

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the

docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T09–0214 as follows:

§ 165.T09–0214 Safety zone; Conneaut Festival Fireworks, Conneaut Harbor, Conneaut, OH.

(a) *Location.* The following area is a temporary safety zone: An 840 ft radius in part of the waters of Conneaut Harbor from position +41°58'2.22" N, –80°33'39.89" W.

(b) *Effective and enforcement period.* This zone will be effective and enforced from 9:30 p.m. until 10:45 p.m. on July 3, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: May 11, 2011.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2011–13758 Filed 6–2–11; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2011–OII–0001]

Investing in Innovation Fund

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

ACTION: Final revisions to priorities, requirements, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement amends the final priorities, requirements, and selection criteria under the Investing in Innovation Fund (i3) program as established in the notice of final priorities, requirements, definitions, and selection criteria (2010 i3 NFP) that was published in the **Federal Register** on March 12, 2010. The 2010 i3 NFP established specific priorities, requirements, definitions, and selection criteria to be used in evaluating grant applications for the i3 program. This document provides the Secretary with additional flexibility in using the priorities and selection criteria for i3 competitions in fiscal year (FY) 2011 and subsequent years. In addition, the document modifies the requirements on the “Limits on Grant Awards” and “Cost Sharing or Matching.” The revisions we establish in this document respond to specific lessons learned from the first competition of the i3 program in FY 2010 and allow the Department to simplify and improve the design of the i3 program to better achieve its purposes and goals.

DATES: *Effective Date:* These revisions to priorities, requirements, and selection criteria are effective July 5, 2011.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202. Telephone: (202) 453–7122; or by e-mail: i3@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA),

provides funding to (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of the i3 program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

Grants awarded under the i3 program (1) Allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to carry out that work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071).

Background: The Department published a proposed notice of revisions to priorities, requirements, and selection criteria (2011 Notice of Proposed i3 Revisions) in the **Federal Register** on January 10, 2011 (76 FR 1412–1415). That notice contained background information and our reasons for the proposed revisions.

There is one difference between the proposed revisions to priorities, requirements, and selection criteria and these final revisions to priorities, requirements, and selection criteria.

Public Comment: In response to our invitation in the 2011 Notice of Proposed i3 Revisions, 18 parties, including nonprofit organizations, professional associations, and private citizens, submitted comments.

We address general comments and then discuss other substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments received on, and any changes to, the revisions to the priorities, requirements, and selection criteria since publication of the 2011 Notice of Proposed i3 Revisions follows.

General Comments

Comment: While one commenter endorsed all of the proposed revisions, a few commenters expressed dissatisfaction with the overall structure and operation of the i3 program, stating that the proposed revisions were insufficient and would not improve the program.

Discussion: The Department appreciates the feedback on how the i3 program could be improved. However, the proposed revisions to the priorities, requirements, and selection criteria were not intended to substantially change the program but, instead, were intended to give the Secretary flexibility in a few discrete areas (selecting priorities and selection criteria and adjusting the private-sector matching percentages on a competition-by-competition basis) and to modify our requirement on grant award limits. We believe that by establishing the flexibility to select the most appropriate priorities, requirements, and selection criteria for each type of grant (Scale-up, Validation, or Development) under this program in any year in which the Department makes new i3 awards, the Secretary will be able to use the i3 program to meet the evolving needs of the American education system. A substantial revision of the structure and operation of the i3 program could be proposed by the Department in the future. If the Department decides to propose such a revision, the concerns raised and suggestions made in comments regarding the overall structure of the i3 program would be considered.

Changes: None.

Priorities

Comment: A few commenters stated that the Department should use all four absolute priorities in all future i3 competitions. One commenter stated that the integrity of the i3 program relies on whole-scale reform that can be achieved only by applying all four absolute priorities in all future competitions. One commenter noted that the priorities established under the 2010 i3 NFP are generally broad and would be relevant in most years of the foreseeable future, which would make it unnecessary to exclude a priority in a given year.

Discussion: The Department agrees that all four absolute priorities are important to whole-scale education reform. However, the Department also recognizes that one or more of the four absolute priorities may be relatively more important in a given year. With the flexibility to select the absolute priorities for a given i3 competition, the Secretary can consider and select priorities that best support the needs of the American education system in a given year.

Additionally, although applicants selected for funding in the FY 2010 competition officially applied under one absolute priority, they tended to address several of the absolute priorities in responding to the selection criteria. Therefore, even if all four absolute priorities established in the 2010 i3 NFP are not used in a given year's competition, it is still likely that we would receive applications addressing the four reform areas.

Changes: None.

Comment: One commenter stated that the applications funded in the FY 2010 i3 competition under *Absolute Priority 1: Innovations that Support Effective Teachers and Principals* focused predominantly on teachers instead of principals, resulting in minimal funding of efforts to improve school leadership. The commenter recommended that the Department separate Absolute Priority 1 into two separate priorities—one focused on teachers and one focused on principals.

Discussion: Absolute Priority 1 focuses on practices, strategies, or programs that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals), especially for high-need students. Under this priority, applicants already may determine whether their proposed project will focus on teachers or principals.

The 2011 Notice of Proposed i3 Revisions did not propose any changes to the text of the absolute priorities established in the 2010 i3 NFP. For this reason, we do not believe it is appropriate to make changes to the text of the priorities through this notice. However, when designing future i3 competitions, the Department may consider revising Absolute Priority 1 or developing a priority focused exclusively on school leadership. If in a future competition the Department decides to propose such a new priority or revise an existing priority, rather than select from the established priorities, the Department would comply with any applicable rulemaking requirements.

Changes: None.

Comment: A number of commenters recommended additional priorities for the Department to use in future i3 competitions, including priorities on promoting diversity, expanding learning time, supporting school start-up models, and using technology to improve instruction.

Discussion: While the Department recognizes the importance of the issues and topics mentioned by the commenters, this notice is not intended to specify the absolute or competitive preference priorities that will be used in a given year's i3 competition. Rather, the purpose of this notice is to provide the Secretary with the flexibility to use any of the absolute or competitive preference priorities announced in the 2010 i3 NFP in any future i3 competition. When designing future i3 competitions, the Department may consider using other priorities, including the priorities recommended by the commenters as well as the Secretary's Supplemental Priorities, published in the **Federal Register** on December 15, 2011 (75 FR 78486–78511). If in a future competition the Department decides to propose a new priority or revise an established i3 priority, rather than select from existing priorities, the Department would comply with any applicable rulemaking requirements.

Changes: None.

Comment: A few commenters expressed support for giving the Secretary the flexibility to use one or more of the established competitive preference priorities in a given year's competition. One commenter requested that the Department use this flexibility to remove *Competitive Preference Priority 8: Innovations that Serve Schools in Rural LEAs* because, according to the commenter, it disadvantages all other applicants.

Discussion: We appreciate the commenters' support for providing the Secretary with the flexibility to use one or more of the established priorities in a given year's competition.

With regard to the commenter's recommendation that the Department use the flexibility afforded under this notice to remove *Competitive Preference Priority 8: Innovations that Serve Schools in Rural LEAs*, we note that the flexibility provided enables the Secretary to select priorities on a competition-by-competition basis—that is, through the notice inviting applications, not this notice. In any given year, Competitive Preference Priority 8 may be appropriate because it acknowledges that solutions to educational challenges may be different in rural areas than in urban and

suburban communities and that there is a need for solutions to unique rural challenges. The Department aims to ensure that projects serving high-needs students in diverse contexts can compete for i3 funding.

Changes: None.

Comment: A few commenters opposed giving the Secretary the flexibility to use one or more of the established competitive preference priorities in a given year's competition. One commenter recommended that the Department use all of the competitive preference priorities established in the 2010 i3 NFP in all future competitions. Another commenter opposed the proposed revision because it would allow any future Secretary to determine that early learning is not a priority in a given year.

Discussion: In the FY 2010 i3 competition, the Department identified four competitive preference priorities aligned with the Department's reform goals. Although we recognize the importance of these priorities, we appreciate that the needs of the American education system may change. We believe it is important that the Secretary have the flexibility to consider multiple factors in determining whether to award competitive preference points in a given competition. This notice allows for that consideration by providing the Secretary with flexibility to use one or more of the competitive preference priorities established in the 2010 i3 NFP.

Changes: None.

Comment: Two commenters expressed support for providing the Secretary with the flexibility to use one or more of the established priorities in a given year's competition, but recommended that the Department provide the public with the opportunity to comment on the selected priorities for each year's competition.

Discussion: Under the General Education Provisions Acts (GEPA) and the Administrative Procedures Act (APA), the Department, in most cases, is required to seek public comment on proposed rules, including proposed priorities, requirements, definitions, and selection criteria for a grant competition, and then publish a final rule along with responses to the comments received on the proposed rule. The Department already sought, received, and responded to public comment on the absolute and competitive preference priorities established in the 2010 i3 NFP. As we stated in that notice, in any year in which we choose to use these priorities, we will announce them in a notice

inviting applications published in the **Federal Register**. Following this process (rather than seeking additional public comment on priorities that have already gone through rulemaking) allows the Department to award grants on a more efficient and timely basis. However, if in a future competition the Department decides to propose a new priority or revise an established i3 priority, rather than select from existing priorities, the Department would comply with any applicable rulemaking requirements.

Changes: None.

Requirement on Limits on Grant Awards

Comment: Many commenters supported the proposed change that clarified that the limit of two grant awards applies to a single year's competition. However, two commenters recommended that the Department apply the requirement differently depending on the type of grant award (Scale-up, Validation, or Development). One commenter stated that the limit of two grant awards in a single year's competition should apply only to Validation and Development grants and that a Scale-up grantee should not be permitted to reapply or receive funding for the same or a similar project in the year immediately following the year it was awarded a grant. In addition, one commenter recommended that no grantee be allowed to receive more than two Scale-up or Validation grants in a single year's competition.

Discussion: In the 2010 i3 NFP, the Department established the requirement on the "Limits on Grant Awards" to ensure that i3 funds are used to support the widest possible array of innovative projects. Generally, we agree with commenters that the limitations on grant awards for Scale-up and Validation grantees should be more stringent than the limitation on grant awards for Development grants because of the size of the awards and the complexity of these grants. As a result, we have modified the proposed requirement on the "Limit on Grant Awards" to further limit the number of Scale-up and Validation grants a grantee may receive to only one grant in two consecutive years. Thus, if a grantee receives a Scale-up or Validation grant in one year, that grantee would not be eligible to receive a Scale-up or Validation grant the next year.

We have also modified the requirement on "Limits on Grant Awards" to clarify that the limit applies to new grant awards made in a year in which the Department funds down the slate from a prior year's competition, but not to continuation awards. The

purpose of this requirement is to limit the number of new awards received by a single grantee, whether through a competition or funding down the slate from a prior year's competition; the purpose is not to limit possible continuation awards.

Changes: We have revised the proposed "Limits on Grant Awards" requirement to clarify that the limitation applies to new awards. Specifically, the revised requirement states that (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than \$55 million in new grant awards under the i3 program in a single year.

Comment: One commenter opposed the proposed change to limit an applicant to two grant awards in a single year's competition. The commenter stated that limiting grant awards in only a single year's competition would allow successful applicants to pull further ahead of unsuccessful applicants and, thus, would increase the resource gap among applicants.

Discussion: As discussed elsewhere in this notice, in addition to clarifying that no grantee may receive more than two grant awards in a single year, the Department further modified the requirement on the "Limits on Grant Awards" so that no Scale-up or Validation grantee can receive more than one Scale-up or Validation grant in any two-year period. The Department appreciates the commenter's concern and believes that this additional change appropriately balances the program's purpose of supporting the implementation of and investment in innovative practices that are demonstrated to improve student academic achievement and attainment with the desire to support a wide array of innovative projects.

With regard to Development grants, we note that most of the i3 applications submitted in the FY 2010 i3 competition were applications for Development grants. Given the high volume of applications, and our expectation that the competition for Development grants will remain highly competitive, we are not establishing this same limitation on Development grantees.

Changes: As noted elsewhere in this notice, we have revised the "Limits on Grant Awards" requirement to state that no grantee may receive more than two new grant awards of any type under the i3 program in a single year; in any two-year period, no grantee may receive more than one new Scale-up or

Validation grant; and no grantee may receive more than \$55 million in new grant awards under the i3 program in a single year.

Requirement on Cost-Sharing or Matching

Comment: Many commenters expressed support for the proposed revisions to the "Cost Sharing and Matching" requirement, which provides the Secretary with the flexibility to determine the required amount of private-sector matching funds or in-kind contributions that an eligible applicant must obtain for an i3 grant in a given year. One commenter stated that replacing a "one-size fits all" policy with this flexibility to determine the private-sector match on a more customized basis would broaden participation in future competitions.

In addition, two commenters provided recommendations on how the Department might use the proposed flexibility to require different matching levels for the different types of i3 grant awards (Scale-up, Validation, or Development). One commenter encouraged the Department to consider limiting the percentage of private-sector matches required for Scale-up grantees because they would have already received a significant level of private funding. In contrast, another commenter recommended that the Department maintain a significant matching requirement for Scale-up and Validation grants, but that a lower matching requirement be set for Development grants.

Discussion: The "Cost Sharing or Matching" requirement contained in the 2011 Notice of Proposed i3 Revisions states that to be eligible for an award, an eligible applicant must obtain private-sector matching funds or in-kind contributions equal to an amount that the Secretary will specify in the notice inviting applications for a particular i3 competition. We appreciate the commenters' support for this revision to the "Cost Sharing or Matching" requirement.

With respect to the comments requesting that we further modify this requirement to provide for different matching levels for the different types of grants, we do not believe that establishing fixed matching levels in this notice is appropriate. Furthermore, such a modification is not necessary because the proposed revision allows the Department to establish different matching levels for different types of grants when designing future i3 competitions.

Changes: None.

Comment: Two commenters expressed general support for the proposed changes to the "Cost Sharing or Matching" requirement in the 2011 Proposed i3 Revisions, but recommended that the Department also establish a ceiling on the private-sector match that could be required under any i3 competition.

Discussion: As noted in the 2010 i3 NFP, the Department considers the private-sector match to be a strong indicator of the potential for the scalability and sustainability of a proposed project over time. We decline to set a ceiling on the private-sector match because doing so would limit the Department's flexibility to leverage public- and private-sector investments in education. The flexibility offered by the revision will allow the Department to consider multiple factors when determining the required private-sector match, including the economic climate or the amount of time available for the highest-rated applicants to secure their private-sector matches.

Changes: None.

Comment: Two commenters suggested that the Department allow local educational agency (LEA) funds or other public funds to be used to meet the matching requirement. One commenter stated that this change would encourage LEAs to demonstrate their commitment to i3 projects, which would enhance the sustainability of those projects. Another commenter stated that it may be difficult for potential applicants to secure sizeable private-sector contributions and that undue reliance on the private sector could result in LEAs becoming overly beholden to private funders.

Discussion: Section 14007(b)(3) of the ARRA specifically requires a private-sector match for this program. Thus, an eligible applicant may not use funding from other Federal programs or other public sources (including an LEA's own funds) to satisfy the statutory "Cost Sharing or Matching" requirement. However, nothing prohibits an eligible applicant from securing public funds in addition to the required private-sector matching funds or in-kind contributions. In addition, eligible applicants can establish the terms and conditions of their private-sector partnerships and diversify the sources from which they seek support for i3 projects in order to avoid becoming unduly dependent on or beholden to any particular source or type of funding.

The Department understands the commenter's concern about the challenges of securing significant private-sector investments. This concern, however, is addressed by the

flexibility provided in the “Cost Sharing or Matching” requirement, which allows the Secretary to determine the required amount of private-sector matching funds or in-kind contributions that eligible applicants must obtain under an i3 competition in a given year. We expect this determination to be based on an assessment of the capacity and resources available in that particular year. Moreover, an eligible applicant continues to have the option, under this requirement, to request in its application that the Secretary decrease the private-sector match amount it must provide.

Changes: None.

Comment: One commenter opposed the proposed revisions to the “Cost Sharing or Matching” requirement. Specifically, the commenter opposed providing the Secretary with the flexibility to determine the required amount of private-sector matching funds or in-kind contributions that an eligible applicant must obtain for an i3 competition in a given year. The commenter stated that requiring a private-sector partnership would be a violation of State and local laws.

Discussion: As noted elsewhere in this notice, an eligible applicant must demonstrate that it has established one or more partnerships with the private sector and that the private sector will provide matching funds. The “Cost Sharing or Matching” requirement is based on the cost-sharing and matching requirement in the authorizing legislation for the i3 program. Moreover, the commenter did not cite, and the Department is not aware of, any State or local laws that prohibit State and local governmental entities or private organizations from securing a private sector matching requirement in a Federal grant program.

Changes: None.

Selection Criteria

Comment: A few commenters supported permitting the Department, in establishing selection criteria used in grant competitions conducted under the i3 program, to choose selection criteria and factors—(i) From those established in the 2010 i3 NFP for the i3 program, (ii) from the menu of general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210, (iii) based on statutory provisions in accordance with 34 CFR 75.209, or (iv) from any combination of (i) through (iii) for competitions in FY 2011 and in subsequent years. However, one commenter encouraged the Department to maintain the selection criteria that

focus on strength of research and evaluation.

Some commenters encouraged the Department to publish the specific selection criteria for a given competition as far in advance as possible. Two commenters recommended that the Department provide the public with an opportunity to comment on the selection criteria for each year's competition.

Discussion: We decline to establish specific mandatory selection criteria and factors within each criterion that must be used in all i3 competitions. As we discussed in the 2011 Notice of Proposed i3 Revisions, the purpose of the revisions concerning the use of the i3 selection criteria is to provide the Secretary with the flexibility to choose the selection criteria, and the factors included under each criterion, in order to better align the selection criteria used for the different types of grants (Scale-up, Validation, and Development) with the critical aims of that specific grant type and to better ensure that i3 projects address the most critical needs of education in a given year. With regard to the comment requesting that we maintain the selection criterion on strength of research evidence, we note that whether or not the Department uses this selection criterion, the evidence standards requirement must be met in order for an application to be eligible to receive an award. Specifically, an application for a Scale-up grant must be supported by *strong evidence* (as defined in the 2010 i3 NFP), an application for a Validation grant must be supported by *moderate evidence* (as defined in the 2010 i3 NFP), and an application for a Development grant must be supported by a reasonable hypothesis.

Regarding the recommendation that the specific selection criteria for each competition be submitted for public comment, the Department already sought, received, and responded to public comments on the selection criteria established in the 2010 i3 NFP, as well as the general selection criteria in EDGAR. However, in any year in which we choose to use these selection criteria, we will announce them in a notice inviting applications published in the **Federal Register**. Following this process (rather than seeking additional public comment on priorities that have already gone through rulemaking) allows the Department to award grants on a more efficient and timely basis. However, if in a future competition the Department decides to propose new selection criteria or revise the established selection criteria rather than select from among them, the Department

would comply with all applicable rulemaking requirements.

Changes: None.

Comment: One commenter expressed concern that the proposed revision to the selection criteria would not simplify or improve the design of the program. The commenter further stated that the optional menu of EDGAR criteria suggests that the Department is unsure of the direction of the i3 program and suggested that applicants would prefer more predictability and responsiveness.

Discussion: Section 75.200 of EDGAR establishes that, to evaluate the applications for new grants, the Secretary may use: (i) The selection criteria established in § 75.209, (ii) the selection criteria in program-specific regulations, (iii) the selection criteria established under § 75.210, and (iv) any combination of criteria from (i) through (iii) of that section. We disagree that the proposed revision would not simplify or improve the design of the i3 program. We note that it is not unusual for Department programs to use the EDGAR selection criteria found in § 75.210 or developed under § 75.209 or to use different selection criteria in a given year. We believe that having greater flexibility to choose the selection criteria and the factors included in each criterion will allow the Department to simplify and better align the competition design and priorities for the three types of grants for a particular year's competition thereby resulting in projects that address the most pressing needs of the American educational system at that time.

Changes: None.

Comments Not Directly Related to Proposed Changes

We received a number of comments on issues that were unrelated to the specific proposals in the 2011 Notice of Proposed i3 Revisions. These comments focused on the overall design of the i3 program. Although the Department previously addressed these issues in the 2009 i3 notice of proposed priorities, requirements, definitions, and selection criteria or in the 2010 i3 NFP, we want to be responsive and transparent in establishing rules under the i3 program and, therefore, are addressing these comments in this notice.

Comment: Three commenters provided recommendations on who may apply for and receive an i3 grant award. One commenter encouraged the Department to continue to allow nonprofit organizations in partnership with LEAs or schools to be eligible applicants. In contrast, another commenter recommended that the Department allow only LEAs to be

eligible applicants for Development grants. Another commenter recommended that the Department allow for-profit organizations to be eligible applicants or official partners that may receive subgrants.

Discussion: Section 14007(a)(1) of the ARRA specifies the types of entities that are eligible to apply for funding under this program. Entities eligible for i3 grants are:

- (a) An LEA
- (b) A partnership between a nonprofit organization and—
 - (1) One or more LEAs; or
 - (2) A consortium of schools.

The Department has no authority to revise or expand these statutorily prescribed eligibility requirements.

Changes: None.

Comment: One commenter recommended that the Department redefine the role of the *official partner*, a term that is defined in the 2010 i3 NFP, so that schools without a track record of success can participate in future i3 projects.

Discussion: A low-performing LEA or school may participate in projects under this program as either an *official partner* (as defined in the 2010 i3 NFP) or *other partner* (as defined in the 2010 i3 NFP). While an LEA that applies for funds under section 14007(a)(1)(A) of the ARRA must meet the requirements in section 14007(b)(1) through (b)(3) of the ARRA, as amended by section 307 of Division D of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), nothing in the statute or the priorities, requirements, definitions, or selection criteria for this program prohibits such an eligible LEA from proposing a project that involves the LEA partnering with other partners, including other LEAs. Such other partners may be low-performing LEAs or schools. In addition, a partnership between a non-profit organization and one or more LEAs or a consortium of schools could include one or more LEAs, either as an *official partner* (as defined in the 2010 i3 NFP) or as an *other partner* (as defined in the 2010 i3 NFP) that does not meet the eligibility requirements. This is because such a partnership is deemed to have met the eligibility requirements in section 14007(b)(1) through (b)(3) of the ARRA if the nonprofit organization in the partnership satisfies the requirements in section 14007(c) of the ARRA.

Changes: None.

Comment: One commenter stated that the term “high-need student” should be deleted from the 2010 i3 NFP because the term is defined too broadly and does not focus solely on reducing the achievement gap among the subgroups

of students specified in the Elementary and Secondary Education Act of 1965, as amended (ESEA) (e.g., economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and limited English proficient students).

Discussion: The 2010 i3 NFP established a requirement that all eligible applicants implement practices, strategies, or programs for high-need students. The 2010 i3 NFP also defined a high-need student as a student at risk of educational failure or otherwise in need of special assistance and support. This requirement and definition of *high-need student* were not within the scope of the 2011 Notice of Proposed i3 Revisions. However, as noted in the 2010 i3 NFP, we believe that this program’s focus on funding projects that serve high-need students is consistent with the goal of this program, which is to improve student academic achievement and attainment. We believe that it is important to improve the academic achievement and attainment of any student at risk of educational failure. In addition, we note that the definition of *high-need student* included in the 2010 i3 NFP is appropriate because it also includes students who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, and who have been incarcerated. These students typically have very high needs, but are not included among the subgroups of students specified in the ESEA. Consequently, we do not believe the definition of *high-need student* in the 2010 i3 NFP is too broad.

Changes: None.

Comment: One commenter recommended that the Department set aside more funding for early-stage innovation or Development grants.

Discussion: As noted in the 2010 i3 NFP, the Department has found that the structure of this program and the use of three categories of grants appropriately balance support for the development of promising yet relatively untested ideas with the growth and scaling of practices that have made demonstrable improvements in student achievement and attainment outcomes. The Department will consider multiple factors, including the quality of the applications received and the amount of funds available for new grant awards in a given year, when determining the number of awards made under each type of grant.

Changes: None.

Comment: Two commenters opposed any additional funding for the Department’s innovative discretionary grant programs. These commenters argued that formula grants are a more reliable stream of funding for LEAs and are particularly beneficial for small and rural LEAs that often lack the resources to compete for discretionary funds. Both commenters expressed concern with the Department’s lack of emphasis on the needs of rural schools and one commenter recommended that a specific set-aside be available to rural States or LEAs that demonstrate innovative initiatives that are expressly applicable in rural settings.

Discussion: The Department understands and shares the commenters’ concerns about the unique challenges of schools in rural LEAs. In the FY 2010 i3 competition, we addressed those challenges by providing up to two competitive preference priority points for innovations that are designed to focus on the unique challenges of high-needs students in schools in rural LEAs. The other competitive preference priorities were awarded only one point. As with all of the Department’s competitions, we have learned from experience, and we understand that more needs to be done under the i3 program to adequately address the needs of rural States and LEAs. In future i3 competitions, we will increase our outreach efforts to rural applicants as well as our efforts to recruit peer reviewers who are from rural areas or who have other experience working in rural schools and communities. We also hope that the flexibility this notice establishes in terms of choosing selection criteria and factors will allow the Department to simplify the application, thus minimizing the burden on schools and LEAs with limited resources.

Changes: None.

Comment: One commenter expressed concern that the selection criterion on strategy and capacity to scale is an impediment to applicants from rural America because the criterion requires applicants to serve 100,000, 250,000, and 500,000 students with their proposed i3 projects. The commenter encouraged the Department to reward scale-up strategies that are appropriate to the project instead of rewarding applicants that propose to serve an arbitrary number of students.

Discussion: The i3 program does not include requirements for scaling proposed projects to a specific number of students. Under selection criterion E(4) of the 2010 i3 NFP, the Secretary considers cost estimates both— (a) for

the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants). An eligible applicant is free to propose the number of students it will serve under its project, consistent with its project goals, capacity, and resources, and is expected to serve that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the general cost-effectiveness of proposed projects, whether implemented by the eligible applicant or by any other entity. Grantees are not required to reach these numbers during the grant period or to provide a plan to do so.

Changes: None.

Comment: One commenter recommended that the Department provide more emphasis on “social return on investment” than unit cost and scale numbers.

Discussion: The Department agrees that “social return on investment” would provide valuable information about a project’s cost-effectiveness. However, the Department recognizes the challenges of calculating “social return on investment” and believes that requiring such a measure would increase the burden on applicants.

Changes: None.

Comment: One commenter encouraged the Department to allow applicants to modify existing practices, strategies, or programs as part of their plans to scale and sustain their proposed projects.

Discussion: As noted in the 2010 i3 NFP, evidence of the effectiveness of a proposed practice, strategy, or program will be stronger in terms of internal validity if the prior research applies to the same innovation the eligible applicant is proposing, rather than to a similar innovation or to a component of the proposed strategy or program. The 2010 i3 NFP does not prohibit applicants from proposing in their applications to modify an existing practice, strategy, or program as part of their plans to scale or sustain the project. However, modification and adaptation of existing, well-tested practices for new contexts may mean that strong evidence of effectiveness in the original context is only moderate evidence of effectiveness in the new context. To the extent possible, if an eligible applicant is proposing to modify

or adapt an existing, well-tested practice, then it should provide a rationale for the proposed changes in its application and justify why those changes are desirable or necessary in order to improve the effectiveness of the project or to scale or sustain the project, and why the eligible applicant believes those changes would not invalidate the prior evidence of effectiveness.

Changes: None.

Comment: Some commenters submitted recommendations regarding the strong and moderate evidence requirements for the Scale-up and Validation grants. One commenter encouraged the Department to use the changes proposed in the 2011 Notice of Proposed i3 Revisions that provide for additional flexibility in using selection criteria in order to apply selection criteria that accurately reflect the state of research in the field of education.

Two commenters stated that the current evidence requirements established in the 2010 i3 NFP focus too heavily on experimental and quasi-experimental studies that are typically possible only for more mature organizations and recommended that the Department give more weight to publicly reported data. One commenter expressed concern that the current evidence requirements are overly restrictive and discourage LEAs from applying on their own because it is rare for an LEA to produce research evidence. The commenter recommended that the Department remove the moderate evidence requirement for Validation grants and instead require proposed projects to be supported by evidence of effectiveness (e.g., school-based outcome data, student progress across performance levels, attainment of adequate yearly progress (AYP), gains exceeding comparable schools, subgroup progress, closing achievement gaps, graduation and dropout data, course completion, engagement indicators, teacher evaluation improvements, program evaluations). In contrast, another commenter encouraged the Department to retain the evidence definitions and requirements included in the 2010 i3 NFP and recommended that applications proposing evaluation plans that would get them to the next level of evidence receive additional points.

Discussion: The 2010 i3 NFP established standards of evidence for each type of grant under this program. Specifically, to be eligible for an award, an application for a Scale-up grant must be supported by *strong evidence* (as defined in the 2010 i3 NFP), an application for a Validation grant must be supported by *moderate evidence* (as

defined in the 2010 i3 NFP), and an application for a Development grant must be supported by a reasonable hypothesis. The Department believes that, given the magnitude of public investment and the scale on which Scale-up and Validation grants will be implemented, the requirements for strong and moderate evidence are appropriate. Nothing would preclude an applicant from using publicly available data to meet the moderate and strong evidence requirements. The evidence standards requirement addresses the design of the study as opposed to the source of the data used by the study.

Regarding the comment that the Department provide additional points to applications proposing evaluation plans that would meet the next level of evidence, all applications in the FY 2010 i3 competition were judged in part on the quality of the eligible applicant’s plan to evaluate its proposed project (see Selection Criterion D (Quality of the Project Evaluation) of the 2010 i3 NFP). The Department believes that this selection criterion adequately rewards applications with well-designed evaluation plans.

Changes: None.

Comment: One commenter recommended that the Department add “intervention” and “service” to the list of “proposed practice, strategy, or program,” in every place where the list occurs in the i3 priorities and selection criteria. The commenter expressed concern that without these revisions applicants might assume that projects focused on interventions or services could not be funded under the i3 program.

Discussion: The Department understands that, in the context of the i3 program, a “practice, strategy, or program” includes an “intervention” or “service.”

Changes: None.

Comment: Two commenters requested clarification regarding the Department’s policies on open educational resources and intellectual property.

Discussion: The Department’s regulations on project materials and copyrightable intellectual property produced with grant funds apply to grants awarded under this program. Specifically, under 34 CFR 75.621, grantees may copyright project materials produced with Department grant funds. However, under 34 CFR 74.36 and 80.34, the Department retains a non-exclusive and irrevocable license to reproduce, publish, or otherwise use those project materials for government purposes.

Changes: None.

Comment: A few commenters requested that the Department provide additional information on the i3 application process, including the requirements for securing an independent evaluator and the assumptions under which the Department may standardize application scores. One commenter thanked the Department for its efforts to provide a transparent application process and noted areas where the process might be improved, including by streamlining the application and incorporating responses to frequently asked questions into future notices inviting applications for the i3 program. One commenter recommended the Department provide additional training as well as audits to ensure consistent scoring among reviewers.

Discussion: The Department maintains an i3 Web site that addresses many of the issues highlighted by the comments. The Department's i3 Web site is available at <http://www2.ed.gov/programs/innovation/index.html>.

Changes: None.

Final Priorities

The Secretary may use any of the priorities established in the notice of final priorities, requirements, definitions, and selection criteria (2010 i3 NFP) that was published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) when establishing the priorities for a particular i3 competition. We may apply one or more of these priorities in any year in which this program is in effect.

Final Requirements

The Secretary modifies the following requirements for the i3 program:

Limits on Grant Awards: (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than \$55 million in new grant awards under the i3 program in a single year.

Cost Sharing or Matching: To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to an amount that the Secretary will specify in the notice inviting

applications for the specific i3 competition. Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request.

Final Selection Criteria

The Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition. This includes the authority to reduce the number of selection criteria. In addition, within each criterion from these sources, the Secretary may further define each criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion, from any of those sources, to another criterion, in any of those sources. The Secretary may apply one or more of these criteria in any year in which this program is in effect. The Secretary may also select one or more of these selection criteria to review pre-applications, if the Secretary decides to invite pre-applications in accordance with 34 CFR 75.103. In the notice inviting applications, the application package, or both, we would announce the maximum possible points assigned to each criterion.

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

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's discretionary grant programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the proposed priorities and definitions justify the costs.

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

We summarized the costs and benefits of this regulatory action in the 2011 Notice of Proposed i3 Revisions, published in the **Federal Register** on January 10, 2011 (76 FR1412–1415).

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, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: <http://www.gpo.gov/fdsys>. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.411A (Scale-up grants), 84.411B (Validation grants), and 84.411C (Development grants).

Dated: May 26, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–13589 Filed 6–2–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9315–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Coker's Sanitation Service Landfills Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Deletion of the Coker's Sanitation Service Landfills Superfund Site (Site) located in Cheswold, Kent County, Delaware, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.

- **E-mail:** Darius Ostrauskas, Remedial Project Manager, U.S. EPA, ostrauskas.darius@epa.gov
- **Fax:** (215) 814–3002, Attn: Darius Ostrauskas
- **Mail:** Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029
- **Hand delivery:** Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Phone 215–814–3360, Business Hours: Monday through Friday—9 a.m. to 4 p.m. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the

hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday 8 a.m. to 5 p.m. The Dover Public Library, Reference Department, 45 South State Street, Dover, DE 19901, (302) 736–7030, Monday through Thursday, 9 a.m. to 9 p.m., Friday and Saturday, 9 a.m. to 5 p.m., and Sunday, 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3360.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Coker's Sanitation Service Landfills Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect.