

§ 165.T01–1127 Safety Zone; 2016 Wings Over Vermont Air Show, Lake Champlain; Burlington, VT.

(a) *Location.* The following area is a Safety Zone: All navigable waters, from surface to bottom, of Lake Champlain, Burlington, VT, within an aeronautical box extending to and including the breakwater bounded by the following coordinates: 44°29'24" N./073°14'44" W.; 44°29'24" N./073°14'03" W.; 44°28'56" N./073°14'03" W.; 44°28'50" N./073°13'48" W.; 44°28'12" N./073°13'33" W.; 44°27'47" N./073°14'03" W.; 44°27'25" N./073°14'03" W.; 44°27'25" N./073°14'44" W.

(b) *Enforcement period.* This safety zone described in paragraph (a) above will be enforced from 9 a.m. until 6 p.m. on August 12–14, 2016.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) 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 or his designated representatives.

(3) Persons and vessels may request permission to enter the safety zone by contacting the COTP or the COTP's designated representative on VHF–16 or via phone at 207–767–0303.

(4) The “designated representative” 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 may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. Additionally, the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

Dated: July 13, 2016.

M.A. Baroody,

Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.

[FR Doc. 2016–18535 Filed 8–5–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2016–OESE–0004; CFDA Number: 84.368A.]

Final Priorities—Enhanced Assessment Instruments

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities under the Enhanced Assessment Instruments Grant program, also called the Enhanced Assessment Grants (EAG) program. The Assistant Secretary may use one or more of these priorities for competitions using funds from fiscal year (FY) 2016 and later years. These priorities are designed to support projects to improve States' assessment systems.

DATES: These priorities are effective September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Donald Peasley, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E124, Washington, DC 20202. Telephone: (202) 453–7982 or by email: donald.peasley@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 EAG program is to enhance the quality of assessment instruments and assessment systems used by States for measuring the academic achievement of elementary and secondary school students.

Program Authority: Section 6112 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), and section 1203(b)(1) of the ESEA, as amended by the Every Student Succeeds Act (Pub. L. 114–95) (ESSA).

We published a notice of proposed priorities for this program in the **Federal Register** on April 18, 2016 (81 FR 22550) (NPP). That notice contained background information and our reasons for proposing the particular priorities.

Except for minor revisions, there are no differences between the proposed priorities and these final priorities.

These priorities are for use in addition to those published in the 2011 notice of final priorities, requirements, definitions, and selection criteria (76 FR

21985) (2011 NFP) and the 2013 notice of final priorities, requirement, definitions, and selection criteria for this program (78 FR 31343) (2013 NFP).
Public Comment: In response to our invitation in the NPP, eight parties submitted comments on the proposed priorities.

We group major issues according to subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

General

Comment: Five commenters expressed support for the proposed priorities and noted the potential for grants awarded under the EAG program to improve State assessment systems. Three commenters expressed views on how the Department should distribute awards across priorities under the EAG program. One commenter strongly recommended that Priority 2 be designated as an absolute priority in the EAG competition.

Discussion: We appreciate the support for these priorities and agree that projects funded under them will support States in continuously improving their assessment systems to measure college- and career-readiness. This notice establishes priorities that can be used in any future competition, but does not establish how those priorities are designated in any particular competition. For the competition funded with FY 2016 funds, as announced in the notice inviting applications published elsewhere in this issue of the **Federal Register**, Priorities 1, 2, and 3 will be competitive preference priorities. The grant application and competition process will determine the number and types of projects funded under each priority.

Changes: None.

Comment: One commenter encouraged the Department to consider requiring content developed under proposed projects to be made freely available to others. This commenter noted that, even if content is made publicly available, it is not always accessible due to the use of proprietary software or applications.

Discussion: We recognize the benefit of sharing work developed under the EAG program to serve as models and resources for other States, which is why Priorities 1 and 2 require an applicant responding to them to provide a dissemination plan. Sharing resources and lessons learned from grantees is a key goal of the grant program.

Additionally, the notice of final priorities, requirements, definitions, and selection criteria for this program published in the **Federal Register** on April 19, 2011 (76 FR 21985) (2011 NFP) includes a requirement that, unless otherwise protected by law or agreement as proprietary information, an eligible applicant awarded a grant under this program must make any assessment content (*i.e.*, assessments and assessment items) and other assessment-related instruments developed with funds from this competition freely available to States, technology platform providers, and others that request it for the purposes of administering assessments, provided that those parties receiving assessment content comply with consortium or State requirements for test or test item security.

Further, as with any grant, and consistent with 2 CFR 200.315, the Department reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, for Federal government purposes, the copyright in any work developed under a grant (or contract under a grant) in this program, and any rights of copyright to which a grantee or contractor purchases ownership with grant support.

As the Department has these tools available to require grantees to make publicly available work developed under the EAG program, we do not believe any related change to the priorities is necessary.

Changes: None.

Comment: One commenter encouraged the Department to explicitly advocate for innovative, efficient, accessible, and fair testing for English learners in each priority, including by: Including English language proficiency assessments in Priority 1; requiring grantees implementing projects under Priority 1 to include English learners and their families as a representative sample in any research and development activities and gather evidence that innovative item types are accessible to English learners; requiring projects under Priority 2 to include representation from English learners, parents of English learners, and teachers of English learners. The commenter expressed support for the requirement in Priority 3 that SEAs ensure tests are fair for all students and particularly commended the reference to English learners. The commenter also recommended requiring States proposing projects under Priority 3 to ensure that tests are fully transparent to English learners and their parents and to solicit feedback on the usefulness of

assessments from English learners and their parents.

Discussion: The Department recognizes the unique needs of English learners and the importance of ensuring that they are included in State assessment systems and assessed fairly. Having an assessment system that validly, reliably, and fairly measures the academic achievement of all elementary and secondary school students is vital to providing necessary information to inform instructional decisions and program evaluation, and to improve outcomes for all students. These priorities are intended to benefit all students, including English learners and students with disabilities, by enhancing the quality of assessment instruments and systems used by States for measuring the academic achievement of all elementary and secondary school students.

For example, paragraph (a)(2) of Priority 1 requires applicants to ensure the validity, reliability, and fairness of the assessments and the comparability of student data; to meet this requirement, applicants will need to address how they will evaluate the fairness of their innovative item types for all students, including English learners. The Department believes that strong assessment audits, as required under Priority 3, will ensure that tests are fully transparent to all students and their parents and will include mechanisms for soliciting feedback from all students and their parents, including English learners.

Additionally, in the past, the Department has funded several projects that targeted improving the assessment of English language proficiency (see www2.ed.gov/programs/eag/awards.html for a complete listing of past awards made under this authority). Given that these grants are still active and the first English language proficiency assessments developed under these grants were administered for the first time in the 2015–2016 school year, the Department does not think it necessary to include a specific reference to English language proficiency assessments. Items for summative assessments in reading/ language arts, mathematics, and science are the focus of this competition.

However, there is nothing that would preclude the submission of a proposal under these priorities that specifically addresses the assessment of English learners.

Changes: None.

Comment: None.

Discussion: The Department recognizes the benefit of sharing work developed under the EAG program with

other States, which is why Priorities 1 and 2 require an applicant responding to them to provide a dissemination plan. However, the NPP did not include information regarding the content of such a dissemination plan. The Department believes that it is important to clarify for applicants the expectations of such a dissemination plan.

Changes: The Department added language to Priorities 1 and 2 to specify that applicants must propose dissemination plans to share lessons learned and best practices.

Priority 1—Developing Innovative Assessment Item Types and Design Approaches

Comment: Two commenters proposed including additional innovative assessment item types in this priority. One commenter suggested that obtaining information on students' English language proficiency through a content assessment could be listed as an example of an innovation. Another commenter recommended that the Department include assessments that measure student behaviors and goals (*e.g.*, persistence or dependability) in this priority, in addition to mastery of academic content.

Discussion: While the Department included examples of new innovative item types, such as performance tasks, simulations, and interactive, multi-step, technology-rich items, applicants may propose projects to develop other kinds of innovative item types as long as they meet the requirements of the priority. As such, we do not include a comprehensive list of innovative item types or design approaches a State could choose to develop. The statutory authority for this program specifically references the assessment of academic achievement, and the assessment systems developed by States to meet the requirements under title I, part A of the ESEA must measure the academic achievement of students in, at a minimum, reading/language arts, mathematics, and science. As a result, the Department believes it would not be appropriate to exclusively focus on innovative assessments that focused on non-academic skills.

Changes: None.

Comment: One commenter suggested adding a requirement to this priority that applicants articulate a theory of action for how innovative assessment systems and design approaches will support deeper student learning.

Discussion: The Department believes that innovative item types and modular assessment approaches allow students to gain valuable experience by demonstrating complex work and

critical thinking skills. Assessments can improve student learning by providing data that can support and inform instruction, particularly if the data are timely and targeted. However, the primary focus of the priority is developing new methods for measuring student knowledge and skills to determine college- and career-readiness. As such, the Department believes it is important for applicants to focus their proposals on the complex tasks of developing, evaluating, and implementing new, innovative item types or developing approaches to transforming traditional summative assessment forms into a series of modular assessment forms. The Department agrees with the commenter that developing a sound theory of action for any large research and development proposal in educational assessment is a good project planning tool, but does not believe it is necessary to explicitly make this a priority or requirement.

Changes: None.

Comment: One commenter recommended that the Department clarify the meaning of the term “competency-based assessment” to communicate that such an assessment supports competency-based determinations and is not a type of assessment.

Discussion: The Department appreciates this recommendation, but believes that clarification of the term “competency-based assessment” is not needed in the priority itself. The priority indicates that innovative item types may include those item types that can support competency-based assessments. This term, also used in the President’s Testing Action Plan (see www.ed.gov/news/press-releases/fact-sheet-testing-action-plan), is used to describe a system of assessments that allows students to demonstrate their learning throughout the school year and focuses on the application of skills and knowledge. The Department believes that innovative item types, including performance tasks, can be useful as part of a competency-based assessment. In addition, the Department believes that the term is recognized by experts in the field but that there may be variations in how it is applied and that proposals should define this type of assessment in the context of the proposed design and plan of work.

Change: None.

Comment: One commenter suggested that the design of technology-based items, interactive tools, and user interfaces proposed in projects under this priority be based on a Principled Assessment Design framework that takes

into account principles of universal design for learning.

Discussion: The priority requires applicants to ensure the quality, validity, reliability, and fairness of the assessment or assessment items and comparability of student data. The Department acknowledges that universal design for learning is a nationally recognized method for taking into account the needs of all students when designing an assessment item, test, or system and that this method can help to promote fairness in assessment, and also notes that assessments administered to fulfill the requirements of title I, part A of the ESEA, recently reauthorized by the ESSA, must address universal design for learning.

Changes: We revised this priority to include a reference to universal design for learning.

Priority 2—Improving Assessment Scoring and Score Reporting

Comment: One commenter suggested that we require applicants to present a high-quality plan for leveraging other Federal funds to improve educators’ assessment literacy and support parental engagement.

Discussion: The Department agrees that assessment literacy and parent engagement in assessment systems are important goals. We also support States’ efforts to carefully examine how Federal and other funding sources can best be leveraged to support their goals and to sustain work supported by time-limited grant funding. As part of the President’s Testing Action Plan, the Department released a Dear Colleague Letter in February 2016 (see www2.ed.gov/admins/lead/account/saa/16-0002signedcso222016ltr.pdf) that provides examples of how funds under titles I, II, III, and VI of the ESEA can be used to increase assessment literacy and parent engagement. However, in order to allow applicants flexibility to use appropriate funds to best meet their needs, we decline to prescribe that States use other Federal funding, in addition to any EAG funding awarded, for these purposes.

Changes: None.

Comment: One commenter recommended that assessment reporting be focused on “stakeholders closest to students” who can use the data to improve student learning.

Discussion: The Department agrees that it is important for information on student performance to be made available to stakeholders close to students, such as educators and parents, in a timely fashion and in a format that provides actionable information to guide instruction and supports for

students. In paragraph (b) of Priority 2, the Department requires that States include educators and parents in the development of score reports and paragraph (b)(1)(ii) focuses on educators’ and parents’ assessment literacy.

Changes: None.

Comment: Two commenters recommended that the Department require States to develop both enhanced score reporting templates and digital mechanisms for communicating assessment results.

Discussion: The Department appreciates the support for this priority and agrees that it is important to improve the utility of information about student performance included in reports of assessment results. However, because we recognize that States have different goals and may already have initiatives underway to develop score reporting templates or digital mechanisms to communicate assessment results, we do not think it is appropriate to make both activities required under Priority 2.

Changes: None.

Comment: Two commenters provided several recommendations for how States could improve score reporting, particularly to meet parents’ needs. For example, both commenters recommended that States share contextual information with parents through a cover letter accompanying the score report. One commenter also suggested that States: include clear, actionable next steps for parents; ensure that information is communicated in parent-friendly language; prioritize the content of the score report to avoid overwhelming parents; seek parent feedback on score reporting materials; and ensure that reports are personalized and culturally sensitive.

Discussion: The Department believes that these comments provide helpful examples of how an applicant might address needs related to score reporting and improve the utility of information about student performance included in score reports.

Changes: We have revised this priority to include the commenters’ suggestions regarding clear and actionable next steps for parents as an example.

Comment: One commenter suggested that the Department require or strongly incentivize States to provide training for educators on data and using data to inform instruction.

Discussion: The Department agrees that ensuring educators understand assessment data and can use that information to guide instruction and supports for students is an important part of making assessments worth

taking. The President's Testing Action Plan also highlights this as a key area of focus for States and districts. For this reason, we have included improving assessment literacy of educators and parents as one of the activities applicants could choose to include in projects proposed under this priority. However, because we recognize that States have different goals and may already have initiatives underway to support assessment literacy, we do not think it is appropriate to make this a required component of projects proposed under Priority 2.

Changes: We have included in Priority 2 examples of how applicants might improve assessment literacy by providing training on test development and interpretation of test scores.

Priority 3—Inventory of State and Local Assessment Systems

Comment: One commenter recommended that the Department remove Proposed Priority 3, given that States may use other Federal funds to conduct assessment audit activities.

Discussion: The Department agrees that there may be opportunities for States and local educational agencies (LEAs) to leverage other Federal funds to conduct assessment audit activities beginning with FY 2017, such as the State assessment grant funds authorized under section 1201 of the ESEA, as amended by the ESSA, and the dedicated funds for assessment audit work authorized under section 1202 of the ESEA, as amended by the ESSA. For this reason, the Department has: limited the amount of grant funding an applicant could receive under this priority; required that projects under Priority 3 be no longer than 12 months; and required that projects include a longer-term plan for implementation using other funding sources. However, the Department believes that funding grants under this priority presents a valuable opportunity for applicants to lay the groundwork for activities in this area and begin the important work of evaluating all assessments administered in the State and its LEAs.

Changes: None.

Comment: One commenter suggested that the Department reframe the priority to focus on assessment systems and clarify that the goal of assessment inventories is to ensure that States' balanced systems of assessments work together to provide information to relevant stakeholders.

Discussion: The Department believes that this priority, as written, already emphasizes the importance of analyzing entire assessment systems, rather than individual assessments. Assessment

inventories proposed by applicants must include a review of all assessments at the Federal, State, and local levels and must include feedback from stakeholders on the entire assessment system.

The Department agrees that assessments should provide clear and actionable information about students' knowledge and skills to stakeholders. However, consistent with the President's Testing Action plan, we believe that assessment inventories should not be focused only on whether assessments provide feedback to stakeholders, but should also ensure that tests are high quality, worth taking, time limited, fair for all students, and tied to improved student learning.

Changes: None.

Comment: One commenter proposed that the Department remove the requirement that State educational agencies (SEAs) review State and LEA activities related to test preparation to make sure those activities are focused on academic content and not on test-taking skills.

Discussion: The Department believes that low-quality test preparation strategies are a poor use of students' time and that students perform best on high-quality assessments that measure critical thinking and complex skills when they have been exposed to strong instruction. As such, we maintain that ensuring that test preparation strategies and activities are focused on academic content instead of test-taking skills is an important part of reviewing and improving assessment systems.

Changes: None.

Comment: None.

Discussion: In the NPP, paragraph (a)(2) of Priority 3 indicated that the purpose of assessments is to help schools meet their goals. Although we believe that assessments provide valuable information about school performance and can help schools to assess progress toward their goals, the Department believes that assessments have other purposes that are important for applicants to consider as they address Priority 3.

Changes: The Department adjusted the language in paragraph (a)(2) of Priority 3 to reflect that assessments are intended to measure student achievement and identify gaps in students' knowledge and skills.

Final Priorities

Priority 1—Developing Innovative Assessment Item Types and Design Approaches

Under this priority, SEAs must:

(a) Develop, evaluate, and implement new, innovative item types for use in

summative assessments in reading/language arts, mathematics, or science;

(1) Development of innovative item types under paragraph (a) may include, for example, performance tasks; simulations; or interactive, multi-step, technology-rich items that can support competency-based assessments or portfolio projects;

(2) Projects under this priority must be designed to develop new methods for collecting evidence about a student's knowledge and abilities and ensure the quality, validity, reliability, and fairness (such as by incorporating principles of universal design for learning) of the assessment and comparability of student data; or

(b) Develop new approaches to transform traditional, end-of-year summative assessment forms with many items into a series of modular assessment forms, each with fewer items than the end-of-year summative assessment.

(1) To respond to paragraph (b), applicants must develop modular assessment approaches which can be used to provide timely feedback to educators and parents as well as be combined to provide a valid, reliable, and fair summative assessment of individual students.

(c) Applicants proposing projects under either paragraph (a) or (b) must provide a dissemination plan to share lessons learned and best practices such that their projects can serve as models and resources that can be shared with other States.

Priority 2—Improving Assessment Scoring and Score Reporting

Under this priority, SEAs must:

(a) Develop innovative tools that leverage technology to score assessments;

(1) To respond to paragraph (a), applicants must propose projects to reduce the time it takes to provide test results to educators, parents, and students and to make it more cost-effective to include non-multiple choice items on assessments. These innovative tools must improve automated scoring of student assessments, in particular non-multiple choice items in reading/language arts, mathematics, or science; or

(b) Propose projects, in consultation with organizations representing parents (including parents of English learners and parents of students with disabilities), students, teachers, counselors, and school administrators to address needs related to score reporting and improve the utility of information about student performance included in reports of assessment results and

provide better and more timely information to educators and parents;

(1) To respond to paragraph (b), applicants must include one or more of the following in their projects:

(i) Developing enhanced score reporting templates or digital mechanisms for communicating assessment results and their meaning (such as by providing clear and actionable next steps for parents);

(ii) Improving the assessment literacy of educators and parents to help them interpret test results and to support teaching and learning in the classroom (such as by providing training on test development and interpretation of test scores); and

(iii) Developing mechanisms for secure transmission and individual use of assessment results by teachers, students, and parents.

(c) Applicants proposing projects under either paragraph (a) or (b) must provide a dissemination plan for sharing lessons learned and best practices such that their projects can serve as models and resources that can be shared with other States.

Priority 3—Inventory of State and Local Assessment Systems

(a) Under this priority, SEAs must—

(1) Review statewide and local assessments to ensure that each test is of high quality, maximizes instructional goals, has a clear purpose and utility, and is designed to help students demonstrate mastery of State standards;

(2) Determine whether assessments are serving their intended purpose to measure student achievement and identify gaps in students' knowledge and skills and to eliminate redundant and unnecessary testing; and

(3) Review State and LEA strategies and activities related to test preparation to make sure those strategies and activities are focused on academic content and not on test-taking skills.

(b) To meet the requirements in paragraph (a), SEAs must ensure that tests, including statewide and local assessments are—

(1) Worth taking, meaning that assessments are a component of good instruction and require students to perform the same kind of complex work they do in an effective classroom and the real world;

(2) High quality, resulting in actionable, objective information about students' knowledge and skills, including by assessing the full range of relevant State standards, eliciting complex student demonstrations or applications of knowledge, providing an accurate measure of student achievement, and producing

information that can be used to measure student growth accurately over time;

(3) Time-limited, in order to balance instructional time and the need for assessments, for example, by eliminating duplicative assessments and assessments that incentivize low-quality test preparation strategies that consume valuable classroom time;

(4) Fair for all students and used to support equity in educational opportunity by ensuring that accessibility features and accommodations level the playing field so tests accurately reflect what all students, including students with disabilities and English learners, know and can do;

(5) Fully transparent to students and parents, so that States and districts can clearly explain to parents the purpose, the source of the requirement (if appropriate), and the use by teachers and schools, and provide feedback to parents and students on student performance; and

(6) Tied to improving student learning as tools in the broader work of teaching and learning.

(c) Approaches to assessment inventories under paragraph (a) must include:

(1) Review of the schedule for administration of all assessments required at the Federal, State, and local levels;

(2) Review of the purpose of, and legal authority for, administration of all assessments required at the Federal, State, and local levels; and

(3) Feedback on the assessment system from stakeholders, which could include information on how teachers, principals, other school leaders, and administrators use assessment data to inform and differentiate instruction, how much time teachers spend on assessment preparation and administration, and the assessments that administrators, teachers, principals, other school leaders, parents, and students do and do not find useful.

(d) Projects under this priority—

(1) Must be no longer than 12 months;

(2) Must include a longer-term project plan, understanding that, beginning with FY 2017, there may be dedicated Federal funds for assessment audit work as authorized under section 1202 of the ESEA, as amended by the ESSA, and understanding that States and LEAs may use other Federal funds, such as the State assessment grant funds, authorized under section 1201 of the ESEA, as amended by the ESSA, consistent with the purposes for those funds, to implement such plans; and

(3) Must have a budget of \$200,000 or less.

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)).

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

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

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

(3) Materially alter the budgetary impacts of entitlement grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles 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.

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

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

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

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

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

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

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

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

The priorities included in this notice would benefit students, parents, educators, administrators, and other stakeholders by improving the quality of State assessment instruments and systems. Priority 1 will yield new, more authentic methods for collecting evidence about what students know and are able to do and provide educators with more individualized, easily integrated assessments that can support competency-based learning and other forms of personalized instruction. Priority 2 will allow for States to score non-multiple choice assessment items more quickly and at a lower cost and ensure that assessments provide timely, actionable feedback to students, parents, and educators. Priority 3 will encourage States to ensure that assessments are of high quality, maximize instructional goals, and have clear purpose and utility. Further, it will encourage States to eliminate unnecessary or redundant tests.

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 compact disc) 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: 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 Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: August 1, 2016.

Ann Whalen,

Senior Advisor to the Secretary, Delegated the Duties of Assistant, Secretary for Elementary and Secondary Education.

[FR Doc. 2016–18530 Filed 8–5–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0234; FRL–9950–31–OAR]

40 CFR Parts 60 and 63

Reconsideration on the Mercury and Air Toxics Standards (MATS) and the Utility New Source Performance Standards Startup and Shutdown Provisions; Final Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petitions for reconsideration.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to two petitions for reconsideration of the final rule titled “Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units,” published in the **Federal Register** on November 19, 2014. The Administrator denied the requests for reconsideration in separate letters to the petitioners. The letters and a document providing a full explanation of the agency's rationale for each denial is in the docket for these rules.

DATES: August 8, 2016.