

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would establish a special anchorage area.

A preliminary “Environmental Analysis Check List” and “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

#### PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.5 by adding paragraph (f) to read as follows:

##### § 110.5 Casco Bay, Maine.

\* \* \* \* \*

(f) *Yarmouth Harbor and adjacent waters*—(1) *Littlejohn Island/Doyle Point Cousins Island Special Anchorage*. All of the waters enclosed by a line connecting the following points: starting from the northernmost point of Littlejohn Island at latitude 43°45′86″ N., longitude 70°06′95″ W.; thence to latitude 43°45′78″ N., longitude 70°06′89″ W.; thence to latitude 43°45′43″ N., longitude 70°07′38″ W.; thence to latitude 43°45′28″ N., longitude 70°07′68″ W.; thence to latitude 43°44′95″ N., longitude 70°08′45″ W.; thence to latitude 43°44′99″ N., longitude 70°08′50″ W. DATUM: NAD 83.

(2) *Madeleine and Sandy Point Special Anchorage*. All of the waters enclosed by a line connecting the following points: starting from a point northeast of Birch Point on Cousins Island at latitude 43°45′27″ N., longitude 70°09′32″ W.; thence to

latitude 43°45′35″ N., longitude 70°09′50″ W.; thence to latitude 43°45′63″ N., longitude 70°09′18″ W.; thence to latitude 43°45′95″ N., longitude 70°08′98″ W.; thence to latitude 43°45′99″ N., longitude 70°08′83″ W. DATUM: NAD 83.

(3) *Drinkwater Point and Princes Point Special Anchorage*. All of the waters enclosed by a line connecting the following points: starting south of Drinkwater Point in Yarmouth, Maine at latitude 43°46′42″ N., longitude 70°09′25″ W.; thence to latitude 43°46′35″ N., longitude 70°09′16″ W.; thence to latitude 43°46′07″ N., longitude 70°09′77″ W.; thence to latitude 43°45′48″ N., longitude 70°10′40″ W.; thence to latitude 43°45′65″ N., longitude 70°10′40″ W. DATUM: NAD 83.

**Note to § 110.5(f):** An ordinance of the Town of Yarmouth, Maine requires the approval of the Yarmouth Harbor Master for the location and type of moorings placed in these special anchorage areas. All anchorings in the areas are under the supervision of the Yarmouth Harbor Master or other such authority as may be designated by the authorities of the Town of Yarmouth, Maine. All moorings are to be so placed that no moored vessel will extend beyond the limit of the area.

Dated: April 9, 2007.

**Timothy S. Sullivan,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. E7–9969 Filed 5–23–07; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF EDUCATION

##### 34 CFR Part 75

[Docket ID ED–2007–OCFO–0132]

RIN 1890–AA15

##### Direct Grant Programs

**AGENCY:** Office of the Chief Financial Officer, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations in 34 CFR part 75, regarding the determination and recovery of indirect costs by grantees. The proposed amendments would address procedural aspects related to the establishment of temporary indirect cost rates, specify the temporary rate that would apply to grants generally, and clarify how indirect costs are determined for a group of applicants that apply for a single training grant.

**DATES:** We must receive your comments on or before June 25, 2007.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select “Department of Education” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select ED–2007–OCFO–0132 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

• **Postal Mail, Commercial Delivery, or Hand Delivery.** If you mail or deliver your comments about these proposed regulations, address them to Richard Mueller, U.S. Department of Education, 830 First Street, NE., room 21C7, Washington, DC 20202–4450.

**Privacy Note:** The Department’s policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

##### FOR FURTHER INFORMATION CONTACT:

Richard Mueller. Telephone: (202) 377–3838 or via Internet: [Richard.Mueller@ed.gov](mailto:Richard.Mueller@ed.gov).

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

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

##### SUPPLEMENTARY INFORMATION:

##### Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of

your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should provide to reduce the potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's Direct Grant programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 21C7, 830 First Street, NE., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

#### **Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Background**

##### **Changes to Indirect Cost Policy**

The Secretary proposes amendments to improve the Department's ability under 34 CFR 75.560 to provide a temporary indirect cost rate. The temporary rate for a grantee that does not have a federally recognized indirect cost rate at the time the Department awards its first grant to the grantee would be ten percent of the direct salaries and wages of the project. These changes would permit the use of a temporary indirect cost rate under the grant award for the first ninety days after the date the Department issues the Grant Award Notification. A grantee may continue to charge indirect costs at the temporary rate after the first ninety days if the grantee submits a formal indirect cost proposal to its cognizant agency within those ninety days. If, after the ninety-day period, a grantee has not submitted an indirect cost proposal to its cognizant agency, it must stop using the temporary rate. After that period, the grantee would not be allowed to charge any indirect costs to its grant until it

obtained a federally recognized indirect cost rate from its cognizant agency.

These regulations are needed to make the Department's practice consistent with the practice of other Federal agencies and reduce the number of improper payments that result when applicants budget indirect costs that are greater than the actual indirect costs the applicant can expect to recover under Federal cost principles. Currently, new grantees of the Department are not recovering any indirect costs until they negotiate an indirect cost rate with their cognizant agencies. These proposed regulations would help a new grantee by permitting it to recover indirect costs at the temporary rate until it negotiate a rate with its cognizant agency or for ninety days if it does not submit its indirect cost rate proposal to its cognizant agency within the ninety-day period.

The proposed regulations would also clarify how the modified total direct cost base is determined when a grant is subject to the eight percent indirect cost rate limitation for training grants and would specify how that rate is applied when the Department awards a grant to a group of applicants. These changes are necessary to correct an oversight in the current regulations.

#### **Significant Proposed Regulations**

##### *34 CFR Part 75*

##### **Section 75.560 General Indirect Cost Rates; Exceptions**

The Secretary proposes to amend § 75.560 (c) and (d) to specify the procedures used to establish temporary indirect cost rates for any grantee that does not have a federally recognized indirect cost rate. The proposed language would require such a grantee to submit an indirect cost rate proposal to its cognizant agency within ninety days after the date the Department issues the Grant Award Notification to the grantee. In most cases, the cognizant agency is the agency that provides the most federal funding to a grantee under programs that authorize grantees to charge indirect costs to their grants. Under the proposed regulations, the grantee could charge indirect costs at a temporary indirect cost rate of ten percent of the budgeted direct salaries and wages. If a grantee does not submit an indirect cost rate proposal to its cognizant agency by the end of the ninety-day period, the proposed regulations would provide that the grantee could not charge any more indirect costs to its grant until it negotiated a federally recognized rate.

If a grantee negotiates an indirect cost rate that would recover more funds than

the temporary rate has recovered, the proposed regulations would permit the grantee to recover the difference between the amount it would have recovered under the federally recognized rate and the amount it already recovered under the temporary rate after the date the indirect cost proposal was submitted to the cognizant agency.

*Example:* The project period for a grant starts on June 1 and the grantee starts recovering indirect costs at ten percent of direct salaries and wages; the indirect cost proposal is submitted to the cognizant agency on July 1; and the grantee obtains a federally recognized indirect cost rate on September 15.

From June 1 through June 30, the grantee expends \$5,000 in direct salaries and wages. Using the temporary rate of ten percent of direct salaries and wages, the grantee recovers \$500 in indirect costs for this period. From July 1 through September 15, the grantee charges its grant \$12,500 in direct salaries and wages, which produces an indirect cost recovery of \$1,250 under the temporary rate.

The grantee negotiates an indirect cost rate with its cognizant agency of twenty percent of its modified total direct cost base. For the period July 1 through September 15, the grantee expends \$15,000 in modified total direct costs. Thus, under the negotiated rate, the grantee is entitled to recover \$3,000 for the period July 1 through September 15. Assuming sufficient funds are available within the grant budget, the grantee can recover an additional amount of \$1,750 in un-recovered indirect costs for the period July 1 through September 15. This \$1,750 represents the difference between the \$1,250 it already recovered for that period and the \$3,000 that it could have recovered under the negotiated rate. The grantee cannot claim indirect costs at the negotiated rate for the period June 1 through June 30 because it did not submit its indirect cost proposal until July 1. However, it can keep the \$500 in indirect costs it recovered under the temporary rate for that period. [End of example]

Under the proposed regulations, the grantee would have to obtain prior approval from the Department to shift direct costs to indirect costs. This limitation is needed to ensure that the shifting of funds from direct costs to indirect costs does not result in a change in the scope or objectives of the project. To reduce the potential for adverse budget implications for the Department, the grantee would not be permitted to request additional funds in order to fully recover indirect costs.

## Section 75.562 Indirect Cost Rates for Educational Training Projects

The Secretary proposes to amend § 75.562(c) to clarify that—a grantee cannot include the amount of a sub-award<sup>1</sup> that exceeds \$25,000 in the modified total direct cost base used to determine and charge its indirect cost rate. For example, if a grantee hired an evaluator for its grant and the sub award to the evaluator cost the grantee \$60,000, the grantee could claim only the first \$25,000 of that contract in its claim for indirect costs. This exclusion of costs above \$25,000 for sub-awards recognizes the fact that the grantee is not responsible for most of the costs of support services that the contractor supplies for its own services to the grantee. That is because the contractor builds those costs into the cost of the contract to the grantee. Also, we note that if the contract is a multi-year contract, the grantee can only recover indirect costs against the first \$25,000 of the contract in the first year of the contract because, after the year that the grantee awards the contract, the grantee has no special indirect costs associated with the contract.

These proposed regulations would also clarify that the definition of the word equipment, as used in this section, is the same as the definition of equipment in parts 74 and 80. Under that definition, a grantee may choose to treat as equipment items of useful value of less than \$5,000 but, if it does so, all equipment above the lower threshold must be excluded from the modified total direct cost base.

Example: If a grantee has a policy of capitalizing equipment that costs \$3,000 or more, then it must exclude all equipment that has a useful value of \$3,000 or more from the modified total direct cost base for the project.

## Section 75.564 Reimbursement of Indirect Costs

The Secretary proposes to amend § 75.564(e) to clarify the determination of indirect costs for a training grant in the context of a grant to a group of organizations that apply together for a grant under the procedures in 34 CFR 75.127–75.129.

<sup>1</sup> The term “sub-award” as used in the proposed regulation covers both sub grants and contracts made under a grant. However, because virtually all of the Department’s discretionary grant programs do not authorize grantees to award sub grants, we only describe in this preamble the effect of the proposed regulation on contracts awarded by grantees.

## Executive Order 12866

### 1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Department’s Direct Grant programs effectively and efficiently. In assessing the potential costs and benefits of this regulatory action, we have determined that the benefits would justify the costs.

### Summary of Potential Costs and Benefits

These regulations impose no additional burdens on applicants for discretionary grants or recipients of grants. The regulations merely specify the rate at which grantees can recover indirect costs during a temporary period when the grantee does not have an indirect cost rate recognized by the Federal Government and establish procedural requirements regarding temporary indirect cost rates. While these proposed regulations would prohibit a grantee from recovering indirect costs if the grantee has not submitted its indirect cost proposal within the ninety days after the date the Department issues the grant award notification, the burden and timing of submitting a proposal under the federal cost principles does not change at all.

### 2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§ ” and a numbered heading; for example, § 75.210 *General selection criteria*.)
- Could the description of the proposed regulations in the

**SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because the proposed regulations do not impose any new burdens at all.

## Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

## Intergovernmental Review

These proposed regulations affect Direct Grant programs of the Department that are 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 to strengthen 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 these programs.

## Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

## Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** 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 on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

#### List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: May 18, 2007.

**Margaret Spellings,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend part 75 of title 34 of the Code of Federal Regulations as follows:

#### PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.560 is amended by revising paragraphs (b) and (c), redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

##### **§ 75.560 General indirect cost rates; exceptions.**

\* \* \* \* \*

(b) A grantee must have obtained a current indirect cost rate agreement from its cognizant agency, to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to its cognizant agency within ninety days after the date the Department issues the grant award notification.

(c) If a grantee does not have a federally recognized indirect cost rate agreement, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of ten percent of budgeted direct salaries and wages.

(d)(1) If a grantee fails to submit an indirect cost rate proposal to its cognizant agency within the required ninety days, the grantee may not charge indirect costs to its grant from the end of the ninety-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (c) of this section

even though the grantee has not submitted its indirect cost rate proposal within the ninety-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs recovered under the temporary indirect cost rate after the date the indirect cost proposal was submitted to the cognizant agency.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that cannot be recovered by shifting direct costs to indirect costs.

\* \* \* \* \*

3. Section 75.562 is amended by revising paragraph (c) to read as follows:

##### **§ 75.562 Indirect cost rates for educational training projects.**

\* \* \* \* \*

(c)(1) Indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less.

(2) For the purposes of this section, a modified total direct cost base consists of total direct costs minus the following:

(i) The amount of each sub-award in excess of \$25,000.

(ii) Stipends.

(iii) Tuition and related fees.

(iv) Equipment, as defined in 34 CFR 74.2 and 80.3, as applicable.

**Note:** If the grantee has established a threshold for equipment that is lower than \$5,000 for other purposes, it must use that threshold to exclude equipment under the modified total direct cost base for the purposes of this section.

(3) The eight percent indirect cost reimbursement limit specified in paragraph (c)(1) of this section also applies to sub-awards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The eight percent limit does not apply to agencies of State or local governments, including federally

recognized Indian tribal governments, as defined in 34 CFR 80.3.

(5) Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

\* \* \* \* \*

4. Section 75.564 is amended by revising paragraph (e) to read as follows:

##### **§ 75.564 Reimbursement of indirect costs.**

\* \* \* \* \*

(e)(1) Indirect costs for a group of eligible parties (See §§ 75.127–75.129) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement.

(2) If a group of eligible parties applies for a training grant under the group application procedures in §§ 75.127–75.129, the grant funds allocated among the members of the group are not considered sub-awards for the purposes of applying the indirect cost rate in 34 CFR 75.562(c).

(Authority: 20 U.S.C. 1221e–3 and 3474)

[FR Doc. E7–10036 Filed 5–23–07; 8:45 am]

BILLING CODE 4000–01–P

#### POSTAL SERVICE

##### 39 CFR Part 111

##### **Electronic Option for Delivery Confirmation Service Required for Priority Mail Open and Distribute**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service currently allows mailers to use the electronic option for Delivery Confirmation service on Priority Mail Open and Distribute containers. We are proposing to make this optional extra service a requirement.

**DATES:** Submit comments on or before June 25, 2007.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260–0004.