



Federal Register

**Monday,
May 16, 2005**

Part VI

**Department of
Education**

Semiannual Regulatory Agenda

DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, Education.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866 “Regulatory Planning and Review.” The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Questions or comments related to preparation of this agenda should be directed to Stanley M. Cohen, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6E117, FB-6, 400 Maryland Avenue SW., Washington, DC 20202-2241; telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C.

602(a), requires ED to publish, in October and April of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED’s Principles for Regulating listed in its regulatory plan (69 FR 72709, published December 13, 2004), ED is committed to regulation that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items

listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any regulations listed in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities. ED has identified in this agenda the regulations it will review under section 610.

This publication in the **Federal Register** does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

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<http://www.gpoaccess.gov/nara/index.html>

Dated: April 1, 2005.

Kent D. Talbert,
Acting General Counsel.

Office of the Chief Financial Officer—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|--------------------------------------------------------------------------------|------------------------------|
| 762 | Federal Policy for the Protection of Human Subjects, Technical Amendment | 1890-AA12 |

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Office of the Chief Financial Officer—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|----------------------------------------------------------|------------------------------|
| 763 | Protection of Human Subjects (Classified Research) | 1890-AA08 |

Office for Civil Rights—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|------------------------------------------------------------------------------------------------------------------|------------------------------|
| 764 | Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance | 1870-AA11 |
| 765 | Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups | 1870-AA12 |

Office of Elementary and Secondary Education—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|------------------------------------------------------------------------|------------------------------|
| 766 | Title I, Improving the Academic Achievement of the Disadvantaged | 1810-AA97 |

Office of Special Education and Rehabilitative Services—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|--------------------------------------------------------------------------------------------------------|------------------------------|
| 767 | Reauthorization of the Individuals With Disabilities Education Act (Section 610 Review) | 1820-AB54 |

Office of Innovation and Improvement—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|----------------------------------------------------------------------|------------------------------|
| 768 | Student Rights in Research, Experimental Programs, and Testing | 1855-AA03 |

Office of Innovation and Improvement—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|-----------------|----------------------------------------------------------------|------------------------------|
| 769 | Credit Enhancement for Charter School Facilities Program | 1855-AA02 |
| 770 | Innovation for Teacher Quality | 1855-AA04 |

Department of Education (ED)

Final Rule Stage

Office of the Chief Financial Officer (OCFO)

762. FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS, TECHNICAL AMENDMENT

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 20 USC 1221e-3; 20 USC 3474; 42 USC 300v-1(b)

CFR Citation: 34 CFR 97

Legal Deadline: None

Abstract: These final regulations would amend the Department of Education regulations for the protection of human subjects by (1) changing all references

to the Office for Protection from Research Risks (OPRR) to the Office for Human Research Protections (OHRP) and (2) revising the footnote at the end of 34 CFR 97.101(i) by removing the references to research involving fetuses, pregnant women, or human in vitro fertilization and subpart B of 45 CFR part 46. This technical amendment is being made in conjunction with the other Federal departments and agencies that have promulgated the Federal Policy for the Protection of Human Subjects.

Timetable:

| Action | Date | FR Cite |
|--------------|----------|---------|
| Final Action | 06/00/05 | |

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Helene Deramond, Department of Education, Office of the Chief Financial Officer, Room 7103, PCP, 400 Maryland Avenue SW, Washington, DC 20202-4248
Phone: 202 245-6154

RIN: 1890-AA12

Department of Education (ED)

Long-Term Actions

Office of the Chief Financial Officer (OCFO)

763. PROTECTION OF HUMAN SUBJECTS (CLASSIFIED RESEARCH)

Priority: Substantive, Nonsignificant

CFR Citation: 34 CFR 97

Timetable:

| Action | Date | FR Cite |
|--------------------|------------------|---------|
| Interim Final Rule | To Be Determined | |

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Helene Deramond
Phone: 202 245-6154

RIN: 1890-AA08

Department of Education (ED)

Final Rule Stage

Office for Civil Rights (OCR)

764. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Other Significant

Legal Authority: 20 USC 1681 to 1682

CFR Citation: 34 CFR 106

Legal Deadline: None

Abstract: The Department proposed changes to the regulations implementing title IX of the Education Amendments of 1972. These changes would amend existing regulations to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The amendments would support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational opportunities that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. Amendments would be designed to permit appropriate latitude

for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of title IX.

Timetable:

| Action | Date | FR Cite |
|-------------------------|----------|-------------|
| NPRM | 03/09/04 | 69 FR 11276 |
| NPRM Comment Period End | 04/23/04 | |
| Final Action | 09/00/05 | |

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sandra G. Battle, Department of Education, Office for Civil Rights, Room 6126, PCP, 400 Maryland Avenue SW, Washington, DC 20202-1100
Phone: 202 245-6767

RIN: 1870-AA11

765. EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES FOR THE BOY SCOUTS OF AMERICA AND OTHER DESIGNATED YOUTH GROUPS

Priority: Other Significant

Legal Authority: 20 USC 7905

CFR Citation: 34 CFR 108

Legal Deadline: None

Abstract: These regulations would implement the Boy Scouts of America Equal Access Act (Boy Scouts Act), which is part of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. Under the Boy Scouts Act, no public elementary school, public secondary school, or State or local educational agency that receives funds made available through the Department and that has a limited public forum or designated open forum shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or other specified patriotic youth groups.

ED—OCR

Final Rule Stage

Timetable:

| Action | Date | FR Cite |
|-----------------------------|----------|-------------|
| ANPRM | 11/15/02 | 67 FR 69456 |
| ANPRM Comment Period End | 12/16/02 | |
| NPRM | 10/19/04 | 69 FR 61556 |
| NPRM Comment Period End | 12/03/04 | |
| Final Action | 09/00/05 | |

Regulatory Flexibility Analysis Required: No**Small Entities Affected:** No**Government Levels Affected:** None**URL For Public Comments:** www.regulations.gov**Agency Contact:** Sandra G. Battle, Department of Education, Office forCivil Rights, Room 6126, PCP, 400 Maryland Avenue SW, Washington, DC 20202-1100
Phone: 202 245-6767**RIN:** 1870-AA12

Department of Education (ED)

Final Rule Stage

Office of Elementary and Secondary Education (OESE)

766. TITLE I, IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED**Priority:** Other Significant**Legal Authority:** PL 107-110**CFR Citation:** 34 CFR 200**Legal Deadline:** None

Abstract: These regulations would clarify statutory provisions regarding State, LEA, and school accountability for the academic achievement of limited English proficient (LEP) students and are needed to implement changes to title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind

Act of 2001. The regulations would permit States to exclude from reading/language arts assessments LEP students who have been in schools in the United States for fewer than 10 months. The regulations would also permit States to count in the LEP subgroup for 1 or 2 years students who were LEP but who, it is determined, are no longer LEP.

Timetable:

| Action | Date | FR Cite |
|----------------------------|----------|-------------|
| NPRM | 06/24/04 | 69 FR 35462 |
| NPRM Comment Period End | 08/09/04 | |
| Final Action | 05/00/05 | |

Regulatory Flexibility Analysis Required: No**Small Entities Affected:** No**Government Levels Affected:** None

Agency Contact: Jacquelyn Jackson, Director, Student Achievement and School Accountability Programs, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Room 3W230, Washington, DC 20202-6132
Phone: 202 260-0826

Related RIN: Previously reported as 1820-AB55**RIN:** 1810-AA97

Department of Education (ED)

Proposed Rule Stage

Office of Special Education and Rehabilitative Services (OSERS)

767. REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (SECTION 610 REVIEW)**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Unfunded Mandates:** Undetermined**Legal Authority:** 20 USC 1400 to 1482**CFR Citation:** 34 CFR ch III**Legal Deadline:** None

Abstract: These regulations would implement changes made by the reauthorization of the Individuals With Disabilities Education Act. In addition, ED will review the regulations in 34 CFR chapter III under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review will be to determine if these regulations

should be continued without change, or should be amended or rescinded, to minimize any significant economic impact upon a substantial number of small entities. We will request comments on the continued need for the regulations; the complexity of the regulations; the extent to which they overlap, duplicate, or conflict with other Federal, State, or local government regulations; and the degree to which technology, economic conditions, or other relevant factors have changed since the regulations were promulgated.

Timetable:

| Action | Date | FR Cite |
|--------|----------|------------|
| Notice | 01/10/02 | 67 FR 1411 |
| NPRM | 05/00/05 | |

Regulatory Flexibility Analysis Required: Undetermined**Government Levels Affected:** Undetermined**Federalism:** Undetermined**URL For Public Comments:** www.regulations.gov

Agency Contact: Troy Justesen, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5138, PCP, Washington, DC 20202-2570
Phone: 202 245-7468

RIN: 1820-AB54

Department of Education (ED)

Proposed Rule Stage

Office of Innovation and Improvement (OII)

768. STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Priority: Other Significant

Legal Authority: 20 USC 1232h

CFR Citation: 34 CFR 98

Legal Deadline: None

Abstract: These regulations are needed to implement amendments to the Protection of Pupil Rights Amendment (PPRA) resulting from (1) section 1017 of the Goals 2000 Educate America Act (Pub. L. 103-227; 20 U.S.C. 1232h) and (2) legislation passed as part of the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107-110). Section 1017 of Goals 2000 amended PPRA to require schools, in certain instances, to make specific educational materials available to parents for inspection. The provision also amended PPRA to prohibit schools

from requiring students to submit to certain surveys, analyses, or evaluations without parental consent. NCLB specified certain subjects on which schools, in conjunction with parents, must develop and adopt policies. NCLB also required local educational agencies to directly notify parents of these policies and permit parents to opt out of certain activities. As our next action, we will issue a new NPRM incorporating the amendments resulting from NCLB, as well as the earlier amendments resulting from the Goals 2000 Educate America Act.

Timetable:

| Action | Date | FR Cite |
|-------------------------|----------|-------------|
| NPRM | 08/28/95 | 60 FR 44696 |
| NPRM Comment Period End | 10/27/95 | |
| Second NPRM | 06/00/05 | |

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Ellen Campbell, Family Policy Compliance Office, Department of Education, Room 2W117, FB-6, 400 Maryland Avenue SW, Washington, DC 20202-4605
Phone: 202 260-3887

Related RIN: Previously reported as 1880-AA66

RIN: 1855-AA03

Department of Education (ED)

Completed Actions

Office of Innovation and Improvement (OII)

769. CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

Priority: Other Significant

CFR Citation: 34 CFR 225

Completed:

| Reason | Date | FR Cite |
|--------------|----------|-------------|
| NPRM | 10/22/04 | 69 FR 62008 |
| Final Action | 03/24/05 | 70 FR 14999 |

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jim Houser
Phone: 202 260-1924

Valarie Perkins
Phone: 202 260-1924

RIN: 1855-AA02

770. INNOVATION FOR TEACHER QUALITY

Priority: Other Significant

CFR Citation: 34 CFR 230, subpart B

Completed:

| Reason | Date | FR Cite |
|------------------|----------|---------|
| NPRM | 01/14/05 | |
| Not Under Review | 03/11/05 | |

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thelma Leenhouts
Phone: 202 260-0223

RIN: 1855-AA04

[FR Doc. 05-7659 Filed 05-13-05; 8:45 am]

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