

**DEPARTMENT OF DEFENSE****Department of the Army, Corps of Engineers****Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is proposing to update its current process for requesting a variance from vegetation standards for levees and floodwalls to reflect organizational changes and incorporate current agency-wide review processes.

**DATES:** Written comments must be submitted on or before March 11, 2010.

**ADDRESSES:** You may submit comments, identified by docket number COE-2010-0007 by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:*

*Douglas.J.Wade@usace.army.mil.* Include the docket number, COE-2010-0007 in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW-CE, Douglas J. Wade, 441 G Street, NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE-2010-0007. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that 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 [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:**

Douglas J. Wade, Headquarters, Engineering and Construction Community of Practice, Washington, DC at 202-761-4668.

**SUPPLEMENTARY INFORMATION:** The request process was developed to implement Section 202(g) of the Water Resources Development Act (WRDA) of 1996. Consistent with our regulations for implementing NEPA for our Civil Works programs, we have included a draft Finding of No Significant Impact (FONSI) for review in addition to the draft Environmental Assessment (EA). The draft FONSI is subject to change based on the comments received through this public notice and should not be viewed as predetermining the outcome of this process. Based on the comments received, we may determine that a FONSI is not appropriate and that a full Environmental Impact Statement is required for this action.

To comply with the requirements of the National Environmental Policy Act, a draft environmental assessment (EA) has been prepared. A copy of the draft EA is available at <http://www.regulations.gov> in docket number COE-2010-0007. If you would like to submit comments on the draft EA, you must do so before the end of the comment period specified in the **DATES** section above.

**Authority:** We are proposing to issue this Policy Guidance Letter under the authority of 33 U.S.C. 701n.

Dated: February 4, 2010.

**James C. Dalton,**

*Chief, Engineering and Construction, Directorate of Civil Works.*

**Policy Guidance Letter—Variance From Vegetation Standards for Levees and Floodwalls**

1. *Purpose.* This policy guidance letter revises the procedures for obtaining variances from U.S. Army Corps of Engineers (USACE) mandatory vegetation-management standards for levees, floodwalls, and appurtenant structures contained in Engineer Technical Letter (ETL) 1110-2-571—*Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures*. All vegetation variances, both new and existing, are required to seek approval through the process described in this policy guidance letter. Subjecting all new and existing variances to this approval process aligns with the Levee Safety Program goals that make public safety a top priority and assures application of consistent and well-documented approaches. This policy guidance letter supersedes the applicable regional variance policy and process contained in Engineer Regulation (ER) 500-1-1 and Engineer Pamphlet (EP) 500-1-1 (including Appendix E), dated 30 September 2001, and will serve as interim guidance until this process is incorporated into an USACE engineer publication.

2. *Applicability.* This policy guidance letter applies to all Headquarters USACE (HQUSACE) elements, Major Subordinate Commands (MSCs), districts, and field operating activities having responsibility for Civil Works projects. Specifically, this policy guidance letter applies to flood damage reduction projects within an USACE program or project authority.

3. *References.*

a. Engineer Regulation (ER) 500-1-1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program, Chapter 5, Rehabilitation and Inspection Program, 30 September 2001.

b. Engineer Pamphlet (EP) 500-1-1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program—Procedures, Chapter 5, The Rehabilitation and Inspection Program, and Appendix E, Regional Variances to Levee Vegetation Standards, 30 September 2001.

c. Engineer Technical Letter (ETL) 1110-2-571, *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams,*

and Appurtenant Structures, 10 April 2009.

4. *Background.* The purpose stated in Section 202(g) of the Water Resources Development Act (WRDA) of 1996 is “to provide a coherent and coordinated policy for vegetation management for levees,” so as to “address regional variations in levee management and resource needs.” In general, the resulting policy set forth in ER 500–1–1, paragraph 5–22, allowed the project sponsor of a levee, in active status, to seek a variance from USACE standards to allow additional vegetation on or near levees when such vegetation would preserve, protect, and/or enhance natural resources and/or protect rights of Native Americans. However, the safety, structural integrity, and functionality of the levee, in addition to accessibility for inspection and flood-fighting purposes, must be retained. This guidance provides a clearly defined process to implement Section 202(g) of WRDA 1996.

5. *Definition of a Levee System.* A levee system consists of one or more segments and associated features which collectively provide flood, storm, or hurricane damage reduction to a defined area. Failure of one feature or segment within a levee system may result in failure of the entire system. Levee systems may consist of embankment sections, floodwall sections, closure structures, pumping stations, interior drainage works, and flood damage reduction channels.

6. *Process.* The process for the request and approval of a vegetation variance consists of the following steps.

a. The project sponsor or district (when appropriate as outlined in paragraph 9.g. of this document) shall submit a Vegetation Variance Request, as described in paragraph 7, to the Commander of the appropriate USACE district. The request shall fully explain the nature of the variance being requested and demonstrate compliance with the following two basic criteria.

(1) The variance must be shown to be necessary, and the only feasible means, to

- preserve, protect, and enhance natural resources, and/or
- protect the rights of Native Americans, pursuant to treaty, statute, or Executive Order.

(2) With regard to levee systems, the variance must assure that

- safety, structural integrity, and functionality are retained, and
- accessibility for maintenance, inspection, monitoring, and flood-fighting are retained. Note that, as used here, the term “retained” refers to the level of functionality and reliability

expected under conditions that are fully consistent with the requirements set forth in ETL 1110–2–571 and any other applicable criteria.

b. The district Levee Safety Officer (LSO) shall review the request for completeness and compliance, and recommend to the District Commander acceptance or non-acceptance. All review costs incurred by the district shall be funded by the appropriate account, based on authorization (O&M General, Inspection of Completed Works, or Flood Control and Coastal Emergencies).

c. The District Commander shall accept or reject the request. If accepted, the District Commander shall submit the request package through the MSC LSO to the MSC Commander. The MSC Commander shall either accept or reject the recommended request. If accepted, the MSC Commander shall submit the request to HQUSACE, via the Regional Integration Team (RIT) process, for an Agency Technical Review (ATR).

d. The ATR leader shall concur or non-concur with the variance request and shall include an executive summary, clearly expressing the pertinent rationale. The ATR team may recommend amendments to the request as an alternative to a non-endorsement.

e. The HQUSACE LSO, or the HQUSACE LSO designee, will be the final approving official for the request.

f. The district shall notify the appropriate regional offices of the federal resource agencies when a vegetation variance request has been received.

g. The district shall serve as the main point of contact for coordination with the sponsor during the entire variance request process. If the request is denied at any level (district, MSC, or HQUSACE), the district shall notify the sponsor in writing and include reasons for the denial.

h. All final documentation for the Vegetation Variance Request shall be uploaded by the district to the National Levee Database (NLD).

i. During inspections, levees will be rated for vegetation in accordance with approved variances. The associated vegetation management plan and approved variance shall be added to the levee’s operation and maintenance manual as an addendum.

7. *Vegetation Variance Request.* The following shall be submitted under the cover of the checklist in Enclosure 1 in Adobe PDF format for ATR review.

a. The Vegetation Variance Request and Agreement form (see enclosure) with attachments, completed and signed by the sponsor(s) or district (for situations as specified in 9.g.). District

counsel should be involved in the drafting. Substantive deviations are not permitted without a specific separate request and approval from HQUSACE.

b. General description of the levee system including system name, project authority, location, and potential human and environmental consequences (brief description of the population at risk, estimated potential economic losses, and identification of any critical public facilities or special environmental considerations).

c. Detailed and annotated plans and section drawings, at an appropriate scale, clearly conveying the following information.

(1) The boundaries of the specific area(s) to which the variance is to apply. The variance should not include areas for which there are reasonable alternatives. For example, a variance will not be granted for an entire alignment when only a portion of the alignment meets the first of the criteria described in paragraph 6.a.(1).

(2) Overall plan view clearly delineating normal and ordinary-high-water marks, project right-of-way, levees, floodwalls, appurtenant structures, vegetation-management zones, and required vegetation-free zones.

(3) Description of proposed deviations from vegetation standards, including planting locations and species. Depict each species at its expected size at maturity.

(4) Details of any structural measures (such as armoring or overbuilt sections) intended to preserve system reliability and resiliency by preventing or mitigating vegetation impacts.

(5) For each typical condition, provide a section drawing, at an appropriate scale, clearly showing both the normal and ordinary-high-water marks, the project right-of-way, levee, floodwall, appurtenant structures, any associated structural modifications, vegetation-management zones, required vegetation-free zones, and all proposed vegetation (by species, shown at mature size)—including the typical extent of the root system at species maturity. Clearly indicate that the proposed plantings do not include noxious or invasive species or involve any improper use of herbicides.

d. Explanation of reasons the proposed changes are necessary to preserve, protect, and enhance natural resources and/or protect the rights of Native Americans pursuant to treaty and statute. Explain what alternatives to a vegetation variance were considered and why the proposed changes were the only feasible means to provide the

benefits to natural resources and/or to protect the rights of Native Americans.

e. An engineering analysis showing that the changes proposed will result in conditions consistent with the criteria in 6.a.(2). Include graphics, text, and information, such as construction materials and standards as needed to clearly support conclusions.

f. The most recent Routine Inspection Report and Periodic Inspection Report completed by the USACE district.

g. Summary of system performance history for any and all significant flood events. Indicate the system's design flood or design water surface elevation, as applicable and, for each event, the year of occurrence, event probability (e.g. 1% flood), flood duration, and description of any flood-fighting challenges, failures, and outcomes.

h. Vegetation maintenance plan.

i. Any National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and any other environmental compliance documentation that the district determines are required in order to conduct the review.

j. Other information, as needed.

k. Primary point of contact (POC) for this request.

8. *Agency Technical Review.* In coordination with the RIT leader and the HQUSACE Levee Safety Program Manager (LSPM), the USACE Risk Management Center shall lead and manage the ATR for each variance request. HQUSACE will fund the ATR. The timeline for the ATR will depend on the complexity of the request, but will not exceed 90 days unless special circumstances warrant additional time.

9. *Special Considerations.* The following points will be considered prior to initiating a variance request.

a. Variances will be considered only for individual levee systems or portions thereof.

b. The vegetation variance request process does not apply to embankment dams and their appurtenant structures, channels, or shore-line or river-bank protection systems such as revetments, sand dunes, and barrier islands.

c. Waterside planting berms are allowed only by approved variance.

d. The burden shall be on the sponsor to provide adequate documentation to facilitate review. Sufficient and appropriate documentation will ensure a timely review. Insufficient packages will be returned for completion.

e. Due to the significant threat to system reliability, ability to flood fight, and observe system response under high water conditions, no vegetation variance involving woody vegetation, as defined in ETL 1110-2-571 shall be granted for the following portions of a levee: The

upper third of the river-side (or flood-side) slope, the crown, the land-side (or protected-side) slope, or within 15 feet of the land-side (or protected-side) toe (subject to preexisting right-of-way).

f. The vegetation variance process is not a mechanism to validate conditions that have developed as a result of inadequate operation and maintenance.

g. A district may submit a variance for levee systems currently in the preconstruction, engineering, and design phase (including major rehabilitation projects) on the date when this policy guidance letter is signed. Districts may also apply for variance for USACE operated and maintained levee systems. Funding needed by the district to compile the variance request shall come from the project appropriations. For areas in which ESA considerations exist, the district can apply for a variance in conjunction with planning and design of future rehabilitation under PL 84-99 and associated measures needed to comply with ESA.

h. If implementation of a vegetation variance will modify or alter a federally authorized levee system in the PL 84-99 program, a Section 208.10/408 review will be necessary and the requirements for that review should be coordinated with the vegetation variance request requirements.

10. *Existing Variances or Other Deviations.* Deviation from the national standards, as defined in ETL 1110-2-571, is permitted only through a vegetation variance, approved by the HQUSACE LSO, via the process described herein. All existing vegetation variances, agreements, or other deviations, that are not submitted for an ATR via the process described herein, by 30 September 2010, may no longer be considered valid. On or around this date, each levee system sponsor that had an existing variance, but did not submit that variance for approval will be informed via letter from the district LSO (copy furnished to the MSC and HQUSACE LSO) of the vegetation management standards to be applied to that system.

11. *Environmental Compliance.* The sponsor is responsible for providing all National Environmental Policy Act (NEPA), Endangered Species Act (ESA) Section 7 consultation, and any other environmental compliance documentation required by the district to analyze the request (except for those levees listed in section 9.g. of this document). The documentation must analyze, as alternatives, the effects of the implementation of the proposed variance and the implementation of the national standards. The sponsor must commit to implementation of any

measures (such as monitoring, reasonable and prudent alternatives, etc.) needed to comply with ESA before the sponsor may participate, or continue participation, in the Public Law 84-99 program. Further, the sponsor must commit to bearing the cost for implementation of any measures required to comply with ESA. However, USACE ultimately remains responsible for ensuring that ESA and other environmental compliance obligations are met.

12. After vegetation variance request packages are reviewed through this process, results will be posted by the HQUSACE LSPM to the Levee Safety Community of Practice page, on the Technical Excellence Network (TEN) at <https://ten.usace.army.mil>.

13. The point of contact for this guidance is \_\_\_\_\_.

2 Encls

1. Checklist.
2. Request Package.

James C. Dalton, P.E.  
*Chief, Engineering and Construction  
Directorate of Civil Works.*

#### Enclosure 1—Vegetation Variance Request: Submittal Checklist

##### VEGETATION VARIANCE REQUEST: SUBMITTAL CHECKLIST

The items checked below are submitted herewith, consistent with the requirements outlined in paragraph 7 (Vegetation Variance Request) of *Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls*, dated \_\_\_\_\_.

- (a) *Vegetation Variance Request and Agreement*, completed and signed.
- (b) General Description of the levee system. (attachment 1)
- (c) Drawings. (attachment 2)
- (d) Explanation of why the proposed changes are necessary to preserve, protect, and enhance natural resources and/or protect the rights of Native Americans pursuant to treaty and statute. (attachment 3)
- (e) An engineering analysis showing that the proposed changes will result in conditions consistent with the criteria in 6.a.(2) of the PGL. (attachment 4)
- (f) The most recent Routine Inspection Report and Periodic Inspection Report completed by the USACE district. (attachment 5)
- (g) Summary of system performance history for all significant flood events. (attachment 6)
- (h) Vegetation Maintenance Plan. (attachment 7)
- (i) Any National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or other environmental compliance documentation that the district determines necessary to the review. (attachment 8)
- (j) Other information, as needed. (attachment 9)

(k) Primary point of contact (POC) for this request, as follows.

Name: \_\_\_\_\_  
 Organization: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 E-Mail: \_\_\_\_\_  
 Address: \_\_\_\_\_

**Enclosure 2—Vegetation Variance Request and Agreement**

**VEGETATION VARIANCE REQUEST AND AGREEMENT**

Addressing the Vegetation Standards for (*enter the levee system name and location, as defined in the National Levee Database*).

I. *Purpose.* The purpose of this Agreement is to allow for specific and limited variance from U.S. Army Corps of Engineers vegetation standards, for the levee system named above, provided such variance does not diminish system reliability, and is necessary to preserve, protect, and enhance natural resources, and protect the rights of Native Americans pursuant to treaty and statute.

II. *Authority.* This Agreement is made pursuant to the authority of Public Law 99, 84th Congress (Pub. L. 84–99), (33 U.S.C. 701n) (69 Stat. 186), as regulated by Title 33, Code of Federal Regulations, Sections 203 and 208.10, and as implemented by policy guidance letter, Subject: Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls, dated \_\_\_\_\_.

III. *Applicability.* This Agreement is applicable to the portion(s) of the (*insert name of levee system*) described in attachment (*insert number*).

IV. *References.* (*Insert any references that are applicable, including the existing project cooperation agreement. This could include state law, county ordinances, Federal or state court documents, technical manuals, etc. References may be incorporated into this Agreement.*)

V. *Scope.* A detailed description of the conditions proposed under this agreement is provided in attachment(s) (*insert number(s)*).

VI. *Actions During and After Emergencies.*

A. *Definition of Emergency.* For the purposes of application of this Agreement, the term “emergency” is defined as any situation in which a levee is threatened with either failure or overtopping.

B. *Definition of Flood Fight.* For the purposes of application of this Agreement, the term “flood fight” is defined as actions taken immediately before or during a flood to protect human life and reduce flood damages, such as evacuation, emergency sandbagging and diking, and providing assistance to flood victims.

C. *Conduct of Flood-Fight Activities.* During an emergency, any responsible party engaged in flood-fight activities, to specifically include the U.S. Army Corps of Engineers, the (*list states, cities, or counties as necessary*), and the project sponsor(s) may take whatever actions are necessary to preserve the structural integrity of the levee system addressed by this Agreement. Actions necessary to preserve the structural integrity of the system may include removal of any

and all vegetation on or near the levee or floodwall.

D. *Rehabilitation.* Any levee repairs, modifications, or improvements made as a result of the emergency event shall be in accordance with current USACE vegetation management standards or approved vegetation variance for the levee system.

VII. *Obligations of the Signatories of the Agreement.*

A. The sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance repair, replacement, and rehabilitation of the (*insert name of levee system*), the Hurricane/Shore Protection Project, and any related betterments, except for damages due to the fault or negligence of the Government or the Government’s contractors.

B. The sponsors agree to maintain the levee system in accordance this variance agreement and assume the responsibility for implementing and bearing the costs of any measures that are required for compliance with the Endangered Species Act or any mitigation requirements that result from environmental compliance processes such as the National Environmental Policy Act or required permits.

VIII. *Notices.*

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, to the address provided.

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in paragraph C (below).

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered, or, seven calendar days after it is mailed.

IX. *Expiration of this Agreement.*

(*Approval of this agreement may be contingent upon agreement to an expiration mechanism. Use one of the three conditions below to complete this paragraph.*)

(*This Vegetation Variance is intended to be permanent.*)

(*This Vegetation Variance shall expire on [insert date].*)

(*This Vegetation Variance shall expire upon [explain event].*)

However, the Corps reserves the right to revoke this agreement if it becomes apparent that it results in conditions that threaten system reliability and public safety.

X. *Signatures.*

*In witness hereof*, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the HQUSACE Levee Safety Officer.

Submitted by:

\_\_\_\_\_  
 The (name of entity)  
 (signature)

\_\_\_\_\_  
 (full name, typed)

\_\_\_\_\_  
 (title, in full)

\_\_\_\_\_  
 (date)

(additional sponsor signature blocks may be added if needed—afterward, delete this note)

Reviewed by:

US Army Corps of Engineers, (insert name)  
 District  
 (signature)

\_\_\_\_\_  
 (full name, typed)

Levee Safety Officer

\_\_\_\_\_  
 (date)

Accepted by:

US Army Corps of Engineers, (insert name)  
 District  
 (signature)

\_\_\_\_\_  
 (full name, typed)

Commander

\_\_\_\_\_  
 (date)

Reviewed by:

US Army Corps of Engineers, (insert name)  
 Division  
 (signature)

\_\_\_\_\_  
 (full name, typed)

Levee Safety Officer

\_\_\_\_\_  
 (date)

Accepted by:

US Army Corps of Engineers, (insert name)  
 Division  
 (signature)

\_\_\_\_\_  
 (full name, typed)

Commander

\_\_\_\_\_  
 (date)

Endorsed by:

US Army Corps of Engineers, Risk  
 Management Center

As Proposed

As Amended

(signature)

\_\_\_\_\_  
 (full name, typed)

Leader, Agency Technical Review Team

\_\_\_\_\_  
 (date)

Approved by: The Department of the Army  
 (signature)

\_\_\_\_\_  
 (full name, typed)

Levee Safety Officer, HQUSACE

\_\_\_\_\_  
 (date)

**XI. Certificate of Authority**

**CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the (*Name of Public Sponsor*), that (*Name of*

*Public Sponsor*) is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the (*Name of Public Sponsor*) in connection with this Vegetation Variance Request and Agreement Addressing the Vegetation Standards for (*enter the levee system name and location, as defined in the National Levee Database*) and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of (*Name of Public Sponsor*) have acted within their statutory authority.

*In Witness Whereof*, I have made and executed this certification this \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_.

(*Name of Counsel for signing entity*)  
(*Full Formal title*)

## XII. Certification Regarding Lobbying.

### CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

(*Signature of Agreement Signatory*)

(*Typed Name*)

(*Typed Title*)

[FR Doc. 2010-2807 Filed 2-8-10; 8:45 am]

BILLING CODE 3720-58-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 11, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395-5806 or e-mailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) with a cc: to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of

the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 4, 2010.

**Sheila Carey,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* Revision.

*Title:* Trends in International Mathematics and Science Study (TIMSS: 11) and Progress in International Reading Literacy Study (PIRLS: 11).

*Frequency:* Annually.

*Affected Public:* Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 8,529.

*Burden Hours:* 10,706.

*Abstract:* NCES seeks OMB approval to recruit schools for the full-scale administration of the Trends in International Mathematics and Science Study (TIMSS) 2011 and the Progress in International Reading Literacy Study (PIRLS) 2011, both coordinated by the International Association for the Evaluation of Educational Achievement (IEA). TIMSS is administered every four years in more than 60 countries and provides data for internationally benchmarking U.S. performance in mathematics and science at the fourth- and eighth-grade levels against other countries around the world. PIRLS is administered every five years in more than 50 countries and provides assessment data for internationally benchmarking U.S. performance in fourth-grade reading. NCES has received OMB approval for the international field test for the two studies, March 1-April 15, 2010. The full-scale data collection will be in April-May 2011. NCES will seek approval for the full-scale instruments in the fall of 2010.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4181. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address