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DEPARTMENT OF EDUCATION

[Docket ID ED–2020–OPEPD–0096]

Administrative Priority and Definitions for Discretionary Grant Programs

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Final priority and definitions.

SUMMARY: The Secretary of Education announces a priority and definitions for discretionary grant programs that the Secretary may use in fiscal year (FY) 2021 and later years to promote the use of the Department of Education’s (the Department’s) discretionary grants funds to support remote learning.

DATES: The priority and definitions are effective January 29, 2021.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Program Authority: 20 U.S.C. 1221e–3.

We published a notice of proposed priority and definitions (NPP) in the **Federal Register** on September 8, 2020 (85 FR 55439). That notice contained background information and our reasons for proposing the particular administrative priority and definitions.

We have made minor revisions to paragraphs (b) and (f) of the priority and to the definition of “interoperable credentials,” which we explain in the *Analysis of Comments and Changes* section of this document.

Public Comment: In response to our invitation in the NPP, 16 parties submitted comments.

We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority and definitions.

Analysis of the Comments and Changes: An analysis of the comments and of any changes in the priority and definitions since publication of the NPP follows.

Comments: A few commenters asked for clarity on how the priority would be used and encouraged the Department to prioritize certain applicants, such as institutions of higher education, for eligibility.

Discussion: As discussed in the NPP, the priority is intended to build State and local capacity to support remote learning and instruction. The Department may elect to use this priority when inviting applications for a discretionary grant program. The Department has the discretion to choose whether the priority and definitions are appropriate for the competition after considering program purpose, feasibility, and scope. The Department also has the discretion to choose how the priority would apply; for example, the priority may be used as an absolute priority (applicants must address the priority in order to be eligible to receive grant funds) or a competitive preference priority (applicants may receive additional points depending on how well they address the priority). We will only use the priority and definitions for a particular grant competition when it is relevant and appropriate. Furthermore, the Department is not required to use the priority and definitions for any particular program.

In any competition in which this priority and definitions are used, eligible entities are determined by the program statute; therefore, we cannot specify eligibility for a particular type of entity as part of the final priority.

Changes: None.

Comments: A few commenters proposed revisions to, or additional language for, the background section that accompanied the proposed priority to emphasize the impact of school closures for in-person instruction on different populations, such as students with disabilities, as well as specifics related to learning losses discussed in the cited study.

Discussion: We appreciate the feedback we received on the NPP background section, which explains our rationale for this priority and definitions. We agree with comments that emphasized the impact of school closures for in-person instruction on

students with disabilities and other groups of students and believe the commenters’ concerns are sufficiently addressed through paragraph (f) of the priority. Moreover, we are revising paragraph (f) so that a program may choose to focus on a specific subgroup. Additionally, we added language in parentheses clarifying that where the commonly used terms used for the subgroups of students in paragraph (f) or similar terms are defined in the applicable authorizing program statute, these terms take on the statutory definition that applies to the particular program. For example, this priority could be used in the Alaska Native Education (ANE) program to encourage projects that provide high-quality remote learning to students who are Alaska Natives, as defined in the Elementary and Secondary Education Act, as amended (ESEA), through the use of paragraph (f)(iv) of the priority, pertaining to Native American students.

Changes: We are modifying paragraph (f) so that a program may choose to focus on specific subgroups and have clarified that the definitions of listed subgroups may be based on the program’s statutory authority, as applicable.

Comments: Multiple commenters requested that we reference Section 508 of the Rehabilitation Act in the accessibility requirement paragraph that concludes the priority.

Discussion: We agree that accessibility is important in ensuring all students can access remote learning effectively, and we have indicated so in various paragraphs of the priority. Section 508 of the Rehabilitation Act applies only to Federal agencies, so recipients of Federal financial assistance are not required to comply with that law; consequently, inclusion of Section 508 in the accessibility requirement has limited applicability and is therefore unnecessary.

Changes: None.

Comments: Multiple commenters expressed concerns about the impact of remote learning for students with disabilities, including a concern that the priority did not take into account the individual needs of students identified for services pursuant to the Individuals with Disabilities Education Act (IDEA).

In addition, multiple commenters expressed support for paragraph (f) of the priority to target the needs of specific subgroups, including students with disabilities. However, one commenter recommended the Department remove the requirement that paragraph (f) of the priority be used only in conjunction with another paragraph of the priority.

Discussion: Students with disabilities throughout the country who may be eligible for services under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the IDEA must have their individual learning needs met from wherever they are learning. Educators also need training and support to provide effective remote instruction. Through this priority, we will promote strategies and practices for delivering remote learning and competency-based education that effectively meet the individual needs of students with disabilities, including: Identifying the appropriate technologies, assistive technologies, or accessible educational materials needed to ensure students with disabilities have access to core or alternate curricula; enhancing communication and collaboration with parents and families to identify the most effective methodology and supports that will meet the unique and individual needs of students with disabilities; and ensuring Individualized Education Program teams and teams determining services under Section 504 collaborate with parents to identify the program, related services, accommodations, and supports the individual student will require in order to derive an educational benefit and achieve academic, functional, and behavioral educational outcomes.

Lastly, paragraph (f) of the priority is designed to target the work carried out under paragraphs (a)–(e) of the priority to a particular subgroup or subgroups of students and leverage that work to focus efforts. As such, paragraph (f) on its own would not address fully the improvements that would be supported with this remote learning priority.

Changes: None.

Comments: Multiple commenters suggested adding language on the principles of Universal Design for Learning (UDL) in all the paragraphs of the priority.

Discussion: The priority currently refers to UDL in paragraph (a) of the priority as an example. As written, the language in the other paragraphs of the priority could be inclusive of UDL as a strategy for meeting the needs of students with disabilities.

Further, the priority offers the flexibility for applicants to address UDL and similar strategies in their grant applications. There is nothing in the priority that would prohibit the use of UDL. For these reasons, it is not necessary to revise the priority to include explicit references to the strategy in all paragraphs of the priority.

Changes: None.

Comment: One commenter raised concerns that the priority did not

address all student populations most impacted by remote learning, that remote learning is not culturally responsive, and that the assessments need to be research-based. This commenter also raised concern about inequitable access to technology, stating that the priority will further exacerbate the “digital divide.” A second commenter recommended removing the 10 percent limitation on technology costs, citing concerns about access to technology and the variance in that access across the country.

Discussion: We appreciate the concern that the remote learning priority must consider the needs of all students. We include paragraph (f) of the priority which requires “high-quality” remote learning for specific subgroups of students, and we think that the concept of high-quality remote learning would include considerations about what is culturally responsive, as appropriate. We also generally defer to applicants on how best to meet their communities’ needs. Furthermore, the intent of the remote learning priority is to ensure that the Department provide incentives to applicants that would implement robust, effective, and engaging remote learning strategies that meet the needs of all students. In addition, while we do not explicitly require performance-based assessments to be supported by research, in paragraph (d) of the priority we do require that the assessments obtain valid and reliable results.

Paragraph (c) of the proposed priority allowed for providing access to technologies needed to serve learners. The intent of proposed paragraph (c) was to reduce the differences in access to technology. We understand that setting a limit on technology costs could be prohibitive to successfully implementing the remote learning priority and understand that applicants are best positioned to determine the sufficient amount of resources needed to invest in technology to support project objectives. As such, we are removing the cap on technology costs in paragraph (c) of the proposed priority.

Changes: We are removing the last sentence of paragraph (c) of the proposed priority.

Comments: Multiple commenters supported the priority, emphasized the need for professional learning and the usage of paragraph (b), and noted the important role institutions of higher education play in professional development. One commenter asked that the Department use paragraph (b) in all competitions as an absolute priority.

Discussion: We appreciate the support for the priority. We agree that

professional learning is an important part of effective remote learning and agree that institutions of higher education, along with a number of other entities, can support professional learning for educators. With respect to using paragraph (b) as an absolute priority across all discretionary grant programs, the Department has discretion in choosing whether and how to use the priority based on its applicability to a given program’s purpose, and those decisions are best made on a program-by-program basis.

Changes: None.

Comment: A couple of commenters requested that the Department expand paragraph (b), which is focused on professional learning. One commenter wanted paragraph (b) to align with the definition of “professional development” under the ESEA. Another commenter said the examples in the parenthetical for paragraph (b) should be expanded with additional examples to emphasize professional development focused on student engagement and not just professional development in technology use.

Discussion: We appreciate the interest in clarity and consistency in terminology in this priority and other statutes. However, the language about professional development being “sustained and intensive” from the definition of “professional development” in ESEA is not appropriate for this remote learning priority. Our intent for this priority is to help the Department’s grantees pivot between in-person and remote learning as needed. While remote learning in response to the novel coronavirus 2019 (COVID–19) pandemic has been in place for an extended period, not all remote learning under this priority will be for similar time frames, and professional learning may not need to be ongoing to address educator capacity for remote learning.

In regard to the comment recommending additional examples to highlight professional learning activities beyond technology, paragraph (b) already includes a focus on professional learning with the intent of advancing student engagement and learning, but we recognize the paragraph may appear to highlight technology primarily. As such, we are reorganizing the sentence for paragraph (b) to clearly emphasize increasing student engagement, including through the use of technology.

Changes: We are revising paragraph (b) so that it more clearly states that the professional learning under this priority is focused on student engagement and learning through technology, rather than emphasizing technology.

Comments: Multiple commenters sought revisions to paragraph (d) of the priority to clarify that performance-based assessments are important, regardless of the connection to competency-based education; that the assessments must show true competency; and that assessments should not require seat time. Commenters also asked the Department to provide additional examples of assessments.

Discussion: We agree that performance-based assessments are important and purposefully highlight these kinds of assessments and seek their development under paragraph (d) of the priority. We agree that performance-based assessments can be separate from competency-based education; however, we want to emphasize competency-based education in this paragraph of the remote learning priority. Moreover, we want to encourage assessments that demonstrate competency, in keeping with the recommendation from one commenter, and we want to support assessments that accurately document students' skills. The examples included in paragraph (d) do not need to be exhaustive and are sufficient for the purposes of the priority. Lastly, we do not consider the priority or the definition of "competency-based education," as written, to require a particular amount of instruction or seat time; rather, the definition of "competency-based education" specifically calls for assessments that demonstrate progression "based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age."

Changes: None.

Comment: One commenter stated that the "valid and reliable assessments" piece of paragraph (d) of the priority that focused on assessments and competency-based education should not be limited to just summative assessments.

Discussion: We appreciate the commenter's interest in not limiting assessments to summative assessments and focusing on formative assessments as well. We do not consider the inclusion of "valid and reliable" in describing the assessments to mean that they must only be summative assessments. Rather, paragraph (d) focuses on performance-based assessments that document students' skills and, under the definition of "competency-based education," progression is based on demonstrated mastery rather than seat time. However, we want to clarify that the intent is for

performance-based assessments to yield valid and reliable results and are therefore changing "obtain" in proposed paragraph (d) to "yield."

Changes: We are revising "obtain" in paragraph (d) of the proposed priority to "yield."

Comment: One commenter recommended that we clarify the terms "hybrid/blended learning" and "linked open data formats" used in the priority.

Discussion: We appreciate the interest in providing clarity in the priority and the terminology used. We decline to further define "hybrid/blended learning," as this term has various meanings in the field depending on specific contexts of a particular community, and we do not think it is necessary to define the term for purposes of the priority. We also decline to define "linked open data formats." We think "open data" is a term widely used at the Federal, State, and local levels, and by "linked" we emphasize the accessibility of the data. We do not consider a separate definition to be necessary and believe programs using this priority will clarify how these terms fit within their specific context.

Changes: None.

Comment: One commenter asked whether, under paragraph (f), the Department should require applicants to provide both high-quality remote learning and competency-based education in response to this paragraph, or whether applicants should have the flexibility to choose between remote learning or competency-based education, as provided in the proposed priority.

Discussion: The proposed priority would have offered applicants a choice between providing remote learning or competency-based education to specific student subgroups. While a project could support both remote learning and competency-based education, in further reviewing paragraph (f), we think "competency-based education" can be removed from proposed paragraph (f) because the broader priority is focused on building capacity for remote learning.

Changes: We are removing "or competency-based education" from paragraph (f) of the proposed priority.

Comment: One commenter proposed limiting the definition of "remote learning" to K–12 education given the recent publication of the higher education distance education regulations, citing concern that existing definitions in the higher education context, including the definition for "distance education," that include remote learning concepts may spark confusion. Specifically, "distance

education" is defined in the Higher Education Act of 1965, as amended (HEA), as well as in the Distance Education and Innovation regulations published in the **Federal Register** on September 2, 2020 (85 FR 54742).

Discussion: We appreciate the commenter's consideration of whether this priority and the "remote learning" definition is applicable in the higher education context, as our intent is to establish a priority that could be used in grant programs across the Department, including those for higher education. We recognize that there are definitions for "distance education" in section 103(7) of the HEA and "distance learning" in section 8101(14) of the ESEA. The definition of "remote learning" is not meant to contradict or supersede these definitions or the definition of "distance education" in the HEA or the higher education Distance Education and Innovation regulations; rather, it is meant to provide context for those definitions and clarify what is meant by remote learning in the context of this priority.

Changes: None.

Comment: One commenter supported the priority but asked that the definition for "remote learning" also reference non-technology models, such as service learning, internships, and other programs.

Discussion: We agree that remote learning can include non-technology models and highlight some of those as examples in the "remote learning" definition. Given that the list of examples is not exhaustive, nothing in the definition prohibits other activities in addition to the activities identified. We, therefore, do not think adding additional examples is necessary.

Changes: None.

Comments: Multiple commenters supported the inclusion of competency-based education in the priority, with one commenter recommending a stand-alone priority focused on competency-based education, arguing that competency-based education, while it can be used in conjunction with technology, does not require technology.

Discussion: We appreciate the support for inclusion of competency-based education in the priority and definitions. We agree that competency-based education is important, and the Department previously included "competency-based learning" in Priority 3—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills in the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities) published in the **Federal Register** on March 2, 2018

(83 FR 9096). As such, we do not need to create an additional, separate priority for competency-based education. Further, we decline to remove the reference to “competency-based education” in paragraph (a) because our intent is to encourage competency-based education in remote learning environments.

Changes: None.

Comments: Multiple commenters recommended changes to the definition of “competency-based education,” including adding references to credentials that are inclusive of all students, include appropriate pacing, and are student focused. An additional commenter proposed limiting the definition for “competency-based education” to K–12 education given the recent publication of the higher education Distance Education and Innovation regulations and concern about confusion when used in the higher education context, especially since competency-based education was not defined in those regulations.

Discussion: We appreciate comments suggesting that we revise the definition of “competency-based education.” We proposed to define the term as “competency-based education,” which was included as an example in paragraph (a) of the priority and is central to the performance-based assessments piece of paragraph (d). The definition as written is inclusive of all students, allows for demonstration of mastery as a result of self-paced learning, and provides a broad understanding of competency-based education for operationalizing within the context of the remote learning priority. The definition of “competency-based education” for the remote learning priority is consistent with other Department usage and definitions of “competency-based education,” including the Rural Tech Project (<https://www.ruraltechproject.com/>).

As to the concern about usage of the priority and the “competency-based education” definition in higher education, the Department has the discretion for each grant program to choose if the priority should be used in a given competition considering the program’s purpose, feasibility, and scope, and, if so, how the priority would apply; for example, a program may choose to use only paragraph (a) of the priority. As noted above, competency-based education is part of an illustrative list in paragraph (a), and an applicant is not required to address all items in that list. Competency-based education is more central to paragraph (d), but the Department may choose whether to use paragraph (d) when including the

remote learning priority in a particular grant competition, taking into consideration the program’s statute and other relevant regulations. As noted earlier, the Department will make program-by-program decisions about when and how to use the remote learning priority, including in the higher education context. Moreover, the definition of “competency-based education” does not contradict or supersede any of the Distance Education and Innovation regulations; rather, it is meant to clarify what is meant by “competency-based education” in the context of this priority.

Changes: None.

Comment: One commenter supported the inclusion of interoperable credentials in the priority and definitions and recommended that the Department include interoperable credential requirements in all discretionary grant competitions. In the definition, the commenter proposed that we change “common standardized frameworks” to “nationally recognized and widely used educational or professional learning standards.”

Discussion: We agree that interoperable credentials are important and appreciate the support for paragraph (e) of the priority. The Department has discretion in choosing whether and how to use the priority for all of our grant competitions. We decide to use a particular priority based on careful consideration of whether the priority and definitions are appropriate for each competition with regard to program purpose, feasibility, and scope.

In regard to the recommendation to refer to “nationally recognized and widely used educational or professional learning standards” rather than “common standardized frameworks,” we appreciate the interest in ensuring clarity in terminology. We note the white papers hosted on the U.S. Department of Commerce website designed to provide clarity regarding, among other things, “credentials,” which include a focus on “common standardized frameworks”: “White Paper on Interoperable Learning Records” (www.commerce.gov/sites/default/files/2019-09/ILR_White_Paper_FINAL_EBOOK.pdf) and “Learning and Employment Records: Progress and the path forward” (www.commerce.gov/sites/default/files/2020-09/LERwhitepaper09222020.pdf). Moreover, we do not think the Department should endorse specific national standards related to credentialing, and, as such, we do not consider it appropriate to revise the definition as the commenter suggested. Though there are many standards that

could apply to credentials, we expect applicants and grantees will choose standards that are widely accepted and meet the needs of their projects. Therefore, we are not making any changes to the reference to, or definition of, “interoperable credentials.”

Changes: None.

Comment: In reference to competency-based education and interoperable credentials, one commenter recommended adding specific references to “short-term credentials,” such as micro-credentials, to clearly demonstrate that credentials are broader than traditional, time-bound programs.

Discussion: We agree that the intent behind inclusion of competency-based education and interoperable credentials in the priority and definitions is to broaden practitioners’ use of credentials. As such, we are adding examples of some of these short-term credentials to highlight other less traditional credential types.

Change: In the definition for “interoperable credentials,” we have added references to micro-, stackable, and other types of short-term credentials.

Comment: One commenter proposed limiting the definition of “interoperable credentials” to K–12 education, stating that the term is not one used in the higher education context.

Discussion: We appreciate the commenter’s consideration of whether the “interoperable credentials” definition is applicable in the higher education context, as our intent is to have a priority that could be used in grant programs across the Department, including those for postsecondary education. Credentials are more than specific postsecondary degrees; they can be smaller units and time bound. Examples of these types of credentials include micro-credentials and stackable credentials, which can be used for professional development, and we think it is important for all education sectors to think more broadly about credentials and their interoperability.

Changes: None.

Comment: A few commenters asked whether the definition of “interoperable credentials” creates two sets of requirements, for the credentials themselves and for data and information sharing relating to the credentials. The commenters suggested clarifying revisions. Given that the term included two distinct points, the commenters had concerns about confusion when defining “interoperable credentials.” The commenters proposed edits to clarify the distinction.

In addition, one of the commenters also expressed the importance of transparency related to interoperable credentials and proposed a new definition for “credential transparency.”

Discussion: Through this definition, the Department is establishing requirements both with respect to the credentials generally and with respect to their interoperability. Although there are many types of credentials, including some that may not be interoperable, we intentionally use the term “interoperable credentials” in this priority because we are especially interested in promoting recognizable, transferrable, and transparent evidence of mastery. Defining the term “interoperable credentials” does not imply that other forms of credentials do not exist.

Credential transparency is embedded in the definition, particularly through the requirement of “open standards,” and, as the commenter points out, there are many organizations focused on making credentials transparent and available to users. We note the white papers hosted on the U.S. Department of Commerce website as examples of the efforts to promote credential transparency and interoperability, in this case in the context of learner employment records: “White Paper on Interoperable Learning Records” (www.commerce.gov/sites/default/files/2019-09/ILR_White_Paper_FINAL_EBOOK.pdf) and “Learning and Employment Records: Progress and the path forward” (www.commerce.gov/sites/default/files/2020-09/LERwhitepaper09222020.pdf). We, thus, do not think a separate definition or additional clarification of the definition is needed.

Changes: None.

Final Priority

Building Capacity for Remote Learning

Under this priority, an applicant must propose a project that is designed to address one or more of the following priority areas:

(a) Adopting and supporting models that leverage technology (e.g., universal design for learning, competency-based education (as defined in this notice), or hybrid/blended learning) and provide high-quality digital learning content, applications, and tools.

(b) Providing personalized and job-embedded professional learning to build the capacity of educators to create remote learning experiences that advance student engagement and learning through effective use of technology (e.g., synchronous and asynchronous professional learning,

professional learning networks or communities, and coaching).

(c) Providing access to any of the following, in particular to serve learners without access to such technologies: Reliable, high-speed internet, learning devices, or software applications that meet all students’ and educators’ remote learning needs while inside the school building and in remote learning environments.

(d) Developing performance-based assessments that promote competency-based education and can be delivered remotely or in-person to students and yield valid and reliable results that accurately document students’ skills (e.g., inquiry/game-based assessment or data visualization tools for monitoring ongoing learning).

(e) Supporting the development of digital interoperable credentials (as defined in this notice) that make transparent the competencies achieved through remote learning experiences and allow students to access, control, and share their achievements across a variety of education and training processes (formal or informal, classroom-based, remote, or workplace-based). Information on these credentials must be publicly accessible using linked open data formats to ensure their transferability and the continuity of learning for students.

(f) Providing high-quality remote learning specifically for one or more of the following student subgroups:

(i) Students from low-income (as may be defined in the program’s authorizing statute) families;

(ii) Children or students with disabilities (as may be defined in the program’s authorizing statute);

(iii) English learners (as may be defined in the program’s authorizing statute);

(iv) Native American (as may be defined in the program’s authorizing statute) students;

(v) Homeless (as may be defined in the program’s authorizing statute) students ; or

(vi) Students attending schools in rural (as may be defined in the program’s authorizing statute) areas.

The remote learning environment must be accessible to individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, as applicable. The remote learning environment must also provide appropriate remote learning language assistance services to English learners.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the priority and definitions, we invite applications through a notice in the **Federal Register**.

Final Definitions

The Secretary establishes the following definitions for use in any Department discretionary grant competition in which the final priority is used:

Competency-based education (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

Interoperable credentials are those credentials built using open standards so that they are shareable, verifiable, portable, and secure. The credentials describe the specific achievements, such as credential type, skill level, or other information, using common, standardized frameworks so that the data are machine readable, exchangeable, and actionable across technology systems and, when appropriate, on the web. When

credentials are interoperable, a full range of an individual's skills and achievements, earned through formal and informal learning experiences or workplace-based training, can be collected together and verified, regardless of available technology systems, reducing challenges as individuals transition between education and employment. These credentials include traditional academic credentials, as well as micro-, stackable, and other types of short-term credentials earned through short-term, professional development, or non-credit bearing educational experiences.

Remote learning means programming where at least part of the learning occurs away from the physical building in a manner that addresses a learner's education needs. Remote learning may include online, hybrid/blended learning, or non-technology-based learning (e.g., lab kits, project supplies, paper packets).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this 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 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 loan 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under

Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2021, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the priority and definitions would be used in connection with one or more discretionary grant programs, Executive Order 13771 does not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority and definitions only on a reasoned

determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action will not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the priority and definitions will not impose any particular burden except when an entity voluntarily elects to apply for a grant. The benefits of the priority and definitions will outweigh any associated costs because they will help ensure that the Department's discretionary grant programs select high-quality applicants to implement activities that are designed to address critical remote learning needs.

Regulatory Flexibility Act Certification: The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the final priority and definitions will

significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

These final priority and definitions contain information collection requirements that are approved by OMB under OMB control number 1894–0009; the final priority and definitions do not affect the currently approved data collection.

Intergovernmental Review: This program is 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 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 early notification of our specific plans and actions for the Department's discretionary grant programs.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Betsy DeVos,
Secretary.

[FR Doc. 2020–28820 Filed 12–29–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ21–7–000]

City of Colton, California; Notice of Petition for Declaratory Order

Take notice that on December 16, 2020, pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, 385.207, and consistent with the provisions of the Transmission Owner (TO) Tariff, the City of Colton, California (Colton), submitted a petition for a declaratory order requesting that the Commission (1) accept Colton's seventh annual revision to its Transmission Revenue Balancing Account Adjustment (TRBAA); (2) approve Colton's annual update to the costs of its Existing Transmission Contract (ETC) with Southern California Edison Company for the purpose of recovery of such costs through the ETC Pass-through Clause contained in Colton's TO Tariff; (3) accept revisions to Appendix I to Colton's TO Tariff to reflect Colton's revised TRBAA, ETC costs, and updated Base and High Voltage Transmission Revenue Requirements (TRR); (4) to the extent necessary, waive the sixty-day notice requirement provided for in the Commission's regulations at 18 CFR 35.3(a); (5) waive the filing fee associated with this Petition that is provided for by Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207; and (6) grant any other relief or waivers necessary or appropriate for approval and implementation of the revisions to Colton's Base TRR (including the updated ETC cost components), TRBAA, High Voltage TRR, and modifications to Colton's TO Tariff effective as of January 1, 2021, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission strongly encourages electronic filings of comments, protests

and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 6, 2021.

Dated: December 22, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–28834 Filed 12–29–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 539–015]

Lock 7 Hydro Partners, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 539–015.

c. *Date Filed:* April 30, 2020.

d. *Applicant:* Lock 7 Hydro Partners, LLC (Lock 7 Hydro).

e. *Name of Project:* Mother Ann Lee Hydroelectric Station Water Power Project (Mother Ann Lee Project).