DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2010–OESE–0005]

RIN 1810–AB10

Race to the Top Fund

ACTION: Interim final requirements; request for comments.

SUMMARY: The U.S. Secretary of Education (Secretary) amends the final requirements for the Race to the Top Fund to incorporate and make binding for Phase 2 of the competition State budget guidance.

DATES: These requirements are effective April 2, 2010. We must receive your comments by May 3, 2010.

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* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final requirements, address them to James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E108, Washington, DC 20202.
- *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 in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: James Butler, Telephone: 202–205–3775 or by e-mail: *racetothetop@ed.gov.*

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

Individuals with disabilities can obtain this document in an accessible 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 interim final requirements and 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 interim final requirements.

During and after the comment period you may inspect all public comments about these interim final requirements by accessing Regulations.gov. You may also inspect the comments, in person, in room 3W100, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background: The Secretary published final requirements for the Race to the Top Fund in the **Federal Register** on November 18, 2009 (74 FR 59688). In the same issue of the **Federal Register**, the Secretary also published the Race to the Top Fund NIA for Fiscal Year (FY) 2010 (74 FR 59836). The NIA provides two application deadlines for the FY 2010 Race to the Top Fund competition: Phase 1, due January 19, 2010, and Phase 2, due June 1, 2010.

Through Race to the Top, the Department seeks to spur reform of the country's education system. This mission can be met by achieving two key goals. First, we seek to ensure that States that put forth the highest-quality reform plans and demonstrate the capacity to implement those plans have sufficient funding to make their plans a reality. Second, we seek to recognize a number of States that can serve as models of change through their Race to the Top plans. Funding for Race to the Top is not unlimited. For this reason, the Department must balance these competing goals to maximize the Race to the Top investment while ensuring that the highest-quality plans can be implemented.

In an effort to achieve these goals, in the NIA, the Department provided direction and flexibility to States in planning their budgets. Specifically, the NIA contained nonbinding budget ranges for each State. The NIA provided that States could use these ranges as rough blueprints to guide the development of their budgets, but that States could also prepare budgets that were above or below the ranges specified. States were encouraged to develop budgets that were appropriate to implement the plans they outlined in their applications. In developing the budget ranges, the Department grouped the States into five categories by ranking every State according to its share of the national population of children ages 5 through 17 and identifying natural breaks in the population numbers. The Department then developed overlapping budget ranges for each category based on the student population data.

The Department received 41 applications in Phase 1. States' budget requests ranged from 90 percent to 297 percent of the suggested budget maximums. There was significant variability in the extent to which State budget requests conformed to the Department's suggested budget ranges, including significant variability among the budget requests from similarly sized States.

Following the peer review of Phase 1 applications, we analyzed the rank order of States based upon their scores and compared the rank order with the extent to which the State conformed with or exceeded the Department's suggested budget ranges. We found no relationship between a State's rank and its budget request.

In light of this analysis, we conclude that States can propose high-quality Race to the Top plans within the Department's suggested budget ranges, particularly given that, as part of their reform plans, States are expected to coordinate, reallocate, or repurpose other Federal, State, and local sources of funding to support their Race to the Top goals. To ensure a robust competition in Phase 2 and to stimulate comprehensive education reform throughout the country, we are establishing the suggested budget ranges as mandatory funding limits for Phase 2 of the competition.

Race to the Top grantees will serve as models of best reform practices across their States and the country; accordingly, we want to ensure that the Secretary can fund, at an adequate level, a sufficient number of high-quality applications within this finite ARRA

funding. Requiring States to conform to the Department's budget ranges will allow more grants to be awarded. Accordingly, these interim final requirements make the previously suggested budget ranges binding on State applicants applying in Phase 2 of the competition.

Waiver of Rulemaking and Delayed Effective Date: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section 553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these requirements are subject to the APA's notice-and-comment requirements, the Secretary has determined that it would be impracticable and contrary to the public interest to conduct notice-and-comment rulemaking.

As noted above, these interim final requirements are needed to establish mandatory budget ranges in the final Race to the Top Fund requirements published on November 18, 2009. The Department believes that mandatory budget ranges are necessary due, in part, to the extent to which Phase 1 applications exceeded the recommended budget ranges. Additionally, as previously indicated, Phase 2 Race to the Top applications are due on June 1, 2010. We chose this date to allow sufficient time for States to prepare their applications and for the Department to conduct Phase 2 of the competition, so that grant awards can be made by September 30, 2010, when all ARRA funds must be obligated. Even on an extremely expedited timeline, it would be impracticable for the Department to conduct notice-and-comment rulemaking and then promulgate final requirements before the June 1, 2010 deadline for Phase 2 applications. Publishing a notice of proposed rulemaking, reviewing the public comments, and issuing final regulations normally takes at least four to six months. We are concerned that, when added to the time the Department will need to conduct Phase 2 of the competition in addition to the time that States will need to plan and draft applications that conform to these budget ranges, the Department might not be able to award Race to the Top grants by the obligation deadline of September 30, 2010. With billions of public dollars at stake, it would be impracticable and contrary to the public interest for the Department to take this risk of not obligating all funds by September 30.

Accordingly, and in order to make timely grant awards with ARRA funds, the Secretary is issuing these interim final requirements without first publishing proposed requirements for public comment. These interim final requirements govern Phase 2 of the Race to the Top competition.

Although the Department is adopting these requirements on an interim final basis, the Department requests public comment on these requirements. After consideration of public comments, the Secretary will publish final requirements. The final requirements would govern any subsequent competition conducted under the Race to the Top program.

The APA also requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). For the reasons outlined in the preceding paragraphs, the Secretary has determined that a delayed effective date for these interim final requirements would be unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date. As such, this rule is effective on the date it is published.

Summary of the Interim Final Requirements

Current final requirements: The current final requirements do not contain any requirements related to the total amount a State may request in its Race to the Top budget.

Interim final requirements: The interim final requirements add a section entitled "Budget Requirements," specifying that State Race to the Top budgets must conform to the budget ranges developed by the Department.

Reasons: In Phase 1 of the Race to the Top competition, States' budget requests varied widely and almost every applicant exceeded the budget ranges suggested in the NIA. The Department did not expect that States would propose budgets that differed so significantly from the suggested budget ranges, which, as indicated previously, were developed based on current State population data. We believe that States can propose successful Race to the Top plans within these ranges because we did not find a relationship between States' scoring ranks and the extent to which States exceeded the Department's suggested budget ranges. By requiring States to conform to specific budget ranges, we will ensure that the Secretary can fund, at an adequate level, multiple high-quality applications.

Interim Final Requirements

34 CFR CHAPTER 2

■ For the reasons discussed previously, the Secretary amends the final Race to the Top Fund requirements published in the **Federal Register** on November 18, 2009 (74 FR 59836) to include a new section as follows:

Budget Requirements: For Phase 2 of the Fiscal Year 2010 competition, and for any subsequent competitions, the State's budget must conform to the following budget ranges: [1]

Category 1—$350–700 million: California, Texas, New York, Florida.

Category 2—$200–400 million: Illinois, Pennsylvania, Ohio, Georgia, Michigan, North Carolina, New Jersey.

Category 3—$150–250 million: Virginia, Arizona, Indiana, Washington, Tennessee, Massachusetts, Missouri, Maryland, Wisconsin.

Category 4—$60–175 million: Minnesota, Colorado, Alabama, Louisiana, South Carolina, Puerto Rico, Kentucky, Oklahoma, Oregon, Connecticut, Utah, Mississippi, Iowa, Arkansas, Kansas, Nevada.

Category 5—$20–75 million: New Mexico, Nebraska, Idaho, West Virginia, New Hampshire, Maine, Hawaii, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, Wyoming, District of Columbia.

The State should develop a budget that is appropriate for the plan it outlines in its application; however we will not consider a State's application if its request exceeds the maximum in its budget range.

Executive Order 12866: Under Executive Order 12866, the Secretary must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect

[1] The Department developed budget ranges for each State by ranking every State according to its share of the national population of children ages 5 through 17 based on data from "Estimates of the Resident Population by Selected Age Groups for the United States, States, and Puerto Rico: July 1, 2008" released by the Population Division of the U.S. Census Bureau. The Department identified the natural breaks in the population data and then developed overlapping budget ranges for each category taking into consideration the total amount of funds available for awards.

on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or local programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f) of the Executive order.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that this rule will not impose additional costs to State applicants, grantees, or the Federal government. The Department is regulating only to incorporate mandatory budget ranges into the final Race to the Top requirements. It may take a State applicant time to create or revise its Race to the Top budget so that it conforms to the required budget range contained in this regulatory action if the State had intended to request more than the maximum in the range. We believe, however, that the benefits of this action outweigh any potential burden that it may cause. Additionally, the Department has determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification: The Secretary certifies that these interim final requirements will not have a significant economic impact on a substantial number of small entities. The Secretary makes this certification because the only entities eligible to apply for grants are States, and States are not small entities.

Paperwork Reduction Act of 1995: The interim final requirements contain information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department had received previously emergency approval for the information collections in the final Race to the Top Fund requirements published on November 18, 2009, under OMB Control Number 1810–0697. The Department will submit to OMB a Paperwork Reduction Act Change Worksheet for this collection that will include the changes described in this notice.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans regarding budget requirements for this program.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

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.*

Dated: March 29, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–7409 Filed 4–1–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2008–0918; FRL–8816–9]

RIN 2070–AB27

1-Propene, 2,3,3,3-tetrafluoro-; Withdrawal of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance identified as 1-Propene, 2,3,3,3-tetrafluoro- (CAS No. 754–12–1), which was the subject of premanufacture notice (PMN) P–07–601. EPA published the SNUR using direct final rulemaking procedures. EPA received a notice of intent to submit adverse comments on the rule. Therefore, the Agency is withdrawing the SNUR, as required under the expedited SNUR rulemaking process. Elsewhere in today's **Federal Register**, EPA is publishing (under separate notice and comment rulemaking procedures) a proposed SNUR for this substance.

DATES: This final rule is effective April 2, 2010.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8773; e-mail address: *chu.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

A list of potentially affected entities is provided in the **Federal Register** of February 1, 2010 (75 FR 4983) (FRL–8438–4). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Rule is Being Withdrawn?

In the **Federal Register** of February 1, 2010 (75 FR 4983), EPA issued several direct final SNURs, including a SNUR for the chemical substance that is the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with 40 CFR 721.170(d)(4)(i), EPA is withdrawing the rule issued for 1-Propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1) at 40 CFR 721.10182 because the Agency received a notice of intent to submit adverse comments. Elsewhere in today's **Federal Register**, EPA is proposing a SNUR for this chemical substance via notice and comment rulemaking.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final