official patrol vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area must contact the COTP or the designated representative via VHF channel 16 or 718–354–4088 (Sector New York Vessel Traffic Center) to obtain permission to do so.

Dated: October 26, 2012.

J.B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012–27490 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 280

[Docket ID ED–2010–OII–0003]

RIN 1855–AA07

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final regulations.

SUMMARY: This document adopts as final a March 2010 interim final rule by which the Secretary amended the regulations governing the Magnet Schools Assistance Program (MSAP) to provide greater flexibility to school districts designing MSAP programs for the FY 2010 competition. The amendments removed provisions in the regulations that require districts to use binary racial classifications and prohibit the creation of magnet schools that result in minority group enrollments in magnet and feeder schools exceeding the district-wide average of minority group students. We sought comments on the amendments because we adopted them through an interim final rule. We have reviewed the comments we received and retain the amendments without change for competitions going forward.

DATES: These regulations are effective December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Brittany Beth, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W252, Washington, DC 20202. Telephone: (202) 453–6653 or via email: *brittany.beth@ed.gov.*

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

Accessible format: Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On March 4, 2010, the Department published an interim final rule (IFR) with a request for public comment in the **Federal Register** (75 FR 9777). The IFR, applicable only to the FY 2010 competition, removed provisions in the MSAP regulations at 34 CFR 280.2(b)(2), 280.4(b), and 280.20(g) that required districts to use binary racial classifications and prohibited the creation of magnet schools that result in minority group enrollments in magnet and feeder schools exceeding the district-wide average of minority group students. The IFR explained that these changes were necessary to permit MSAP applicants ''to determine how best to meet program requirements while also taking into account intervening Supreme Court case law, including the Court's decision in *Parents Involved in Community Schools* v. *Seattle School District No 1 et al.,* 551 U.S. 701 (2007) (*Parents Involved*).''

In the IFR, the Department also invited comments on the removal of the regulatory provisions, noting that any changes made to the IFR in light of comments received would govern future MSAP grant competitions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the IFR, three parties submitted comments on the proposed regulations. We make no further amendments to the regulations in response to the comments; however, an analysis of the comments follows.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize the Secretary to make.

Comments: The commenters agreed with the decision to remove the provisions of the regulations in light of the Supreme Court's decision in *Parents Involved,* but they expressed concern about the use of case-by-case decision-making when evaluating proposed MSAP voluntary desegregation plans. The commenters requested additional guidance from the Department about permissible ways for applicants to voluntarily reduce minority group isolation after the Court's decision in *Parents Involved.* The commenters suggested replacing the removed provisions with more specific language in order to assist school districts in designing legally permissible voluntary desegregation plans.

Discussion: In the IFR, the Department removed the definition of ''minority group isolation'' in 34 CFR 280.4(b). Under the definition, the term meant, in reference to a school, ''a condition in which minority group children constitute more than 50 percent of the enrollment of the school.'' We removed the definition because it required the use of only two racial classifications of students—minority group and nonminority group students. In the absence of a definition of ''minority group isolation,'' the IFR stated—

> the Department will determine on a case-by-case basis whether a district's voluntary plan meets the statutory purpose of reducing, eliminating, or preventing minority group isolation in its magnet or feeder schools, considering the unique circumstances in each district and school. For example, the Department may consider whether there is a substantial proportion of students from any minority group enrolled in a school, looking at the student enrollment numbers of the district and the targeted schools disaggregated by race.

The Department agrees that at the time of publication of the IFR there was some confusion for applicants about whether the case-by-case analysis would be an effective way to evaluate voluntary plans under the MSAP. The Department recognized the need for additional guidance about ways that districts can voluntarily reduce minority group isolation and promote diversity in school districts in light of *Parents Involved.* On December 2, 2011, the Departments of Education and Justice jointly issued guidance that explains how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Titles IV and VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and current case law. The ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' (Guidance) is available on the Department's Web site at *http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf.*

In light of this Guidance, and based on the Department's experience in awarding FY 2010 grants under the regulations as amended by the IFR, the Department has concluded that it is not necessary to propose provisions to replace those that were removed by the IFR. Applicants are encouraged to use the Guidance when designing voluntary desegregation plans.

The Department continues to believe that case-by-case decision-making is

appropriate so that determinations regarding voluntary desegregation plans can be made on the unique facts in each district. The Department determines on a case-by-case basis whether the voluntary plans are adequate under Title VI of the Civil Rights Act of 1964 for the purposes of 34 CFR 280.2. We also determine whether the proposed magnet schools will reduce, eliminate, or prevent minority group isolation within the period of the grant award, for the purposes of sections 280.2(b) and 280.20(g). These determinations will include an examination of the factual basis for any proposed increases in minority enrollment at district schools. For example, the Department might consider whether a plan to reduce, eliminate, or prevent minority group isolation at a magnet school or at a feeder school would significantly increase minority group isolation at any magnet or feeder school in the project at the grade levels served by the magnet school. In a case in which a school district is subject to a desegregation order that prohibits magnet or feeder schools from exceeding the district-wide average of minority group students, the district would, of course, continue to be bound by that order.

Changes: None.

Executive Orders 12866 and 13563

Under Executive Order 12866, the Secretary must determine 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.

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 their benefits justify their 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 these final regulations 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 resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We discussed the potential costs and benefits of these final regulations in the interim final rule at 75 FR 9779.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

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www.ed.gov/programs/magnet/legislation.html

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program)

List of Subjects in 34 CFR Part 280

Elementary and secondary education, Equal educational opportunity, Grant programs—education, Reporting and recordkeeping requirements.

Dated: November 7, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

For the reasons discussed in the preamble, the interim final rule amending 34 CFR part 280, published at 75 FR 9777 on March 4, 2010, is adopted as a final rule without change.

[FR Doc. 2012–27559 Filed 11–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412–2517–02]

RIN 0648–BB97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Amendment 35 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes sector annual catch limits (ACLs) and sector annual catch targets (ACTs) for greater amberjack; revises the sector accountability measures (AMs) for greater amberjack; and establishes a commercial trip limit for greater amberjack. Additionally, Amendment 35 modifies the greater amberjack rebuilding plan. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve optimum yield (OY) for the greater amberjack resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective December 13, 2012.

ADDRESSES: Electronic copies of Amendment 35, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm*.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. All greater amberjack weights discussed in this rule are in round weight.

On July 3, 2012, NMFS published a notice of availability for Amendment 35 and requested public comment (77 FR 39460). On July 19, 2012, NMFS published a proposed rule for Amendment 35 and requested public comment (77 FR 42476). The proposed rule and Amendment 35 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

ACLs and ACTs

Amendment 35 establishes the greater amberjack stock ACL equal to the greater amberjack stock allowable biological catch (ABC) at 1,780,000 lb (807,394 kg), and sets the greater amberjack stock ACT at 1,539,000 lb (698,079 kg) based on the ACT Control Rule developed in the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) (76 FR 82044, December 29, 2011).

Sector allocations were established in Amendment 30A to the FMP and remain unchanged at 27 percent of the ACL allocated to the commercial sector and 73 percent of the ACL allocated to the recreational sector. Based on these allocations, this final rule establishes specific ACLs for the greater amberjack commercial and recreational sectors. This final rule also establishes ACTs (expressed as quotas in the regulatory text) for both sectors.

This final rule establishes the greater amberjack commercial sector ACL at 481,000 lb (218,178 kg). The commercial ACT, which is equivalent to the greater amberjack commercial quota, is reduced from 503,000 lb (228,157 kg), to 409,000 lb (185,519 kg). The commercial ACT is set 15 percent below the ACL to account for management uncertainty.

This final rule establishes the greater amberjack recreational ACL at 1,299,000 lb (589,116 kg). The recreational ACT, which is equivalent to the greater amberjack recreational quota, is reduced from 1,368,000 lb (620,514 kg), to 1,130,000 lb (512,559 kg). The recreational ACT is set 13 percent below the ACL to account for management uncertainty.

AMs

This final rule revises the AMs for both the greater amberjack commercial and recreational sectors. The current in-season AM for the greater amberjack commercial sector requires the sector be closed when commercial landings reach or are projected to reach the applicable quota (currently equal to the commercial ACL). In addition, if despite such closure the commercial landings exceed the quota, the following year's quota is reduced by the amount of the quota overage in the prior fishing year (post-season AM). This final rule implements an ACT that is less than the ACL, creating a buffer between the two. The commercial ACT will now be equivalent to the commercial quota and this final rule requires that the commercial sector be closed when the commercial ACT is reached or projected to be reached. By closing the sector when the commercial ACT is reached or projected to be reached, there is less probability of exceeding the commercial ACL. In addition to this revision of the in-season AM, this rule revises the post-season AM as follows: If commercial landings exceed the commercial ACL, then during the following fishing year, both the commercial ACT (commercial quota) and the commercial ACL will be reduced by the amount of the prior year's commercial ACL overage.

The current in-season AM for the greater amberjack recreational sector closes the sector when recreational landings reach or are projected to reach the recreational quota (currently equal to the recreational ACL). In addition, if despite such closure the recreational landings exceed the recreational quota, the following year's recreational quota is reduced by the amount of the recreational quota overage in the prior fishing year, and the recreational fishing season is reduced by the amount necessary to recover the overage from the prior fishing year (post-season AMs). This final rule implements a recreational ACT, which will now be equivalent to the recreational quota, and requires that the recreational sector close when the recreational ACT is reached or projected to be reached. In addition to this revision of the in-season AM, this final rule revises the post-season AMs as follows: If recreational landings exceed the recreational ACL, then during the following fishing year,