expressly requested by the Office" from the after-allowance amendments or other after-allowance papers that will result in a reduction of patent term adjustment under 37 CFR 1.704(c)(10).

**Costs and Benefits:** This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

##### **Background**

Section 532(a) of the Uruguay Round Agreements Act, or URAA (Pub. L. 103-465, 108 Stat. 4809 (1994)), amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). The URAA also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. Under the patent term extension provisions of 35 U.S.C. 154(b), as amended by the URAA, an applicant is entitled to patent term extension for delays due to interference (which has since been replaced by derivation), secrecy order, or successful appellate review. See 35 U.S.C. 154(b) (1995).

The American Inventors Protection Act of 1999, or AIPA (Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999)), further amended 35