Monday,
December 22, 2003

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 regulations. 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 Sandy Jablonski, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6C109, 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 Information Relay Service (FIRS) 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 contactperson 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, 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 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 the regulation listed in this agenda that is designated for periodic review under the Regulatory Flexibility Act (5 U.S.C. 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.

For this edition of ED’s regulatory agenda, the most important significant regulatory actions are included in the Regulatory Plan, which appears in part II of this issue of the Federal Register. The Regulatory Plan entry is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

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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

Brian W. Jones,
General Counsel.

Office of Management—Proposed Rule Stage

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<tr>
<th>Sequence Number</th>
<th>Title</th>
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<tr>
<td>882</td>
<td>Student Rights in Research, Experimental Programs, and Testing</td>
<td>1880–AA66</td>
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### Office of the Chief Financial Officer—Proposed Rule Stage

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<td>Direct Grant Programs—E-Application Regulations</td>
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<td>Protection of Human Subjects (Classified Research)</td>
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<td>Governmentwide Requirement for Drug-Free Workplace (Financial Assistance) and Governmentwide Debarment and Suspension (Nonprocurement)</td>
<td>1890–AA07</td>
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<td>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance</td>
<td>1870–AA11</td>
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<td>888</td>
<td>Boy Scouts of America Equal Access Act</td>
<td>1870–AA12</td>
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<td>1810–AA95</td>
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### Office of Elementary and Secondary Education—Completed Actions

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<td>892</td>
<td>Reauthorization of the Individuals With Disabilities Education Act (Section 610 Review) (Reg Plan Seq No. 34)</td>
<td>1820–AB54</td>
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References in boldface appear in the Regulatory Plan in part II of this issue of the Federal Register.

Office of Innovation and Improvement—Final Rule Stage

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<td>Family Educational Rights and Privacy Act</td>
<td>1855–AA00</td>
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<td>894</td>
<td>Magnet Schools Assistance Program</td>
<td>1855–AA01</td>
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Department of Education (ED)
Office of Management (OM)

882. 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 section 1017 of the Goals 2000: Educate America Act (Pub. L. 103–227, 20 U.S.C. 1232h). This section amends the Protection of Pupil Rights Amendment (PPRA) to require schools, in certain instances, to make specific educational materials available to parents for inspection. The provision also amends the PPRA to prohibit schools from requiring a student to submit to certain surveys, analyses, or evaluations without prior parental consent. The regulations are being developed in accordance with the Department’s Principles for Regulating. New legislation amending the PPRA passed as part of the No Child Left Behind Act of 2001. As our next action we will issue a new NPRM based on this legislation.

Timetable:

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<tr>
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<th>Date</th>
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<tr>
<td>NPRM</td>
<td>08/28/95</td>
<td>60 FR 44696</td>
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<td>10/27/95</td>
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<td>Second NPRM</td>
<td>11/00/03</td>
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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 2W100, Room 2W117, FB–6, 400 Maryland Avenue SW, Washington, DC 20202–4605 Phone: 202 260–3887
RIN: 1880–AA66

883. DIRECT GRANT PROGRAMS—E-APPLICATION REGULATIONS

Priority: Substantive, Nonsignificant
Legal Authority: 20 USC 1221e–3 and 3474
CFR Citation: 34 CFR 75
Legal Deadline: None

Abstract: These regulations would amend 34 CFR part 75 governing the process for submitting discretionary grant applications for the Direct Grant Programs of the Department of Education. These regulations would revise the regulations governing the deadline date for applications to provide for electronic submission of applications.

Timetable:

<table>
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<tr>
<th>Action</th>
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<tr>
<td>NPRM</td>
<td>10/30/03</td>
<td>68 FR 61779</td>
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<td>NPRM Comment Period End</td>
<td>12/29/03</td>
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<td>Final Action</td>
<td>03/00/04</td>
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Regulatory Flexibility Analysis
Required: No
Small Entities Affected: No
Government Levels Affected: None
URL For Public Comments:
www.regulations.gov
Agency Contact: Blanca Rodriguez, Department of Education, Office of the Chief Financial Officer, Room 3652, Room 3652, ROB–3, 400 Maryland Avenue SW, Washington, DC 20202–4248 Phone: 202 260–0172
RIN: 1890–AA09

884. DIRECT GRANT PROGRAMS AND STATE-ADMINISTERED PROGRAMS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.
Legal Authority: 20 USC 1221e–3; 20 USC 3474; 20 USC 6511(a); 20 USC
### Department of Education (ED) Long-Term Actions

#### Office of the Chief Financial Officer (OCFO)

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<tr>
<th>Priority Code</th>
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<th>CFR Citation</th>
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<th>Regulatory Flexibility Analysis</th>
<th>Government Levels Affected</th>
<th>Agency Contact</th>
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<tr>
<td>885. PROTECTION OF HUMAN SUBJECTS (CLASSIFIED RESEARCH)</td>
<td>The Department is considering changes to the regulations implementing title IX of the Education Amendments of 1972. In the event changes are made, such 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 purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options 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.</td>
<td>34 CFR 97</td>
<td>Interim Final Rule To Be Determined</td>
<td>Regulatory Flexibility Analysis Required: No</td>
<td>None</td>
<td>Helene Deramond, Phone: 202 260–5353</td>
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<thead>
<tr>
<th>Priority Code</th>
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<tr>
<td>886. GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) AND GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)</td>
<td>The Department is considering changes to the regulations implementing title IX of the Education Amendments of 1972. In the event changes are made, such 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 purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options 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.</td>
<td>34 CFR 84; 34 CFR 85; 34 CFR 668; 34 CFR 682</td>
<td>Final Action 11/26/03 68 FR 66534</td>
<td>Regulatory Flexibility Analysis Required: No</td>
<td>None</td>
<td>Peter Wathen-Dunn, Phone: 202 401–6700</td>
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### Department of Education (ED) Proposed Rule Stage

#### Office for Civil Rights (OCR)

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<th>Abstract</th>
<th>CFR Citation</th>
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<tr>
<td>887. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE</td>
<td>The Department is considering changes to the regulations implementing title IX of the Education Amendments of 1972. In the event changes are made, such 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 purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options 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.</td>
<td>34 CFR 106</td>
<td>NPRM 11/00/03</td>
<td>Regulatory Flexibility Analysis Required: No</td>
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<tr>
<td>Government Levels Affected:</td>
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<tr>
<td>URL For Public Comments:</td>
<td><a href="http://www.regulations.gov">www.regulations.gov</a></td>
</tr>
<tr>
<td>Agency Contact:</td>
<td>Sandra G. Battle, Department of Education, Office for Civil Rights, Room 5036, Switzer Building, 400 Maryland Avenue SW, Washington, DC 20202–1100 Phone: 202 205–5526</td>
</tr>
<tr>
<td>RIN:</td>
<td>1870–AA11</td>
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#### 888. BOY SCOUTS OF AMERICA EQUAL ACCESS ACT

**Priority:** Substantive, Nonsignificant  
**Legal Authority:** 20 USC 7905  
**CFR Citation:** 34 CFR ch I  
**Legal Deadline:** None  
**Abstract:** These regulations would implement a new law, the Boy Scouts of America Equal Access Act (Boy Scouts Act), which is part of the amendments to the Elementary and Secondary Education Act of 1965 enacted as 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 provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours 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.

**Timetable:**
- **ANPRM** 11/15/02 FR Cite 67 FR 69456
- **ANPRM Comment Period End** 12/16/02
- **NPRM** 12/00/03

**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 for Civil Rights, Room 5036, Switzer Building, 400 Maryland Avenue SW, Washington, DC 20202–1100 Phone: 202 205–5526  
**RIN:** 1870–AA12

### Department of Education (ED)

Office of Elementary and Secondary Education (OESE)

#### 889. IMPACT AID PROGRAMS

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.  
**Legal Authority:** 20 USC 7701 to 7714  
**CFR Citation:** 34 CFR 222  
**Legal Deadline:** None  
**Abstract:** These regulations would implement the Impact Aid discretionary construction program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The program would provide competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid formula funds. These regulations would incorporate statutory requirements and provide guidance for applying and qualifying for, as well as spending, the Federal funds provided under this program. These regulations would apply to the grant competitions after fiscal year 2002.

**Timetable:**
- **NPRM** 10/22/03 FR Cite 68 FR 60598
- **NPRM Comment Period End** 11/21/03
- **Final Action** 12/00/03

**Regulatory Flexibility Analysis Required:** No  
**Small Entities Affected:** No  
**Government Levels Affected:** None  
**Additional Information:** NPRM published erroneously as RIN 1810—AA96.  
**URL For Public Comments:** www.regulations.gov

**Agency Contact:** Marilyn Hall, Impact Aid Program, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202–6244 Phone: 202 205–8724  
**RIN:** 1810–AA96

### Department of Education (ED)

Office of Elementary and Secondary Education (OESE)

#### 890. 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 students with the most significant cognitive disabilities and are needed to implement changes to title I of the Elementary and Secondary Education Act of 1965, as amended, made by the No Child Left Behind Act of 2001.

**Timetable:**
- **NPRM** 03/20/03 FR Cite 68 FR 13796

**Regulatory Flexibility Analysis Required:** No  
**Small Entities Affected:** No  
**Government Levels Affected:** None  
**URL For More Information:** www.regulations.gov
Agency Contact: Jacquelyn Jackson, Acting Director, Student Achievement and Student Accountability Programs, Department of Education, Office of Elementary and Secondary Education, Room 3W230, 400 Maryland Avenue SW, Washington, DC 20202–6132
Phone: 202 260–0826
RIN: 1810–AA95

Department of Education (ED) Complete Actions
Office of Elementary and Secondary Education (OESE)

891. INDIAN EDUCATION DISCRETIONARY GRANT PROGRAM

Completed:

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<td>68 FR 43639</td>
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Regulatory Flexibility Analysis Required: No

Government Levels Affected: None
Agency Contact: Cathie Martin
Phone: 202 260–1683
RIN: 1810–AA93

Department of Education (ED) Prerule Stage
Office of Special Education and Rehabilitative Services (OSERS)

892. REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Regulatory Plan: This entry is Seq. No. 34 in part II of this issue of the Federal Register.
RIN: 1820–AB54

Department of Education (ED) Final Rule Stage
Office of Innovation and Improvement (OII)

893. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

Small Entities Affected: No
Government Levels Affected: None
Additional Information: Transferred from RIN 1880–AA80
URL For More Information: www.regulations.gov

Agency Contact: Kathleen Wolan, Family Policy Compliance Office, Department of Education, Room 2W100, FB–6, 400 Maryland Avenue SW, Washington, DC 20202–4605
Phone: 202 260–3887
RIN: 1855–AA00

894. MAGNET SCHOOLS ASSISTANCE PROGRAM

Small Entities Affected: No
Government Levels Affected: None
URL For Public Comments: www.regulations.gov

Agency Contact: Steven L. Brockhouse, Department of Education, Office of Innovation and Improvement, Room 3E122, FB–6, 400 Maryland Avenue SW, Washington, DC 20202–6140
Phone: 202 260–2476
RIN: 1855–AA01