

**DEPARTMENT OF LABOR****29 CFR Part 29**

RIN 1205-AB85

**Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations****AGENCY:** Employment and Training Administration, Labor.**ACTION:** Final rule.

**SUMMARY:** To address America's skills gap and to rapidly increase the availability of high-quality apprenticeship programs in sectors where apprenticeship opportunities are not widespread, the U.S. Department of Labor (DOL or the Department) is issuing this final rule under the authority of the National Apprenticeship Act (NAA). This final rule establishes a process for the DOL's Office of Apprenticeship (OA) Administrator (Administrator), or any person designated by the Administrator, to recognize qualified third-party entities, known as Standards Recognition Entities (SREs), which will, in turn, evaluate and recognize Industry-Recognized Apprenticeship Programs (IRAPs). This final rule describes what entities may become recognized SREs; outlines the responsibilities and requirements for SREs, as well as the standards of the high-quality Industry-Recognized Apprenticeship Programs the SREs will recognize; and sets forth how the Administrator will oversee SREs.

**DATES:** This final rule is effective May 11, 2020.

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Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

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**I. Background***A. Purpose of This Regulation*

On June 25, 2019, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (84 FR 29970), proposing to amend 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) by authorizing the Administrator to recognize SREs who meet the criteria outlined herein. These SREs would, in turn, evaluate and recognize IRAPs<sup>1</sup> that satisfied the standards and guidelines for program quality described in the NPRM. The NPRM invited written comments from the public concerning this proposed rulemaking. These comments may be viewed at <http://www.regulations.gov> by entering docket number ETA-2019-0005.

After careful consideration of the comments received, the Department is adopting this final rule, which supplements the existing system of registered apprenticeships with a flexible, industry-led model—one that will be capable of rapidly increasing the availability of apprenticeships in emerging, high-growth sectors.

Since its enactment, the Department has implemented the NAA by registering individual apprenticeship programs and apprentices. The registration of programs and apprentices occurs either directly under the auspices of the Department's OA, or through recognized State Apprenticeship Agencies (SAAs). While registered apprenticeships have been successful in certain sectors, in particular construction and its allied trades, the existing registered apprenticeship model has not increased the availability of apprenticeships in other rapidly-expanding sectors of the economy. The proportion of apprentices constitutes only about 0.2 percent of the

<sup>1</sup> In the NPRM for this regulation, the Department also referred to industry-recognized apprenticeship programs as "Industry Programs." In the text of this final rule, however, the Department has opted to utilize the acronym "IRAP" to refer to this new apprenticeship model.

U.S. workforce.<sup>2</sup> Additionally, a 2017 Harvard Business School study identified nearly 50 occupations as ripe for apprenticeship expansion.<sup>3</sup>

The United States is also experiencing an economic challenge: a discrepancy between the occupational competencies that businesses need and the job skills of aspiring workers. There were 6.4 million job openings in the United States at the end of 2019.<sup>4</sup> Some of these jobs are going unfilled because employers have not been able to locate enough workers with the skills required to perform them. This pervasive skills gap has posed a serious impediment to job growth and productivity.<sup>5</sup> A recent report issued by the National Federation of Independent Businesses reinforced that a shortage of qualified, skilled workers is inhibiting small business hiring growth.<sup>6</sup> Another recent report produced jointly by Deloitte and the Manufacturing Institute projected that the skills gap may leave an estimated 2.4 million positions unfilled in the manufacturing sector between 2018 and 2028, placing more than \$2.5 trillion in U.S. manufacturing output at risk during that period, if the skills shortage is not addressed effectively.<sup>7</sup>

In their comments on the NPRM, several industry groups highlighted that the skills gap has led to a lack of qualified candidates, which has stalled business growth and undermined competitiveness in the global marketplace. Another commenter stated

<sup>2</sup> See Robert I. Lerman, "Proposal 7: Expanding Apprenticeship Opportunities in the United States," The Hamilton Project, Brookings Institution, 2014, <http://ow.ly/UIDmN>.

<sup>3</sup> Joseph B. Fuller and Matthew Sigelman, "Room to Grow: Identifying New Frontiers for Apprenticeships," Nov. 2017, 3, <https://www.hbs.edu/managing-the-future-of-work/Documents/room-to-grow.pdf>.

<sup>4</sup> U.S. Bureau of Labor Statistics (BLS), "Job Openings and Labor Turnover—December 2019," Feb. 11, 2020, [https://www.bls.gov/news.release/archives/jolts\\_02112020.pdf](https://www.bls.gov/news.release/archives/jolts_02112020.pdf).

<sup>5</sup> See, e.g., Task Force on Apprenticeship Expansion, "Final Report to the President of the United States," May 10, 2018, 16 (citing 2018 report from National Federation of Independent Business); Business Roundtable, "Closing the Skills Gap," <https://www.businessroundtable.org/policy-perspectives/education-workforce/closing-the-skills-gap> (last visited Dec. 7, 2019); cf. Deloitte and the Manufacturing Institute, "2018 Deloitte and The Manufacturing Institute Skills Gap and Future of Work Study," Nov. 2018, 2 (estimating manufacturing jobs that may go unfilled due to skills gap), [http://www.themanufacturinginstitute.org/~media/E323C4D8F75A470E8C96D7A07F0A14FB/DI\\_2018\\_Deloitte\\_MFI\\_skills\\_gap\\_FoW\\_study.pdf](http://www.themanufacturinginstitute.org/~media/E323C4D8F75A470E8C96D7A07F0A14FB/DI_2018_Deloitte_MFI_skills_gap_FoW_study.pdf).

<sup>6</sup> See National Federation of Independent Businesses, "September 2019 Jobs Report," Sept. 2019, <https://www.nfib.com/foundations/research-center/monthly-reports/jobs-report/>.

<sup>7</sup> Deloitte and the Manufacturing Institute, "2018 Deloitte and The Manufacturing Institute Skills Gap and Future of Work Study," Nov. 2018, 3-5.

that failure to close the skills gaps “risks ceding U.S. technology leadership to other countries, with broad consequences for our nation’s economic [sic] and even national security.” Other commenters stated that they recognize the need for an expanded, well-crafted apprenticeship program in order to address the skills gap in multiple industries. A member of Congress also commented that IRAPs will equip additional Americans with the necessary skills to contribute to and benefit from a prosperous economy.

In light of these challenges, in January 2017—within days of assuming office—President Donald J. Trump and his Administration began promoting apprenticeships as a critical component of addressing the skills gap. On June 15, 2017, President Trump signed Executive Order (E.O.) 13801, “Expanding Apprenticeships in America” (82 FR 28229), which charged the Secretary of Labor (Secretary) with considering the issuance of regulations that promote the development of apprenticeship programs by third parties. Specifically, the proposed regulations would reflect an assessment of determining how qualified third parties may provide recognition to high-quality apprenticeship programs.<sup>8</sup>

Section 8 of the E.O. directed the Secretary to establish a Task Force on Apprenticeship Expansion (Task Force), to identify strategies and proposals to promote apprenticeships, especially in sectors where they are insufficient. During its 6 months of deliberations, the Task Force developed recommendations for improving the educational and credentialing aspects of apprenticeship; attracting more businesses to apprenticeship; expanding public awareness of, and access to, apprenticeships; and developing administrative and regulatory strategies to expand apprenticeship.<sup>9</sup>

On May 10, 2018, the Task Force transmitted its final report to President Trump. The report explained that many employers choose to establish apprenticeship programs outside of the registered apprenticeship program, in part because of the paperwork and process involved in registering a program. In addition, the report noted that there is insufficient flexibility in program requirements within the registered apprenticeship program to meet the varying needs of different industries. The report pointed out that

IRAPs would provide a new apprenticeship pathway that gives industry organizations and employers more autonomy and authority to identify high-quality apprenticeship programs and opportunities.<sup>10</sup>

The issuance of this final rule fulfills E.O. 13801’s mandate concerning IRAPs and implements key recommendations contained in the Task Force report. The final rule also reflects input from the large number of commenters who offered substantive recommendations for the refinement and improvement of the proposed rulemaking.

In this final rule, the Department has modified 29 CFR part 29 by creating two subparts—one governing the operation of registered apprenticeship programs (subpart A), and the other establishing quality guidelines for DOL-recognized SREs and IRAPs (subpart B). The existing regulatory language of 29 CFR part 29, setting forth the labor standards for the registration of apprenticeship programs, has been fully retained within the new subpart A, with minor conforming edits to accommodate the addition of the new subpart B. Subpart B establishes the process for organizations to apply to become DOL-recognized SREs of IRAPs. Once recognized by the Department, these SREs will work with employers and other entities to establish, recognize, and monitor high-quality IRAPs. The final rule includes measures and guidelines to facilitate the recognition of these high-quality IRAPs, and it sets out how the Department will oversee SREs. The final rule also adopts changes suggested by commenters that increase the Department’s role in program oversight, clarify the requirements to become a recognized SRE, and heighten SRE and IRAP program transparency.

The Department expects that the issuance of this final rule will accelerate the expansion of quality apprenticeships by introducing a flexible, market-based, industry-led model that is capable of expanding apprenticeships in emerging, high-growth sectors while also reaching underserved populations. By establishing a supplementary apprenticeship pathway that addresses the varying needs of different industries, the final rule seeks to address the skills gap in the U.S. labor force while promoting the growth of high-quality, sustainable jobs for the American workforce.

This final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule’s economic analysis.

### B. Legal Authority

As relevant to this final rule, the NAA authorizes the Department to: (1) Formulate labor standards to safeguard the welfare of apprentices and to encourage their inclusion in apprenticeship contracts; (2) bring together employers and labor for the formulation of programs of apprentices; and (3) cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship. 29 U.S.C. 50.

This final rule implements the NAA’s direction that the Secretary “bring together employers and labor for the formulation of programs of apprenticeship” by creating a flexible, industry-driven model for apprenticeship designed to bring together diverse groups of employers and prospective apprentices in industries and occupations that do not have a robust presence in the registered apprenticeship system. The final rule further implements the NAA’s direction by establishing standards for this apprenticeship model that are designed to safeguard the welfare of apprentices. As discussed in more detail below, all IRAPs must comply with the standards for high-quality apprenticeships contained in the regulation, and with their respective SRE’s policies and procedures, and must provide apprentices with a written apprenticeship agreement outlining the conditions of employment and training consistent with their respective SRE’s requirements (which would include those required by this regulation).

Several commenters contended that the NPRM was inconsistent with the NAA, referring to the legislative history and purpose of the NAA. Commenters highlighted congressional comments about Federal intervention to halt manipulative and dishonest apprenticeship training programs that failed to train apprentices.

The Department has determined that it has authority under the NAA to establish this program. The NAA provides a general authorization and direction for the Secretary to create and promote standards of apprenticeship, including through contracts, and to interface with employers, labor, and States to create apprenticeships and apprenticeship standards. See 29 U.S.C. 50. This final rule does not exceed or conflict with the broad authority granted by Congress in the NAA. The NAA does not mandate or require that the current registered apprenticeship system be the exclusive apprenticeship system administered by the Department, nor does it suggest that the Department

<sup>8</sup>E.O. 13801, Expanding Apprenticeships in America, 82 FR 28229 (June 15, 2017), sec. 4(a).

<sup>9</sup>See Task Force on Apprenticeship Expansion, “Final Report to the President of the United States,” May 10, 2018, 10–11.

<sup>10</sup>*Id.* at 34.

is limited to one approach in executing the NAA.

One commenter stated that the NAA does not authorize the IRAP model because the legislative history of the NAA indicates it was meant “to bring Government oversight to apprenticeship, and that it did so by directing DOL, in concert with the states, to establish minimum standards to protect apprentices from exploitation.” Commenters argued that the IRAP model does not match this history because it places trust in private actors who could manipulate and mislead apprentices without government oversight.

In response to these particular comments, the Department notes that this regulation establishes the broad standards under which apprentices will work and train, including the requirement that apprentices enter into an apprenticeship agreement that discloses the terms and conditions of the program. In addition, the Department maintains a robust oversight role over SREs, and has a number of tools at its disposal should it determine that a recognized SRE or an SRE’s recognized IRAP is not in compliance with the standards laid out in the regulation.

The Department further notes that while the NAA establishes that the Federal Government may help develop and encourage the adoption of apprenticeship standards, the text of the NAA does not require that any apprenticeship programs receive Department approval or use the standards developed by the Department—participation in the IRAP model, as with registered apprenticeship, is voluntary. Had Congress meant for the Department to mandate standards for all U.S. apprenticeships, it surely would have used stronger language than it did. Phrases like “formulate and promote,” “encourage[e] the inclusion,” “bring together,” and “cooperate,” are not how Congress typically establishes universal mandates. Cf., e.g., 29 U.S.C. 654(a) (“Each employer . . . shall furnish to each of his employees employment and a place of employment . . . free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees . . . [and] shall comply with occupational safety and health standards promulgated under this Act.”). This reading of the text is supported by the NAA’s legislative history. The NAA’s legislative history states that the Department has no authority “to compel adherence to its recommendations” for apprenticeship standards but could encourage their

inclusion in contracts, as well as the provision of technical assistance to employers and labor. See S. Rep. No. 75–1078, at 3. The legislative history of the NAA further indicates that Congress intended to give the Secretary multiple tools to improve the quality of American apprenticeship. It speaks not only of the importance of formulating standards for training and safety to ensure quality apprenticeship opportunities, but the need for Federal assistance in expanding the number of apprenticeship programs to fill the skills needs of industry. See H. Rep. No. 75–945, at 2–3.

Commenters also argued that the statutory text prohibits the IRAP model. One commenter argued that DOL could only create the IRAP model if Congress passed a new law, because DOL cannot deviate from the standards of registered apprenticeship. Another commenter stated that DOL must comply with the authorizations and directions of the NAA at the same time and that the proposed rule did not do so, because it did not provide for the welfare of apprentices.

As noted, the NAA does not dictate the terms of how the Department takes these steps or restrict the Department to only one particular approach, nor does the NAA require the Department to establish one set of standards. The NAA “is written in very broad terms” and “contains a wide grant of authority to the Secretary of Labor.” *Gregory Elec. Co. v. U.S. Dep’t of Labor*, 268 F. Supp. 987, 991 (D.S.C. 1967). As discussed below, the final rule sets out an extensive list of requirements and protections in § 29.22 that are designed to safeguard the welfare of apprentices and to require quality training, progressively-advancing skills, and industry-relevant credentials. Further, unlike the commenter who suggested all provisions of the NAA must be met at the same time, the Department reads the NAA as simply listing the various activities that Congress has authorized and directed the Department to engage in. The NAA authorizes the Department to formulate and promote apprenticeship standards, to encourage the inclusion of those standards in contracts of apprenticeship, to bring employers and labor together, to cooperate with State agencies in the formulation of State standards of apprenticeship, and to cooperate with the Secretary of Education. As a practical matter, these activities may be carried out independently of each other, and nothing in the statute suggests that any particular activity engaged in by the Department must include all five activities to be a valid activity under the

NAA. With that said, as discussed below, the final rule sets out an extensive list of requirements and protections in § 29.22 that are designed to safeguard the welfare of apprentices and to require quality training, progressively advancing skills, and industry-relevant credentials.

Many commenters contended that the proposed rule was problematic because it lacks specificity or does not involve States. Other commenters argued that the NAA does not authorize the proposed rule, because the rule did not provide as detailed or comprehensive a set of requirements as the Department’s registered apprenticeship regulations. Several states submitted comments either opposed to the rule or urging greater State involvement in the IRAP initiative.

The NAA does not require the Department to promulgate highly specific apprenticeship standards, only those standards formulated by the Department that are necessary to safeguard the welfare of apprentices, which, as discussed above and below, the final rule accomplishes. The Department disagrees that the rule lacks specificity, as the final rule provides many requirements for IRAPs and SREs—including detailed performance metrics not required of registered apprenticeship programs. And while the NAA encourages cooperation with States in the development of their standards of apprenticeship, there is no requirement that DOL consult or operate its apprenticeship initiatives through States, nor a requirement that States participate directly in the development of this regulation or any other apprenticeship standards the Department has or may develop. Many states submitted comments on the proposed rule and the Department considered these comments in developing this final rule.

### *C. General Comments Received on the Notice of Proposed Rulemaking*

The Department received a total of 326,798 public comments, of which 17,671 were unique. The majority of the remainder were letters associated with 290 form-letter campaigns. Almost all of the form-letter campaigns addressed the exclusion of the construction industry from the Department’s proposed approach to IRAPs. This issue is discussed at length in the section-by-section discussion of § 29.30 of this final rule (§ 29.31 in the proposed rule).

The commenters represented a range of stakeholders from the public, private, and non-profit sectors. Public sector commenters included Federal, State, and local government agencies and

ected officials. Private sector commenters included employers/business owners, construction and building trades firms, and trade or industry organizations. Non-profit sector commenters included national and local labor unions, professional associations, and educational and training organizations. The majority of public comments received in response to the proposal were from private citizens, including current and former apprentices.

#### General Support for and Opposition to the IRAP Framework

Many commenters expressed general support for the Department's efforts in the proposed rule to establish a framework for IRAPs. Some commenters noted that there is room for more than one pathway to achieving successful apprenticeship programs. Another commenter stated that IRAPs and registered apprenticeship programs can operate in parallel, commenting that by allowing industry groups to recognize IRAPs, DOL is empowering the private sector to create more apprenticeship programs in a more efficient fashion. Commenters stated that IRAPs will equip Americans with the necessary skills to contribute to the booming economy and would allow workers to be trained for flexibility in performing their jobs and other duties. One commenter expressed support for the brevity and simplicity of the proposed rule. Another commenter remarked that workers' choice to participate in apprenticeship programs should not be restricted by the presence of a union-sponsored program in the geographical location where they would choose to attend an IRAP. Several commenters also stated that the proposed rule is beneficial because it could help cut through bureaucratic red tape to put businesses and employees at the center of the conversation; allow businesses to meet labor-market needs; allow small businesses to focus on serving program participants while also protecting apprentices from discrimination; and help industries adjust to and face changes, boost incomes, and curb student debt.

Other commenters contended that the IRAP model does not operate in the best interests of the apprentice because the model has not adopted minimum standards for IRAPs, such as formal apprentice contracts, progressive wage increases, fair discipline and proper supervision, standards for instructors' education, independent oversight, statewide uniformity, safety standards, and protection of apprentices against discrimination and harassment. Multiple commenters indicated that the

IRAP model "takes a macroeconomic view of the industry and workforce development and exhibits only a superficial investment in the interests of the apprentice." A few commenters predicted that the IRAP model would fail in a few years because the model enables "profit-driven" organizations to "cut corners" in order to boost profits at the expense of their workers. A commenter stated that the market-driven approach to scaling the apprenticeship model damages the skilled workforce and apprenticeships by making industry less flexible and resilient to economic downturns, and more susceptible to manipulation by policymakers and diminishing economic growth. A commenter asserted that IRAPs are not apprenticeships at all and, therefore, do not belong in 29 CFR part 29.

The Department appreciates the comments recognizing the benefits of IRAPs to the U.S. economy and workforce. The Department shares the view of commenters who believe that there is room in the workforce for both registered apprenticeship programs and IRAPs. The Department acknowledges the concerns articulated by commenters doubting the success of IRAPs and questioning the ability of the IRAP model to adequately train and safeguard the welfare of apprentices. The Department has responded to these concerns, as discussed in detail below in the section-by-section analysis. In the final rule, the Department has strengthened the standards of high-quality IRAPs to provide more detailed training requirements and protections for apprentices, enhanced Departmental oversight of SREs and—by extension—IRAPs, and included additional requirements on SREs to develop processes that support IRAPs, hold IRAPs accountable, and provide greater protection to apprentices.

The Department disagrees with commenters who have suggested that IRAPs will have a negative effect on the economy and the workforce and would be less flexible during economic downturns. On the contrary, the purpose of IRAPs is to increase high-quality apprenticeships in a manner that ensures industry-relevant training and skills, appropriate safeguards for apprentices, and a skilled, adaptable workforce. IRAPs could provide additional opportunities for workers during economic downturns and assist workers to achieve mobility and transferrable skills through industry-relevant training and credentials.

#### Support for Registered Apprenticeship Programs

Many commenters expressed general concerns about IRAPs as an alternative path to registered apprenticeship programs. Numerous commenters urged the Department to withdraw the proposed IRAP model and focus on supporting and improving registered apprenticeship programs in order to achieve the goal of retaining skilled and qualified tradespeople for long-term success. A commenter expressed the view that IRAPs would divert resources from DOL that could be used to promote registered apprenticeships and would reduce the capacity of DOL to ensure high-quality standards in apprenticeship programs. Some commenters stated that instead of developing a new program, the Department should focus efforts on additional funding of registered apprenticeship programs through Federal grants or tax credits. Multiple commenters remarked on the significant growth of registered apprenticeship and the number of active registered apprentices today as compared to the 20-year national average. Other commenters remarked on the success of registered apprenticeships in "apprenticeable occupations." Some commenters urged DOL to promote joint labor-management apprenticeship programs rather than creating a system of IRAPs. Many commenters asserted that robust, privately-funded registered apprenticeship programs have helped millions of workers obtain upward mobility and learn nationally-recognized skills and that they have benefited employers by supplying a qualified and highly-trained workforce, improving safety, and allowing greater productivity. Many commenters also provided personal stories and examples of professional success gained by completing a registered apprenticeship that cultivates safety-oriented, high-performance apprentices in middle-class careers. A commenter remarked that high-quality apprenticeship programs boost the economy, while another commenter stated that existing programs have one of the highest rates of return on investment for employers.

A commenter asserted that, while the registered apprenticeship system is in need of some improvements—such as streamlining the program approval process, achieving greater diversity, and clarifying misperceptions about how apprenticeship operates—the proposed rule does not address issues to improve the registered apprenticeship system. Some commenters disagreed with the notion that the current registered

apprenticeship system is rigid, inflexible, cumbersome, or burdensome, noting instead that their experience was to the contrary and that registered apprenticeships are fully adaptable to business needs. Other commenters included resolutions from their State apprenticeship advisory bodies listing the important attributes of registered apprenticeship programs and affirming their support for such programs. The resolutions included statements of opposition to the proposed IRAP model because of concerns that the new approach would undermine the existing registered apprenticeship model.

The Department appreciates commenters' concerns about IRAPs' effect on the registered apprenticeship program. The Department emphasizes, however, that IRAPs are not intended to disrupt, supplant, or otherwise negatively affect registered apprenticeship programs. The Department views IRAPs and registered apprenticeship programs as operating in parallel. It further views the market-driven approach with IRAPs as designed to encourage growth in use of the apprenticeship model such that quality IRAPs would succeed alongside registered apprenticeship programs. Moreover, the need to rapidly increase apprenticeships in the United States through a new apprenticeship model is evident when one considers that the proportion of apprentices in the labor force in other countries is considerably greater than in the United States. While apprentices account for approximately 0.2 percent of the American labor force, they constitute 2.2 percent of the labor force in Canada, 2.7 percent in the United Kingdom, and 3.7 percent in Germany and Australia.<sup>11</sup>

As discussed in more detail below in the Department's explanation of § 29.30, the Department has determined that programs that seek to train apprentices to perform construction activities, as described in § 29.30, will not be recognized as IRAPs. The Department's goal in this rulemaking is to expand apprenticeships to *new* industry sectors and occupations. Registered apprenticeship programs are more widespread and well-established in the construction sector than in any other sector. Further, commenters raised concerns about allowing IRAPs in the construction sector in particular. In light of the purpose of this rulemaking, there is no need to take the risk, whatever the

magnitude, of disrupting or displacing registered construction programs.

The Department intends to continue to promote, improve, and increase the availability of registered apprenticeship programs. The Department appreciates commenters' support of registered apprenticeship programs and, particularly, their view that registered apprenticeship programs contain sufficient rigor without creating burdensome requirements. The Department also appreciates the numerous success stories shared by commenters, and the Department agrees that the earn-and-learn model of apprenticeship provides numerous benefits to workers and employers. Furthermore, the Department is well aware of the high rates of return that employers receive from the investment in apprenticeship programs. As for the comment that this rule does not address improvements to the registered apprenticeship system, this rule is not intended to make changes to the registered apprenticeship program but rather to establish a separate system of apprenticeship. This alternative pathway for apprenticeship is to provide additional avenues for addressing the skills gap and creating apprenticeship opportunities. The Department will continue to promote and improve the registered apprenticeship model through streamlined processes and development of electronic tools, among other things. Nevertheless, with this rule, the Department is also acknowledging that an industry-led alternative model may be better suited to some industries and has determined that IRAPs are a valid, parallel option to increase apprenticeship opportunities in the United States.

The Department intends to utilize funds appropriated for registered apprenticeship to continue to improve and support registered apprenticeship programs. The Department also notes that any available grant funding for registered apprenticeships will be announced through future funding opportunity announcements. Comments concerning tax credits to support apprenticeship are outside the scope of this final rule.

#### The Role of States in IRAPs

Commenters recommended that the Federal Government should empower and appropriately fund all States to operate their own, federally-approved registered apprenticeship programs. Another commenter encouraged the Department to consider a role for States in engaging with IRAPs within their State, in addition to the SREs

recognizing those IRAPs, and to support state-agency capacity for this engagement. Multiple commenters expressed concern that IRAPs would bypass the SAA system and States would not have oversight of the apprenticeship programs operating within their borders. A commenter expressed concern about creating a parallel system with no role for SAAs. Another commenter stated that SAAs have been at the forefront of increasing opportunities for apprenticeship in new industries, occupations, and populations. A commenter asserted that the proposed rule could jeopardize its State's history of success in maintaining superior buildings, worksite safety, and family wage jobs in the construction sector. Multiple commenters suggested that IRAPs would undermine their States' longstanding registered apprenticeships in the building trades. One commenter questioned the proposed funding scheme for IRAPs and asked whether there would be any fiscal impact on State labor departments.

The Department appreciates the role of SAAs in the registered apprenticeship program and will continue to support and promote such engagement. The Department also notes that this rule allows States and local government agencies or entities to participate as SREs; therefore, States may serve such a role if they so choose and fulfill the regulatory requirements. The Department appreciates the concern that a State may not have oversight of IRAPs within its borders. The Department notes, however, that various parts of the rule require IRAPs to abide by State and local laws, and State enforcement mechanisms would apply to employers offering IRAPs as to other employers operating within the State. The Department encourages SAA States to continue supporting and promoting registered apprenticeships, and the Department intends to continue to support and promote registered apprenticeships in both SAA and non-SAA States. Concerning the comments about the construction sector's superior buildings, worksite safety, family wage jobs, and State registered apprenticeships in the building trades, the Department has included in the final rule at § 29.30 an exclusion from this subpart for programs that seek to train apprentices to perform construction activities. This means that SREs may not recognize as IRAPs programs that seek to train apprentices to perform construction activities as defined in § 29.30. The Department does not anticipate that this rule generally will have a fiscal impact on State labor

<sup>11</sup> See Robert I. Lerman, "Proposal 7: Expanding Apprenticeship Opportunities in the United States," The Hamilton Project, Brookings Institution, 2014, <http://ow.ly/UIDmN>.

departments, but the Department also notes that State labor departments, or any other State agencies or entities, may choose to become recognized SREs as set forth in §§ 29.20 and 29.21.

#### Distinction Between Registered Apprenticeship Programs and IRAPs

Several commenters stated that the distinction between registered apprenticeships and IRAPs should be emphasized given that, according to the commenters, registered apprenticeships have rigorous standards and are not profit-driven. Multiple commenters asserted that IRAP and registered apprenticeship contractors would often be indistinguishable to the public, who might choose less qualified personnel without recognizing the difference. Multiple commenters recommended that the terms “apprentice” or “apprenticeship” not be used for IRAPs to prevent confusion with registered apprenticeships. A commenter expressed support for DOL’s statement in the NPRM that recognition as an IRAP is different from registration as a Registered Apprenticeship Program. Numerous commenters argued that a “bright line distinction” is warranted, particularly in the construction industry, because, according to them, registered apprenticeship programs are rigorously reviewed and operate at a higher level of commitment to training than the proposed IRAPs would. Commenters also approved of a bright line distinction as applied to the ability to apply for Federal funding given that, in their view, IRAPs would not have the same requirements for standards and quality of instruction and protection of apprentices. Another commenter asserted that it is unrealistic to expect an IRAP to invest the capital and resources that a labor union already “invests as part of its commitment to producing well and broadly trained” employees “with years of rigorous classroom, field, and on the job preparation.”

The Department acknowledges commenters’ statements that there should be a bright-line distinction between registered apprenticeship programs and IRAPs. The Department has determined that the IRAP model sufficiently diverges from the registered apprenticeship model so that a bright line distinction exists without a need for a regulatory change. The Department disagrees with the premise that IRAPs are inherently less safe or rigorous, given the detailed requirements set forth below. Additionally, because construction activities are excluded from the subpart, as discussed further below in the Department’s explanation

of § 29.30, there is no need for any bright-line distinction for apprenticeships involving construction activities.

Regarding Federal funding for IRAPs, it is the Department’s view that in cases where Federal programs confer categorical eligibility, exclusive funding, or special status to registered apprenticeship programs, such benefits do not extend to IRAPs. Such benefits were designed with the registered apprenticeship programs in mind, and it is therefore appropriate to maintain preferential status only for registered apprenticeships. In cases where high-quality apprenticeship programs are generally eligible for funding, such as in the Department’s H-1B Job Training Grant Program, the Department maintains that IRAPs should be eligible for such funding. With respect to the comment that IRAPs may not invest in training to the same degree as labor unions, the Department anticipates that employers that chose to participate in IRAPs will have every reason to invest in job training. The Department anticipates that the establishment of a new apprenticeship pathway will incentivize employers to seek innovative and high-quality methods for training their employees. This is because an employer has every incentive to ensure that its apprenticing employees gain the skills necessary to do the tasks the employer needs. Presumably that is why an employer would offer an IRAP in the first place. Additionally, employers have a market incentive to offer an IRAP. It distinguishes these employers in the competition for talent from other employers who do not offer an IRAP.<sup>12</sup>

#### Decision Not To Pursue IRAP Pilot Program

Multiple commenters stated that the proposed rule did not follow the Task Force’s Recommendation 14 to begin IRAP implementation with a pilot program in an industry without well-established registered apprenticeship programs. Several commenters said that there was no empirical evidence supporting the decision not to implement a pilot program. A commenter stated that a pilot program would have helped the Department assess the effectiveness of IRAPs before issuing a rule and requested that DOL explain the decision not to implement a pilot program as well as provide

<sup>12</sup> The Department also believes it is overly simplistic to state that registered apprenticeship programs are not profit-driven. Many for-profit companies participate in registered programs.

evidence that supports IRAPs’ effectiveness.

Several commenters requested that the Department implement a pilot program in the final rule in order to test the program model narrowly at first and make adjustments as needed to ensure proper implementation and success before applying the program on a larger scale. Other commenters opined that determining which occupations should be included in a pilot project depends on which occupations are experiencing a skills gap, which is hard to identify in any given industry that does not already have a training program via registered apprenticeship. One of these commenters further stated that, because of insufficient reliable data to understand the scope of U.S. apprenticeships, the proposed rule should be withdrawn until adequate data are obtained.

After due consideration of these comments, the Department maintains that the large skills gap requires a more immediate response than a pilot project would permit. The Department believes that the problems posed by the current skills gap necessitate the comprehensive implementation of IRAPs, and that a pilot program would by its very nature be insufficient to address the current shortage of skilled American workers at the scale required. Further, nothing in the NAA requires that bringing together “employers and labor for the formulation of programs of apprenticeship” be done first as a pilot program. The Department has discretion under the broad language of the NAA to establish the IRAP program as it is done here.

#### Industry-Driven Apprenticeship Model Framework

Several commenters suggested that the IRAP framework should coordinate with State, local, and regional partners and stakeholders (local businesses, workforce and education systems, human services organizations, labor and labor-management partnerships, and other community-based organizations) to ensure IRAPs are aligned with the workforce, education, and human services programming in which Federal, State, and local governments and the private sector currently invest.

One commenter argued that the proposed rule leaves many issues unaddressed, such as challenges employers face in navigating the apprenticeship system, lack of attention to reciprocity, and uncertainty among apprentices about how to evaluate program quality. Multiple commenters suggested that each SRE applicant and each IRAP should be classified

according to the North American Industry Classification System (NAICS) or Occupational Information Network (O\*NET) codes, stating that to do otherwise might disrupt the current registered apprenticeship system.

The Department anticipates that the IRAP model will strike the appropriate balance between coordinating at the regional and national levels, as will be more practical for large employers, and coordinating with State and local governments, as may be more practical for many smaller employers. The Department stresses that the IRAP model provides flexibility for industries to set the training requirements, program structure, and teaching curricula that strikes the ideal balance between geographic and industry-wide concerns. This approach, which is intended to minimize administrative burdens on adopters of the IRAP model, should encourage a more rapid scaling of quality apprenticeships across multiple industries where apprenticeships are currently underutilized. With respect to NAICS and O\*NET codes, the Department will be requesting such information from each prospective SRE about the IRAPs it will recognize and expects there to be a uniformity in classification between IRAPs and registered apprenticeships. The Department also acknowledges the concern that employers and prospective apprentices may face difficulty in navigating and comparing potential apprenticeship options. As discussed in more detail below, the Department addressed such concerns by incorporating the enhanced metrics listed in § 29.22(h) as well as the reporting required by § 29.24 of the final rule.

#### Requests To Extend the Comment Period

Ten commenters submitted requests to extend the comment period for the proposed rule. Seven commenters requested a 30-day extension of the comment period, and three commenters requested a 60-day extension. In general, commenters requesting an extension of the comment period cited their desire to provide meaningful and comprehensive comments.

While the Department acknowledges these concerns, the Department concluded that the 60-day comment period was reasonable and sufficient to provide the public a meaningful opportunity to comment. This conclusion is supported by the large volume of complex and thoughtful comments received, including detailed comments from all 10 commenters requesting an extension, which

demonstrates that the public has had adequate time to meaningfully participate in the rulemaking. For these reasons, the Department declined to extend the 60-day public comment period on the NPRM.

#### Other Suggestions About Public Participation

A commenter expressed concern that the proposed rule had been developed with no consultation with, or input from, SAAs or the Advisory Committee on Apprenticeship. Another commenter suggested that the Department should work with previously-contracted intermediaries for registered apprenticeships that have an understanding of the issues within the current system to make changes needed to gain wider adoption by the technology sector. A commenter suggested that the Department offer the public an additional opportunity for public comment, because the proposed rule lacked a discussion of the validity of IRAP-issued credentials.

The Department believes that these concerns are overstated and insubstantial. The Department benefitted from input from the Task Force Report, which helped inform the development of the proposed rule. The Task Force consisted of a wide range of stakeholders, including State elected officials, major trade and industry groups, labor unions, and concerned citizens. In addition, the Department received several comments from SAAs subsequent to the publication of the proposed rule, which were taken into consideration during development of the final rule.

#### Administrative Procedure Act

A commenter raised concerns that the Department has already established both the fact that SREs exist and that SREs may be approved and awarded a favorable determination before the related regulation is finalized. The commenter also asserted that the Department has no intention of taking into serious consideration any critical comments that will be submitted in response to the NPRM, which it is required to do pursuant to the APA.

The Department notes that Training and Employment Notice (TEN) 3–18 and TEN 3–18, Change 1 (issued on July 27, 2018, and June 25, 2019, respectively) were rescinded on October 22, 2019. Accordingly, the Department withdrew the information collection request (ICR) package associated with the TEN on October 22, 2019. The TEN provided that a potential SRE could apply for a favorable determination from the Department as to whether its policies

and procedures met the hallmarks outlined in the TEN. The favorable determination was not intended to provide any benefit or formal recognition to an entity, nor was it envisioned as a prerequisite to any activity. And regardless, the form from which such a determination would be made was only proposed and never went into effect. Conversely, this final rule establishes that a potential SRE must apply for recognition by the Department to become a recognized SRE. Moreover, the Department will not award a favorable determination to an SRE prior to the publication of this final rule. The Department takes seriously its obligation under the APA to review and respond to all germane comments received from the public concerning the NPRM, as amply demonstrated by this final rule release.

## II. Section-by-Section Analysis

The analysis in this section provides the Department's responses to public comments received on the proposed rule. The Department received a number of comments on the proposed rule that were outside the scope of the proposed regulations, and the Department offers no response to such comments. The Department also has made some non-substantive changes to the regulatory text to correct grammatical and typographical errors, in order to improve the readability and conform the document stylistically that are not discussed below.

### A. Subpart A—Registered Apprenticeship Programs

Revisions to part 29 account for its division into two subparts. Each subpart addresses a different type of apprenticeship program. Accordingly, revisions to current part 29—now proposed subpart A—made conforming edits to account for subpart B, and for how SREs and IRAPs establish a new, distinct pathway for the expansion of apprenticeships.

The first type of conforming edit in subpart A replaces prior references to part 29 with references to subpart A. Second, the final rule adds the phrase “[f]or the purpose of this subpart” before definitions provided in subpart A, § 29.2. This revision clarifies the distinction between the current registered apprenticeship system and what new subpart B establishes.

DOL received no comments on conforming edits to subpart A. Revised regulatory text will be implemented as proposed.

*B. Subpart B—Standards Recognition Entities of Industry-Recognized Apprenticeship Programs*

Section 29.20 Standards Recognition Entities, Industry-Recognized Apprenticeship Programs, Administrator, and Apprentices

Section 29.20 of the final rule explains that subpart B establishes a new apprenticeship pathway distinct from the registered program described in subpart A. This section also defines four key terms used in subpart B. These terms are standards recognition entity (SRE), Industry-Recognized Apprenticeship Program (IRAP), Administrator, and Apprentice. The Department received comments on the definitions of an SRE, IRAP, and Apprentice as well as recommendations to define other terms used in the proposed rule. A discussion of these comments is described in detail below. The Department received no comments on the definition of Administrator.

Definition of SRE

Paragraph (a) of § 29.20 in the final rule defines an SRE as an entity that is qualified to recognize apprenticeship programs as IRAPs under § 29.21 and that the Department has recognized as an SRE. The Department received a few comments related to the proposed definition of an SRE in paragraph (a) of § 29.20. Multiple commenters requested that the Department propose a regulatory definition for an SRE. Another commenter stated that the proposed definition lacked defined qualifications to ensure SREs are recognizing programs that protect apprentices and provide proper, uniform supervision and instruction.

In response to the comments, the Department notes that it established a definition for an SRE in the proposed rule. As stated in the proposed rule, an SRE is defined as “an entity that is qualified to recognize apprenticeship programs as [IRAPs] under § 29.21 and that has been recognized by [DOL].” The Department also notes that in addition to establishing a definition for an SRE, the proposed rule also had provisions for the types of entities that can become a recognized SRE in § 29.20(a)(1), the process and criteria in which an entity becomes a recognized SRE in § 29.21, and the responsibilities and requirements of an SRE in § 29.22 as a means of providing the full scope of what being an SRE means.

The Department believes entities will have sufficient qualifications to ensure that they are recognizing high-quality programs, and more fully discusses the specific qualifications for SREs to

recognize high-quality apprenticeship programs in § 29.21 of the final regulation. Accordingly, the Department declines to revise the definition of an SRE, and the final rule adopts the provision as proposed.

The Department inadvertently designated the types of entities that can become a recognized SRE in paragraphs (a)(1)(i) through (vii) under § 29.20 in the proposed rule. The Department has corrected this designation and proposed § 29.20(a)(1)(i) through (vii) has been redesignated as § 29.20(a)(1) through (9) in the final rule. Paragraph (a)(1) of § 29.20 in the proposed rule contained a nonexhaustive list of the types of entities that can become recognized SREs. These entities include but are not limited to: (1) Trade, industry, and employer groups or associations; (2) educational institutions, such as universities or community colleges; (3) State and local government agencies or entities; (4) non-profit organizations; (5) unions; (6) joint labor-management organizations; or (7) a consortium or partnership of entities such as those above. In the final rule, the Department has added two types of entities that can become a recognized SRE in § 29.20(a): (1) Corporations and other organized entities; and (2) certification and accreditation bodies or entities for a profession or industry, to align with the types of eligible entities listed in the Industry-Recognized Apprenticeship Program Standards Recognition Entity Application (Form ETA-9183). The final rule now establishes that the types of entities that can become recognized SREs under § 29.20(a) include: (1) Trade, industry, and employer groups or associations; (2) corporations and other organized entities; (3) educational institutions, such as universities or community colleges; (4) State and local government agencies or entities; (5) non-profit organizations; (6) unions; (7) joint labor-management organizations; (8) certification and accreditation bodies or entities for a profession or industry; or (9) a consortium or partnership of entities such as those above.

Although the application, as proposed in the NPRM, included “companies” and “certification and accreditation bodies” as a type of eligible entity that can become a recognized SRE, the Department has revised “companies” to be “corporations and other organized entities” and “certification and accreditation bodies” to be “certification and accreditation bodies or entities for a profession or industry” in the final rule. By revising this text, the Department aims to provide greater specificity and additional clarity

concerning the types of entities that can act as an SRE.

As noted above, paragraphs (a)(1) through (9) of § 29.20 in the final rule contain a nonexhaustive list of the types of entities that can serve as SREs. A consortium of these entities can also apply to become a recognized SRE. By not limiting the types of entities that may receive recognition, the Department aims to encourage the creation of SREs in a broad range of industries and occupational areas. Accordingly, the Department invited public comment on this approach in the proposed rule.

Several commenters expressed support for establishing a wide list of eligible entities that may become recognized SREs. One commenter proposed that the types of entities that may become recognized SREs should include both individuals and organizations in order to encourage innovation. Other commenters argued that the types of entities that can become a recognized SRE should be restricted to non-profit organizations or exclude individual employers in order to mitigate conflicts of interest.

The Department has considered the various comments received pertaining to this section and maintains that retaining a nonexhaustive list of the types of entities that can serve as an SRE will encourage the development and expansion of apprenticeships, particularly in high-growth and in-demand industries. A nonexhaustive list of eligible entities can also enable building on existing partnerships and cultivating new relationships within industries, which could be instrumental in ensuring the success of an apprenticeship. To alleviate the concerns expressed by commenters requesting that specific types of entities be restricted from becoming a recognized SRE, the Department has added a requirement in § 29.21(b)(6) of the final rule concerning mitigating conflicts. Under this provision, which is discussed at greater length below, potential SREs are required to demonstrate that they can effectively mitigate any potential or actual conflicts of interest as part of their application to becoming a recognized SRE. By adding this provision, the Department is taking the necessary steps to ensure that each SRE applicant addresses any inherent conflicts through specific policies, processes, procedures, organizational structures, or a combination thereof, which will be evaluated by the Department prior to its recognition as an SRE.

One commenter stated that the proposed rule does not explicitly address strategies to encourage



organizations to consider forming SREs and may not necessarily motivate entities that do not yet participate in apprenticeship partnerships to begin doing so in the proposed IRAP framework.

Although the Department did not explicitly address strategies to encourage organizations to consider establishing SREs in the proposed rule, the Department recognizes the importance of engaging with stakeholders and supports partnership development between employer and labor organizations, education and training providers, and others to promote and expand apprenticeship opportunities. The Department believes that the successful implementation of the IRAP initiative will require robust engagement and partnerships to foster the growth and innovation of these types of apprenticeships, particularly in industries lacking such opportunities.

Some commenters expressed concern that having multiple SREs within an industry may generate significant fragmentation and confusion among potential apprentices, employers, and sponsors. One commenter raised several questions about how SREs will operate across State lines. Specifically, the commenter asked how multiple SREs within a State or industry would handle competition over limited resources, and how SREs will count apprentices when they operate across States or regions. Another commenter opined that SAAs should not be allowed to apply to be an SRE, because SAAs are authorized by the Department to recognize registered apprenticeship programs, and it would lead to apprentices in the same industry receiving inconsistent training, affecting their skill level and marketability. In contrast, a different commenter provided specific language to amend the proposed regulations to allow SAAs to serve as an SRE. The commenter expressed its belief that SAAs should be at the forefront of those entities considered as potential SREs.

The Department does not share the concerns raised by commenters questioning how multiple SREs within an industry or State would function. If apprenticeships are to thrive in emerging industries and spread to new and innovative occupational areas, then having multiple SREs within any given industry or State would result in an increase in the number of apprenticeship programs that are able to effectively train individuals for industries and occupations most in need of skilled workers. In addition, the presence of multiple SREs will provide prospective IRAPs and employers with an opportunity to assess and determine

which SRE is best suited to meet the needs of their program.

The Department disagrees with the commenter who opined that SAAs should not be allowed to apply to become a recognized SRE. The Department understands the importance of SAAs and believes that they are well positioned to be recognized as an SRE due to their level of expertise and experience with identifying quality apprenticeships, not only in the private sector but also in the public sector. The Department envisions that SAAs and other State and local government entities that are recognized by the Department as SREs may decide to develop and recognize IRAPs in the public administration sector. The Department believes this will result in the expansion of public administration apprenticeships, thereby building talent pipelines for employers, which will lead to the creation of career opportunities for apprentices in State and local government and to future economic growth in the United States. The Department also disagrees with another commenter's recommendation to amend the regulation so that SAAs are specifically added as an eligible entity, as SAAs already fall within the scope of "State and local government agencies or entities."

#### Definition of IRAP

The Department has replaced the term "Industry Programs" that was used in paragraph (b) of § 29.20 in the proposed rule with "IRAPs" in paragraph (b) of § 29.20 in the final rule. The Department made this change in § 29.20(b) (and throughout the final rule) to limit confusion among stakeholders since the term "Industry Program" is used widely in both the public and private sectors. For that reason, an employer could potentially establish an apprenticeship program on an independent basis and refer to it as an "Industry Program." By making this change, the Department will make clear to stakeholders that "IRAP" is a Department-specific term for an apprenticeship model established in accordance with the NAA.

Paragraph (b) of § 29.20 in the final rule defines IRAPs as high-quality apprenticeship programs that are recognized by an SRE, wherein an individual obtains workplace-relevant knowledge and progressively advancing skills, that include a paid-work component and an educational or instructional component, and that result in an industry-recognized credential. Under § 29.20(b), an IRAP is developed or delivered by entities such as those outlined in § 29.20(a).

Many commenters warned that the term "IRAP" is defined in a vague and overbroad manner and does not provide any meaningful guidance or protection for apprentices. One commenter suggested amending the definition of "IRAP" to add language stating that an apprentice's compensation cannot be less than the minimum wage, and that wages must increase as work and training benchmarks are achieved. The commenter also recommended that the term "industry-recognized credential" be defined in the final rule since it is referenced in the definition of "IRAP."

The Department did not make changes in response to the comments suggesting that the definition of "IRAP" is vague or broadly written. In the proposed rule, the Department required in § 29.22(a)(4) that a program seeking recognition as an IRAP adhere to standards of high quality in order to obtain and maintain recognition by an SRE. The standards of high-quality apprenticeships outlined in § 29.22(a)(4) served to supplement the definition of "IRAP" as proposed in § 29.20(b). The SRE, in accordance with the parameters established under this regulation, is charged with establishing the standards for training, structure, and curricula that an IRAP must conform to. The Department has determined that refining the definition of "IRAP" to include wage requirements, other requirements concerning the welfare of an apprentice, and the parameters of an industry-recognized credential is unnecessary, because these topics are addressed in this final rule at § 29.22. Accordingly, the final rule substantively adopts the definition as proposed, with nonsubstantive textual edits for clarity and to reflect an update to a regulatory citation in accordance with the provisions outlined in 29.22(a)(4).

#### Definition of Administrator

Paragraph (c) of § 29.20 in the final rule clarifies that the "Administrator" is the Administrator of OA, or any person specifically designated by the Administrator. The Department did not receive any comments related to the proposed definition of "Administrator" in paragraph (c) of § 29.20 in the proposed rule. Accordingly, the final rule adopts the provision as proposed.

#### Definition of Apprentice

Paragraph (d) of § 29.20 in the final rule defines an "apprentice" as an individual training in an IRAP under an apprenticeship agreement. The Department received some comments recommending the revision of the definition of "apprentice" in § 29.20(d) of the proposed rule. One commenter

stated that the proposed definition of “apprentice” should be revised by substituting the term “training” in place of the term “participating.” Other commenters stated that the definition of “apprentice” should be revised either to align with the definition of “apprentice” in subpart A or should be written in a manner that is as robust as the subpart A definition. These commenters asserted that aligning the definitions of “apprentice” would provide additional clarity on the rights and responsibilities of an apprentice and the protections that safeguard the welfare of an apprentice, thereby ensuring that underage workers are prohibited from participating in an IRAP.

The Department agrees with the commenter’s suggestion to revise the definition of “apprentice” to clarify that an apprentice is an individual “training” in an IRAP, and accordingly, has revised the definition in the final rule. The use of the term “training” in place of the term “participating” in the definition could eliminate potential ambiguity, since mentors and related instruction providers may also be deemed participants in an IRAP.

The Department acknowledges the other commenters’ recommendation to revise the definition of “apprentice” so that it aligns with the subpart A definition of “apprentice,” which references the standards of apprenticeship. Although the Department declines to adopt this recommendation, the Department has made additional refinements to the definition beyond replacing the term “participating” with the term “training” as noted above. As discussed below in § 29.22(a)(4)(x) of the final rule, IRAPs are now required to have an apprenticeship agreement with each apprentice. Accordingly, the Department has added the phrase “under an apprenticeship agreement” to the definition of “apprentice” in the final rule. Because an apprenticeship agreement establishes the conditions of employment between an IRAP and an apprentice, and this final rule establishes parameters to protect the welfare of all IRAP apprentices as described below in § 29.22, the Department does not think it is necessary to revise this definition further to create alignment with the subpart A definition. The definition comports with the broad discretion the Department possesses under the NAA. In addition, IRAPs must comply with all employment and age-related laws that apply to their employers, thereby conferring upon apprentices the same protections afforded other employees.

#### Recommendations for Additional Terminology Definitions

Several commenters recommended adding definitions for other terms. These terms include “accessibility,” “accreditation,” “categorical eligibility,” “complex task,” “consensus-based process,” “construction,” “consultative services,” “employer engagement,” “high-quality,” “industry-essential skills,” “industry expertise/expert,” “industry-recognized credential/credential,” “paid work,” “recognition decision/recognize,” “sector,” “significant opportunities,” “structured mentorship,” “structured work experience,” and “Universal Design for Learning.” A commenter specifically urged that the proposed rule’s lack of definitions in proposed subpart B requires a “re-proposal” to provide the opportunity for comment.

Of the recommended terms that commenters requested definitions, five terms—“accessibility,” “categorical eligibility,” “employer engagement,” “industry expertise,” and “Universal Design for Learning”—were not used in the proposed regulatory text;<sup>13</sup> two terms—“consultative services” and “recognition decisions”—were used in § 29.22(f) of the proposed regulatory text, but were not carried over into the final regulatory text as discussed below in § 29.22 (under the “Conflicts of Interest” heading); and one term—“significant opportunities”—was used in § 29.31 of the proposed regulatory text, but was not carried over into the final regulatory text. The Department has determined that these terms do not require definitions, because they are not included in the final rule’s regulatory text. Although the term “construction” was not used in the proposed regulatory text, the proposed rule incorporated a long-standing definition of the building and construction industry from case law as part of the Department’s approach in determining which entities and programs are eligible to participate in the IRAP framework. However, after reviewing many comments concerning the need to define “construction,” the Department has revised its construction exclusion in § 29.30 of this final rule, as discussed in detail below.

With regards to the terms that were used in the proposed rule and are carried over into the final rule, the Department has determined that these terms are either discussed in the relevant section of the regulation below

and can be understood in the context of the appropriate section or according to their plain and ordinary meaning. Accordingly, defining these terms in this section is not necessary. In addition, the Department disagrees with the commenter’s assertion that the rule would require a reproposal due to a lack of definitions in subpart B. The Department has identified the key terms that warrant a definition and given sufficient notice and opportunity for comment with respect to these definitions, and believes these definitions are sufficient for public understanding.

#### Section 29.21 Becoming a Standards Recognition Entity

Section 29.21 outlines the process by which an entity may apply for Departmental recognition as an SRE, as well as the criteria against which the Department will assess applications. The Department will recognize entities that show they have the expertise to set standards for high-quality apprenticeship programs that result in industry-recognized credentials and equip apprentices with competencies needed for proficiency in specified industries or occupational areas, as would be demonstrated through components of the entity’s application (described in more detail below).

Several commenters provided suggestions relating to the Department’s proposed process for reviewing an entity’s application to serve as an SRE contained in the preamble of the proposed rule. One commenter suggested that the proposed panel of reviewers either be broadened to include industry training experts from companies and schools, or that it be narrowed to include only Department personnel who possess the experience in apprenticeship programs necessary to adjudicate the application. Another commenter stated that the Department should not delegate its decision-making to Federal contractors, especially considering that the specific expertise and performance standards for the contractors are not defined. A commenter expressed concern that the Department’s use of contractors to review an entity’s application could present conflicts of interest. Another commenter proposed that DOL instead establish a national advisory committee to review and make recommendations regarding SRE applications and to serve as a forum for discussion about issues related to the recognition of SREs.

Commenters also suggested that DOL’s proposed review of entities’ applications appeared to be too limited. The commenter noted that concerns

<sup>13</sup> Three terms did not appear in the preamble discussion of the proposed rule either: “accessibility,” “employer engagement,” and “Universal Design for Learning.”

regarding the initial review would also apply to resubmitted applications. One commenter expressed concern about the proposed panel's limited review of SRE applications in light of the estimate of over 200 SREs approved in the first year. Several commenters expressed concern that the Department lacks the staffing and funding to review the expected number of SRE applications, with one commenter adding that the Department struggles to oversee the registered apprenticeship system.

The Department determined that, for at least the first year of its evaluating SRE applications, a panel of two contractors and one full-time federal employee will conduct these evaluations. After reviewing the comments received, the Department concluded that limiting SRE application review panels to only industry experts or only Department staff could lead to a lack of capacity that could be critical in translating the needs of industry into this new apprenticeship recognition process under the NAA. The Department has concluded that this mix of federal, industry, and credentialing experts would be essential to implementing this rulemaking as quickly and effectively as possible. The Department may adjust the ratio of federal staff, industry experts, and credentialing experts as it continues to implement and refine the review process.

As with all of its programs, the Department will continuously review this process to find the best, most-efficient way of implementing these rules. Additionally, the Department may alter the composition of the panel depending on the nature and breadth of sectors and occupations covered by a particular application, although it expects that three will be the minimum number of reviewers for the initial stages of the evaluation to include Departmental expertise, industry expertise, and credentialing expertise. The Department agrees that the panel of reviewers should include industry experts, rather than consistently relying on two contractors from the credentialing community as proposed. The Department otherwise anticipates following the process outlined in the proposed rule to review entity's applications.

The Department will take all steps necessary to prevent contractors from reviewing applications for which they have a stake in the outcome; furthermore, regardless of the composition of the panel, the Administrator or the Administrator's designee will make the final decision on recognition. In response to comments

calling for a national advisory committee review of SRE applications, the Department determined that assembling such a committee and coordinating its review would be difficult and could impose unnecessary burdens on entities applying to be SREs. Accordingly, it will not take this approach for reviewing applications. The Department made no change to the regulatory text in response to these comments, and it has not included regulatory text addressing the composition of an evaluation panel to maintain flexibility to find the best, most efficient way to handle SRE applications.

Regarding the concern that application review appears limited, the Department notes that its proposed process provides for multiple layers of review. The Department also notes that it has made every effort to reduce the burden of applying to be an SRE without sacrificing quality. The Department notes that review of an initial application and an application for re-recognition are based on the same criteria and thus will necessarily follow similar review processes. The Department acknowledges that its staffing and resources are limited, but it anticipates being able to utilize available appropriated funds to review SRE applications.

#### Application Process—§ 29.21(a)

Paragraph (a) of § 29.21 states that an entity must submit an application to the Administrator to become a recognized SRE. The Department will review the application to determine whether the entity is qualified to be an SRE. This determination will depend in large part on the scope and nature of the IRAPs the SRE seeks to recognize. Accordingly, the application would give the Department information about the industry(ies) and occupational area(s) for which programs would train apprentices.

Numerous commenters suggested that applications should be required to go through notice and comment before receiving approval. Commenters stated that requiring notice and comment on entities' applications may provide for transparency and ensure that the needs of apprentices and industry are met. Commenters also suggested that notice-and-comment review of applications would increase the efficacy, credibility, and appropriateness of the standards that SREs recognize. One commenter suggested that public comment from a wide range of sources would ensure that SREs have the expertise necessary to ensure the creation of high-quality IRAPs and to ensure that apprentices

receive sought-after competencies and industry-recognized credentials. The commenter suggested that confidential business information not be shared, but that other portions of an entity's application be made available for public comment. Another commenter suggested that an SRE's standards should be required to go through a notice-and-comment process.

Other commenters proposed that applications be shared with industry groups so that these groups may raise concerns or provide input to the Department as part of the application process. Many commenters expressed concern that allowing multiple SREs with differing standards to operate in the same occupations and the same geographic area would lead to confusion. A commenter characterized such potential for confusion as "massive" and representative of a major change to apprenticeship. One commenter proposed that the rule should incorporate a standard of reasonable consistency to ensure that training results in transferable skills. The commenter suggested that reasonable consistency could be achieved by allowing industry groups to object to an SRE's training and structures if they are not reasonably consistent with the training and requirements of programs in the same occupation and same area. Another commenter stated that SREs should be required to coordinate with any registered apprenticeship programs in their industry or occupations in which they are certifying programs in order to ensure the programs and standards are complementary and do not undercut each other.

The Department determined that requiring SRE applications to undergo a notice-and-comment period would be a large and unnecessary burden and would not be the best use of Department resources. Such a process would require additional Departmental staff resources to post applications for public comment; review, reconcile, and consider comments; and compare comments concerning an entity's application. The Department further believes that the time required to perform such a process for each entity's application would produce a backlog of applications. In response to the comment proposing that an entity's standards should go through notice and comment, the Department determined that such a requirement would be likely to produce a similar strain on Departmental resources, and a similar potential for delays and backlogs. The Department is confident its expertise combined with the expertise of the panelists will enable the

Administrator or the Administrator's designee to assess an entity's application to determine whether the entity will be able to serve as an effective SRE. Notably, many of the application requirements, such as possessing sufficient financial resources and not being debarred from conducting business with the Federal Government, are criteria that turn on data not readily available to members of the public.

Similarly, the Department determined that sharing applications with industry groups would present unnecessary burdens and potential delays similar to those described above. To become recognized SREs, entities must demonstrate that they have the expertise to set standards through a consensus-based process involving industry experts, and the Department thus expects that entities will demonstrate broad-based support from industry. This places the burden on applicants to demonstrate that they have consensus on how to train apprentices in a way appropriate to the industry. It does not mean, however, that SREs must demonstrate that they have adopted the only approach for training apprentices in an industry. Accordingly, the Department has determined it unnecessary for it to identify and consult industry experts on an applicant's qualifications, as the application must demonstrate, in the Department's evaluation, that an applicant has built consensus and garnered expertise to set training standards in an industry. A successful SRE application will contain all the information necessary for the Department to independently determine whether a prospective SRE developed its curricula and requirements through a consensus-based approach. Requiring that entities share their applications with other industry groups that may include potential competitors could also raise issues of privacy and confidentiality. To the extent that the Department requires outside expertise to assess an entity's application, the Department may rely on the expertise of credentialing experts and industry experts as explained above. The Department's review will be limited to only the application, and the Department will not approve applications that are ambiguous.

The Department does not anticipate that multiple SREs operating in the same industry or occupational area will lead to confusion. The Department notes that standards and training plans associated with IRAPs in the same industry or occupational area may understandably vary depending on the industry-recognized credentials

obtained by apprentices. The Department determined that requiring reasonable consistency between IRAPs operating in the same occupation and area would be unworkable and would unnecessarily restrict employer choice. Such a standard could stifle apprenticeship expansion by requiring SREs to achieve "reasonable consistency" in areas or occupations where such consistency does not exist. Similarly, while SREs are welcome to coordinate with registered apprenticeship programs in the same occupation, the Department determined that it would be most appropriate to allow SREs the flexibility to choose with whom to consult.

Several commenters stated that the attestation-based model of certification is neither rigorous nor transparent. According to one commenter, the H-2B Temporary Worker Visa program demonstrated that an attestation-based process invites fraud. The commenter suggested that the rule be amended to require on-site review in-line with the Nationally Recognized Testing Laboratory program. A different commenter proposed that the application process mirror that of the American National Standards Institute (ANSI), which the commenter characterized as the "gold standard" for private industry. This process involves a detailed application, opportunity for public comment, and a multi-layered review that involves both Department of Education staff and an advisory committee of industry professionals. Another commenter noted that the rule incorporates no method by which the Department will independently verify the information and supporting documentation contained in an entity's application. Even if an application is rejected, the commenter noted that the entity could seemingly correct its application, reapply, and be approved in two business days.

A few commenters suggested that, in addition to the Administrator, SAAs also should be permitted to assess entities' applications. One commenter noted that under a newly-passed state law, SREs must be certified to operate in-state, and the commenter requested that the rule be amended to allow the Administrator to delegate to SAAs the authority to approve SRE applications. One commenter noted that the lack of a role for States makes this subpart unique among education and workforce development programs and could lead to significant confusion for both training providers and businesses if training is not aligned with State priorities under other workforce and education plans. A commenter recommended that the

Department coordinate with other Federal agencies including the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, the Fish and Wildlife Service, and the U.S. Forest Service to encourage unique public-private partnership. A commenter proposed that third-party accreditors such as ANSI should review and assess entities' applications rather than the Department.

The Department notes that the application process provided for is not solely attestation-based, because paragraph (b) of § 29.21 requires that the applicant demonstrate its qualifications by submitting various required documents that include processes and procedures. Paragraph (a) of § 29.21 was also amended to require a prospective SRE to provide a written attestation that all information and documentation provided is true and accurate. Notably, many or all of the attestations in the proposed rule were contained in the proposed form, which was eliminated from the final rule, as explained below. The Department determined that conducting on-site assessments of SREs would offer few insights into an SRE's application while requiring significant time and resources from the Department. The process for reviewing entities' applications involves multiple layers, including processing by program analysts, panel review, a panel meeting, and review by the Administrator or the Administrator's designee. Though this process does not involve the same layers as the ANSI process, the Department is confident that it will result in effective assessment given the rigorous review.

The Department does not anticipate independently verifying all information submitted in conjunction with entities' applications, as proposed by one commenter. However, the Department will be able to identify errors in applications through careful review. The Department will request clarifying information from entities if portions of an entity's application seem to contain potential errors because of unclear or inconsistent information included in the application. In addition, willfully making materially false statements or representations to the Federal Government in an application may constitute a crime under 18 U.S.C. 1001. If an entity were to correct an error and resubmit its application, the Department sees it as a potential benefit that the application may be timely reviewed and approved. Indeed, the Department expressly encourages such resubmission in § 29.21(d)(2). The Department notes, of course, that not every deficiency in an application may be readily corrected. The Department will exercise particular

care in evaluating applications that contradict previously-provided financial information or descriptions of an entity's subsidiaries, as one example.

The final rule does not permit the Administrator to delegate the approval of SREs to States or SAAs. Given the nature of the applications and the possibility that SREs operate on a regional or national scale, the Department is in the best position to assess applications from entities given its national reach and expertise. For this same reason, the Department declined to provide for the assessment of applications by third parties. The Department notes that State and local government agencies or entities are eligible under § 29.21(a)(1) to apply to become recognized SREs. No change to the rule was made in response to these comments.

Several commenters requested that the Department work to minimize the burdens in the application approval process. Multiple commenters suggested that the process to be recognized as an SRE appeared more burdensome than the registration process under subpart A. A commenter suggested that the application process imposes unnecessary and unjustified requirements, including the requirements to establish a consensus-based process, demonstrate capacity and quality assurance processes, and the requirement to apply for re-recognition. The commenter described such burdens as disincentives to apprenticeship expansion.

In response to comments, the Department has made every effort to minimize burdens while still ensuring that the Department collects the information necessary to recognize high-quality IRAPs. The Department determined that the information required to be provided to the Department by § 29.21 is needed to accurately assess SREs. As part of this effort, the Department revised the proposed form to better align the information collected with the information required. The Department determined that the form had the potential to cause confusion, because some parts of the proposed form contained language that varied slightly from the substantive requirements in proposed § 29.21. The Department, therefore, deleted the form from the regulatory text. The Department also revised paragraph (a) of § 29.21 to clarify that the application must be in a form prescribed by the Administrator.

#### Required Qualifications To Become a Recognized SRE—§ 29.21(b)

Paragraph (b) of § 29.21 describes the criteria against which an SRE application will be assessed. The Department received no comments relating directly to the first sentence in paragraph (b) that as proposed read, “[a]n entity is qualified to be a[n] [SRE] if it demonstrates in its application that . . .” The Department edited § 29.21(b) to remove the words “in its application that” to align paragraph (b) of this section with the clarification in paragraph (a) of § 29.21 that the application is in a form prescribed by the Administrator.

The proposed rule set forth the requirements to become a recognized SRE in three paragraphs that were numbered § 29.21(b)(1) through (3). In response to the comment received, this final rule has been revised so that there are eight paragraphs numbered § 29.21(b)(1) through (8), integrating some requirements that were previously in the form included in the proposed rule.

Paragraph (b)(1) of § 29.21 of the proposed rule provided that an entity must demonstrate that it has the expertise to set standards, through a consensus-based process involving industry experts, for the requisite training, structure, and curricula for apprenticeship programs in the industry(ies) or occupational area(s) in which the entity seeks to be an SRE. An SRE should demonstrate sufficient support and input from industry authorities to give confidence in the SRE's expertise, given where its IRAPs will operate. This standards-setting process will, in turn, inform and guide the IRAPs the SRE recognizes, so that those programs impart the competencies and skills apprentices need to operate successfully in their respective industries or occupational areas.

A number of commenters responded to the Department's request for comments on whether SREs should set competency-based standards for training, structure, and curricula, rather than focus on potentially superficial requirements such as seat time. Many commenters expressed support for empowering SREs to set competency-based standards. Commenters noted benefits of competency-based standards, including those focusing on competency-based standards will allow IRAPs to train apprentices in the most efficient manner possible, and that some apprentices receive proficiency on an accelerated timeline using competency-based standards. A commenter also warned that apprenticeships need

flexibility to maximize positive results for both apprentices and employers, meaning that apprentices should not be bound to a certain number of hours, but instead progress through the program to gain a specific skill set and then perform these skills in a real industry setting. Other commenters expressed concern that traditional time-based programs are well established and that SREs are likely to use time-based standards. Also, some credentials may be tied to a minimum amount of seat time. One commenter proposed that the Department impose a minimum competency baseline, while another requested that the Department impose transparency requirements with respect to the competencies that will be attained.

The Department agrees with numerous commenters who noted the various benefits of competency-based programs, and paragraph (b)(1) of § 29.21 is accordingly revised to expressly require that entities have the expertise to set competency-based standards, through a consensus-based process involving industry experts, for the requisite training, structure, and curricula for apprenticeship programs in the industry(ies) or occupational area(s) in which it seeks to be an SRE. The Department has concluded that requiring SREs to develop competency-based standards that measure an apprentice's skill acquisition through the apprentice's successful demonstration of acquired skills and knowledge is consistent with ensuring that IRAPs offer innovative and high-quality training.

Though the Department is requiring competency-based standards, the Department does not intend to restrict SREs in using their expertise in designing those standards, and SREs are not precluded from including time-based requirements as a function of or in addition to competency-based standards. For example, an SRE might determine that time-based requirements are necessary for apprentices to achieve competency. Accordingly, SREs will retain the flexibility to decide how competency is achieved, which may include the utilization of time-based measures.

Requiring SREs to set competency-based standards will ensure that IRAPs and apprentices benefit as much as possible from the knowledge of each SRE's industry experts. Requiring that standards be competency based will further ensure that apprentices gain a specific skill set and perform such skills in a real industry setting, as proposed by one commenter. In addition, requiring SREs to develop competency-based standards is consistent with

Recommendations 1 and 5 of the Task Force on Apprenticeship Expansion Final Report to the President of the United States. Included in Recommendation 5 was the suggestion that technical instruction be competency-based, not seat-time based, and that technical instruction be directly aligned with the knowledge, skills, and abilities needed on the job. The Department does not intend for the requirement that standards be competency-based to preclude SREs from tracking time towards any minimum requirements that must be met to receive a particular industry-recognized credential. The Department agrees that transparency regarding competencies is important and notes that language was added in § 29.22(a) that requires IRAPs to provide apprentices with a written training plan.

The Department determined not to set a minimum time requirement for IRAPs, because the standards developed by SREs are required to be competency-based and may include any time-based requirements the SREs deem necessary for apprentices to achieve competency.

A commenter requested clarification regarding how the Department will review standards. One commenter proposed that if competency-based standards are developed using Federal funding, then SREs should be required to release such competency-based standards to the public so that they become part of the public domain. The commenter suggested that spending taxpayer money on multiple competing competency-based standards would be an example of wasteful spending.

The Department will use the combined expertise of Department staff and outside contractors to review entities' applications to assess the expertise and the sufficiency of the process by which the entities would develop standards. The Department declines to require that standards be made part of the public domain. In the event that the Department enters into grants, contracts, or cooperative agreements to use Federal funding for the creation of standards, the ownership of such standards will be addressed in such agreements. No changes were made to the regulatory text in response to these comments.

Several commenters responded to DOL's question in the preamble to the proposed rule regarding whether additional requirements are needed in paragraph (b)(1) to guarantee that the standards-setting processes of SREs will align the skills that apprentices receive to the needs of employers in a given region. One commenter proposed that DOL should weigh an applicant's

history of developing and operating under the workforce development model using data collected under the Workforce Innovation and Opportunity Act (WIOA). Conversely, the commenter suggested that when considering SRE applications from entities with existing standards-setting processes, the Department should consider how the processes may increase employment outcomes for those with barriers to employment. Another commenter proposed that SREs be required to consult with both industry experts and State Workforce Development Boards, which the commenter suggested are well-suited to identify the industry-recognized credentials needed to meet labor-market demand. Several commenters suggested that allowing multiple entities to act as SREs, each with their own unique standards, would create confusion. A commenter proposed that SREs must demonstrate significant industry engagement at national and local levels and evaluate whether industry programs align with activities of industries.

A commenter recommended focusing on the continuity of standards. Without continuity, the commenter suggested, there would be significant risk for apprentices in finding employment outside of the first sponsoring employer.

Other commenters requested that no geographic approach be incorporated into the final rule. One commenter noted that a small hotel chain might operate in multiple States but still require one comprehensive solution to the hotel chain's workforce needs. Several commenters suggested that this subpart might be interpreted at a local level with no consistency from state to state or even city to city, creating varying levels of IRAP program quality.

Some commenters also suggested that "expertise" and "experts," as used in this paragraph, was vague and should be more specific or should be defined. A proposed clarification was that expertise could be demonstrated by having the support, commitment, and buy-in from multiple employers. Other commenters proposed that the Department specify the qualifications necessary to demonstrate such expertise. A different commenter proposed that the Department attempt to ensure that industry experts are truly representative of their industries, rather than leaving the selection of experts up to the SRE. A commenter suggested that unless the term "expert" were defined, the Department's review panel would have little basis by which to make a consistent assessment, thereby leading to the inclusion of experts of any stripe. Another commenter requested that the

Department provide additional clarification regarding how SRE applicants will be expected to show their expertise in setting standards, impartiality, and credentialing in establishing IRAPs.

Other commenters proposed alternatives to demonstrating expertise. One commenter proposed that the paragraph be amended to allow for an SRE to have the expertise to set standards through a consensus-based process involving industry experts, or that it "possesses the ability to convene a body of industry experts." Several commenters suggested that an applicant's history with workforce development programs should be a possible alternative to demonstrating input from industry experts. A group of commenters noted that "consensus-based process" is vague and undefined. One commenter proposed that the Department define the concept of consensus standards and also questioned whether consensus standards for a given industry are any different from a work process schedule required in § 29.5 of subpart A.

A commenter requested that quantitative and qualitative measures carry equal weight in an entity's application.

The Department agrees that weighing an entity's experience operating under the workforce development system would be relevant information that should be provided in an entity's application if the entity possesses such experience. However, the Department has determined that requiring all applicants provide metrics measured under WIOA may exclude potentially qualified entities from applying. As discussed below, the Department declines to establish minimum experience requirements for entities to apply to become recognized SREs. The Department agrees that a proven track record of positive outcomes for those with barriers to employment would be a relevant and persuasive point of discussion in an entity's application for entities that have such experience. However, the Department declines to require that entities demonstrate the likelihood of expanding opportunities for those with barriers to employment in their applications as it would create a different application standard for applicants experienced in handling such issues. Additionally, the final rule maintains flexibility to allow entities to design programs most responsive to their workforce and economic needs. Additionally, while WIOA is directed in large part toward those with barriers to employment as defined by that statute, the NAA is directed toward apprentices

broadly and generally; consistent with the NAA, the industry-led apprenticeship model envisioned by this rule is intended to serve apprentices in a variety of industries and with a variety of backgrounds, not just those who are currently experiencing barriers to employment as that term is used in WIOA. While input from one or more State Workforce Development Boards could demonstrate valuable knowledge and expertise on the part of an applicant, the Department declines to require that every applicant consult with every relevant State Workforce Development Board.

As discussed above, the Department does not share the concern that a variety of SREs will lead to confusion and inconsistent IRAP program quality. To the contrary, the Department expects that any SREs complying with the requirements of this subpart will only recognize IRAPs that provide high-quality training. The Department views slight variations in approach that will occur between SREs as a net benefit that will provide apprentices and employers with increased options to meet the training needs of their workforce. Furthermore, the Department anticipates that many entities that may be interested in becoming recognized SREs already have standards-setting processes that reflect well-established and high-quality training, and the Department does not anticipate that expanding access to such programs will lead to confusion.

In response to the comment that SREs must be able to demonstrate significant industry engagement at national and local levels, the Department notes that coordination with industry experts is an existing requirement in paragraph (b)(1) of § 29.21. The Department also notes that it would be difficult and burdensome for SREs to list in their applications every local area in which it anticipates recognizing IRAPs.

The Department appreciates the concern with focusing on the continuity of standards to ensure the employability of completing apprentices. Notably, as discussed above, apprentices will train according to competency-based standards that reflect the consensus of experts and thereby convey consistency and employability. In addition, as discussed below, SREs will report on credential attainment and employment outcomes of their IRAPs, thereby demonstrating continuity of training and employability.

The Department disagrees with the concern that allowing SREs to adjust their practices for each State and city in which they certify programs could lead to varying levels of certification quality,

and therefore, has declined to prohibit such an approach. To the contrary, the Department envisions that SREs will make these adjustments as a matter of necessity to successfully operate in a State or region. For example, an apprentice working in automotive body repair in the southwestern United States may not need to achieve competency in repairing damage caused by road salt that may be common in other regions of the country. The Department notes, however, SREs must ensure that IRAPs lead to apprentices receiving industry-recognized credentials, and some State by State credentialing and licensing requirements are inevitable and will need to be considered by SREs.

The Department intends for the term “expert” as used in § 29.21(b)(1) to mean a person who has comprehensive knowledge of a particular area. The Department declines to set minimum experience or qualification requirements as such qualifications may necessarily vary across industries. A worker with in-depth knowledge of his or her occupation or related occupations and an instructor with extensive knowledge in credentialing may both bring valuable expertise to an SRE and could conceivably be included among the SRE’s experts. The selection of experts must necessarily be left up to the SRE as the Department would not be in a position to require consultation with specific industry experts. The Department declines to adopt suggested alternative approaches to demonstrating expertise, such as possessing experience with workforce development, as that would impinge on the flexibility the Department believes SREs should be given.

The ability to set competency-based standards through a consensus-based process involving industry experts is essential to ensuring that the SRE recognizes only high-quality IRAPs. The requirement that standards be the result of a consensus-based process is intended to ensure that an SRE’s experts agree that the standards will result in high-quality IRAPs that convey industry-recognized credentials consistent with the requirements in this subpart. Entities are required to identify in their applications the industry expertise on which they will rely and the processes by which the entity will develop standards. Once recognized, the SRE must rely on the opinion of experts as described in the entity’s application, but need not rely on any particular expert(s) identified on the application. The Department anticipates that the ability to convene a body of industry experts could serve as part, though not all, of an entity’s consensus-based

process. The Department therefore declines to make the ability to convene a body of experts an alternative to establishing a consensus-based process. Although a history of working with the workforce development system could potentially demonstrate an entity’s expertise, the Department does not consider such experience as an alternative to establishing a consensus-based process.

The Department intends for the term “consensus-based process” to require that the competency-based standards developed are the product of agreement by experts in the fields. Regarding the comment questioning whether consensus standards are the same as a “work process schedule” as those terms are used in subpart A, the Department agrees that the two concepts are comparable. The Department expects that SREs will organize their competency-based standards such that IRAPs and apprentices will clearly understand the skills and knowledge that must be demonstrated in order to complete the program. Although the idea of a work process schedule is a common method of describing knowledge and skill attainment under subpart A, the Department is not requiring the establishment of work process schedules under this subpart.

The Department anticipates that qualitative measures of demonstrating qualifications may be more common in entities’ applications as the applications must demonstrate expertise and describe competencies. Quantitative measures will be relevant for entities with extensive experience in training apprentices and such measures will also be assessed in the re-recognition process as described in § 29.21(c)(1)(ii). No change was made in the regulatory text in response to these comments.

Paragraph (b)(1)(i) of § 29.21 clarifies that the requirements in § 29.21(b)(1) may be met by an entity’s past or current standard-setting activities, and need only engender new activity if necessary to comply with this rule. This paragraph accounts for how some prospective SREs already have standards-setting processes that reflect well-established, industry-, occupation-, and employer-specific needs and skills. Rather than requiring those prospective SREs to alter their approach to setting standards, the Department seeks to clarify its expectation that such entities’ processes for setting standards likely meet the requirements of this proposed rule, and need only change if necessary to comply with it.

One commenter suggested that this paragraph as drafted would properly

account for an entity's past efforts in standard setting. A different commenter questioned whether DOL anticipated grandfathering in existing standards-setting entities and suggested such a practice would be inappropriate. The Department agrees that the paragraph as proposed appropriately accounts for entities already setting standards based on the consensus of industry experts; the text is adopted as proposed. The Department does not intend to grandfather in existing standards-setting entities—such entities still must apply to become recognized SREs and will need to alter their processes and procedures as necessary to comply with this subpart.

Although paragraph (b)(1)(ii) of § 29.21 is reserved, one commenter proposed that text be added at this paragraph to clarify that SAAs in good standing receive automatic recognition as SREs. While State entities are eligible to apply to become recognized SREs, the SAA evaluation process is significantly different than the process the Department has designed for evaluating SREs. Accordingly, the Department has determined it necessary that any SAA that seeks SRE recognition to go through the application process prescribed in this subpart to ensure it has the processes and procedures in place to recognize high-quality IRAPs. This paragraph remains reserved as proposed.

Paragraph (b)(2) of § 29.21 states that the entity must demonstrate that it has the capacity and quality assurance processes and procedures sufficient to comply with paragraph § 29.22(a)(4), given the scope of the IRAPs to be recognized. That paragraph authorizes SREs to recognize and maintain recognition of only high-quality apprenticeship programs.

Paragraph (b)(3) of § 29.21, as proposed, noted that prospective SREs must demonstrate they meet the other requirements of the subpart, in particular those outlined in § 29.22. The Department received no comments on this proposed paragraph. However, the paragraph was renumbered as (b)(8) to account for the additional application requirements as follows. The final text was changed from “[i]t meets the other requirements of this subpart” to “[i]t meets any other applicable requirements of this subpart.” The change was made to clarify that not every requirement of this subpart would be an eligibility requirement at the time of application.

The new paragraph (b)(3) of § 29.21 in the final rule incorporates a requirement that an entity indicate that it has the resources to operate as an SRE for a 5-year period, and to report any

bankruptcies during the previous five years. This requirement is taken from the proposed form that required an entity to demonstrate its ability to operate for the next five years and provide a financial statement. The form is not included in the final rule for the reasons discussed above. The text of the final rule is intended to ensure the future financial stability of an SRE to the greatest extent possible. The Department's recognition signals to prospective IRAP sponsors about the operational health of an SRE and thus a sense of security in the sustainability of the SRE. Additionally, this approach minimizes the burden on applicants as requested by several commenters.

A commenter noted that, in its view, a financially unstable training program will not safeguard the welfare of apprentices. Multiple commenters noted, in their view, the importance of verifying that the credential provider remains financially viable. One such commenter added that apprentices may not receive the benefit of industry-recognized credentials if the credential issuer later becomes defunct. Another commenter suggested that measures to ensure the financial viability of SREs be strengthened to ensure that SREs have sufficient financial contributions from IRAPs to operate successfully. One commenter noted that the proposed form seemed to indicate that the Department lacks confidence in prospective SREs, because it asked prospective SREs to address their financial stability over the next five years.

Several commenters pointed to the potential for financial conflicts. Multiple commenters suggested that SREs will have a financial incentive to recognize as many IRAPs as possible. One such commenter suggested that SREs provide a plan for how they will sustain losses from reduced fees if the SRE must derecognize IRAPs. The commenter suggested that such a financial tension has been a central challenge for the higher education accreditation system.

The Department agrees that an SRE's financial viability is crucial to ensuring safety and ensuring the long-term value of industry-recognized credentials, and the Department has included the new paragraph (b)(3) of § 29.21 in the final rule in response to these comments. The bankruptcy or dissolution of an SRE could also disrupt apprentices' training, as the SRE's IRAPs would have to apply for recognition from a different SRE. The Department has determined that an entity should demonstrate its financial viability for five years, which is intended to capture at least one full

recognition cycle for the SRE. SREs are in the best position to determine whether to charge fees, and if so, to set the fees necessary to support their operations. As explained in more detail below, the Department has not set minimum or maximum levels of fees that SREs may charge.

The Department also agrees that demonstrating financial stability at the application stage will ensure that SREs' financial viability is not based on recognizing as many IRAPs as possible without heeding to program quality, and that SREs will be able to absorb lost fees if some IRAPs must be derecognized.

New paragraph (b)(4) of § 29.21 requires that an entity disclose relationships with subsidiaries or other related entities that could reasonably impact its impartiality. The requirement is taken from the proposed form, which requested lists of related bodies, such as parent or subordinate organizations, as well as a list of confirmed or potential partners. The Department received one comment related to this paragraph, which was that conflict of interest provisions related to an SRE offering consultative services should be extended to related entities or subsidiaries.

The Department agrees that potential conflicts of interest involving subsidiaries or related entities could be imputed to the SRE, and paragraph (b)(4) of § 29.21 has been added in part to address such concerns. Proposed 29.22(e) and (f) have also been amended in response to this and other comments, as explained below. Paragraph (b)(4) also requires that the entity describe the roles of confirmed or potential partners. In addition, such information may provide context related to an entity's ability to perform the required functions of an SRE.

Paragraph (b)(5) of § 29.21 has been added to the final rule and requires entities to demonstrate that they are not currently suspended or debarred from conducting business with the U.S. Federal Government. The debarment restriction is intended to exclude entities that have carried out bad acts that would call into serious doubt their ability to effectively function as an SRE. The debarment restriction is taken from the proposed form, which requested that entities affirm they have no relevant injunctions, debarments, or other restrictions that would prevent them from doing business with the Federal Government or members of their industry sector. The final text has been changed from the language in the proposed form to clarify that relevant debarments are those that would prevent the entity from conducting



business with the U.S. Federal Government, as the term “debarment” is commonly understood. The Department received no comments related to the debarment question in the proposed form that is carried forward in this paragraph.

Paragraph (b)(6) of § 29.21 has been added to the final rule and requires entities to mitigate any actual or potential conflicts of interest, including, but not limited to, conflicts that may arise from the entity recognizing its own apprenticeship programs and conflicts relating to providing services to actual or prospective IRAPs. Such actual or potential conflicts must be addressed through specific policies, processes, procedures, structures, or a combination thereof. The requirements in this paragraph are replacing those proposed in paragraphs (e) and (f) of § 29.22 in the proposed rule. As discussed in greater detail in the § 29.22 discussion below, this revision is meant to strengthen the conflict of interest provisions by moving the requirement from § 29.22 of the proposed rule to § 29.21 of the final rule. By moving the requirements to § 29.21(b)(6), every entity is required to address potential conflicts of interest through specific policies, procedures, organizational structures, or a combination thereof that will be assessed by the Department before the entity may be recognized as an SRE. This change was made in response to numerous commenters who suggested the proposed rule insufficiently addressed conflicts of interest. The Department also has broadened the requirement to include recognizing an SRE’s own IRAPs or offering services to actual or prospective IRAPs as non-exhaustive examples of the types of actual or potential conflicts that must be addressed. This change was made in response to several commenters who noted that other conflicts may exist. The comments on conflicts of interest are addressed in the § 29.22 discussion below, because that is the provision in which those requirements were initially proposed (as § 29.22(e) and (f)). Relatedly, as discussed in further detail below, proposed § 29.22 also requires that an SRE’s recognition procedures assure that IRAPs receive equitable treatment and are evaluated based on their merits, and this requirement was carried forward in § 29.22(d) of the final rule.

Paragraph (b)(7) of § 29.21 was added to the final rule and requires that an entity demonstrate that it has the appropriate knowledge and resources to recognize IRAPs in the sectors and occupations in the intended geographic area, which may be nationwide or

limited to a region, State, or local area. This requirement was taken from the proposed form that in Section I asked entities where they planned to recognize IRAPs. Obtaining such information is necessary to ensure that the Department can refer prospective apprentices or IRAPs to nearby SREs or IRAPs in the relevant sector or occupation. As noted in the final regulatory text, the knowledge and expertise that an entity would need to demonstrate would necessarily vary if the entity is interested in recognizing IRAPs in a single State versus nationwide.

#### Consideration of Commenters’ Suggestions for Additional SRE Eligibility Requirements

A few commenters proposed additional eligibility requirements for entities to become recognized SREs. One commenter proposed that the Department limit SRE eligibility to well-established, industry-recognized associations or non-profit organizations. Another commenter suggested that entities should have experience in the area in which they are seeking recognition in order to set standards. The commenter suggested that a community college, for-profit institution, or non-profit organization should not be able to set standards for a trade in which the entities do not perform such work. A commenter proposed that the Department consider requiring that agencies have a minimum of two years of experience to demonstrate that the entity is effective in assessing the quality of workforce programs. Alternatively, the commenter suggested that the Department limit the scope of operations of SREs that lack such experience. One commenter suggested that applicants with accreditation experience should receive priority processing, because such experience would help to maintain consistency across IRAPs.

The Department declines to set minimum experience requirements for entities to apply to become recognized SREs. Notably, § 29.20 addresses the eligibility of a partnership or consortium of entities applying to become recognized SREs in light of the diverse expertise required of SREs. The Department declined to limit eligibility to well-established entities, as a start-up SRE or a new partnership or consortium of entities may be equally well-positioned to serve as effective SREs. Furthermore, it would disadvantage cutting-edge industries and stifle the expansion of apprenticeship to require that all SREs be well established. The Department similarly declined to require that SREs perform the work of

an industry or occupation. The Department notes that SREs must possess a variety of abilities beyond establishing training plans and recognizing standards. SREs must also perform quality-control functions, receive and address complaints, and collect and report data. Moreover, universities and community colleges may possess expertise in classroom instruction and credentialing and licensing that is also required by the subpart. Although an entity possessing actual experience ensuring the quality of workforce programs would be well-positioned to meet the requirements of this paragraph, the Department also anticipates that many entities may not possess such experience but may, nevertheless, be able to demonstrate that they possess the required capacity. For example, an entity without such experience may be able to demonstrate its capacity and quality assurance processes by hiring quality assurance personnel or by implementing industry best-practices. The Department decided not to make SRE approval conditional or limited at the outset. Notably, SREs are expected to comply with the requirements of this subpart immediately upon recognition. The Department made no changes in response to the comments.

#### Applications for Re-Recognition— § 29.21(c)(1)

Paragraph (c) of § 29.21 indicates that the Administrator will recognize an entity as an SRE if the applicant is qualified, and also provides additional details about recognition. This paragraph ensures that the Administrator undertakes adequate review of SREs, both over time and following any significant changes that would affect the SRE’s qualification or ability to recognize IRAPs.

Section 29.21(c)(1) indicates that SREs will be recognized for 5 years. An SRE must reapply if it seeks continued recognition. The Department proposed a 5-year time period to be consistent with best practices in the credentialing industry and to ensure that already-recognized SREs continue to account for the development and evolution in competencies needed within their industries. Changes were also made in response to comments to clarify that an SRE must reapply at least 6 months before its recognition is set to expire.

Numerous commenters stated that, in their view, a 5-year recognition period is too long. Several commenters suggested that SREs should be recognized for a 1-year probationary period and then be reassessed as part of a process that would be similar to

§ 29.3(g) in subpart A. A commenter argued that it would be unfair for SREs to receive 5-year approval whereas a registered apprenticeship program could only be registered provisionally for 1 year. One commenter suggested that the criteria for approval are not stringent enough to result in recognition for 5 years. Another commenter questioned why an entity with no proven track record of high-quality training would be recognized for 5 years. One commenter urged that approval for a shorter period would allow SREs to better keep pace with rapid changes in industry. Conversely, multiple commenters agreed that approval for 5 years is consistent with the practices in the credentialing industry.

A commenter suggested that SREs should be recognized for 5 years, but that they should be required to apply for re-recognition before the 5-year period ends in order to ensure that IRAPs not be approved and monitored by SREs with expired recognition. A different commenter proposed that an SRE should be recognized for 5 years, unless the SRE is an SAA, in which case the recognition should last indefinitely.

Another commenter proposed that re-recognition should take into consideration a measure of employer uptake. The commenter explained that employer uptake would measure the extent to which employers in a given sector emulate or adopt the standards recognized by an SRE.

As discussed above, the Department strengthened the recognition requirements by adding five new paragraphs to paragraph (b) of § 29.21. During the approval period, the Department has broad discretion to conduct both compliance assistance reviews under § 29.23 as well as reviews under § 29.26 that may lead to suspension or derecognition. Such reviews may be conducted at any time, including before the 1-year mark after initial recognition. This oversight ability will allow the Department to monitor SREs for compliance with its regulations. Further, SREs will be able to adapt to rapid changes in industry by amending their recognition process and notifying the Administrator as required under paragraph (c)(2) of § 29.21, discussed below. These measures are more than sufficient to meet the broad and general directives of the NAA, which do not require the Department to adopt precisely the same procedures used in the Registered Apprenticeship program for other programs, nor establish specific time periods of any sort. Rather, the Department is only directed to “bring together employers and labor for the formulation of

programs of apprenticeship” and to “formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices,” which this regulation does.

The Department agrees that allowing SREs to apply for re-recognition on the date of expiration could lead to confusion during the time in which the Department is adjudicating the SRE’s application. In response to this comment, the Department amended § 29.21(c)(1) to require an SRE to apply for re-recognition at least 6 months before its current recognition is set to expire. In response to the comment suggesting that SAAs should receive indefinite recognition if they are recognized as SREs, the Department declines to establish different recognition periods for different types of entities because of the potential for confusion.

Paragraph (c)(1)(i) of § 29.21 was added to clarify that an SRE must apply for re-recognition by submitting an updated application to the Administrator in a form prescribed by the Administrator. This paragraph was added to mirror the changes made to paragraph § 29.21(a) that explain the initial application process.

Paragraph (c)(1)(ii) of § 29.21 was added to establish the standard against which an application for re-recognition is assessed. It provides that the information contained in the application will be evaluated for compliance with § 29.21(b)(1) through (8) in much the same manner as an initial application. In addition, the paragraph recognizes that the SRE will have reported data pursuant to § 29.22(h) that will reflect the outcomes of the IRAPs the SRE has recognized.

An SRE applying for re-recognition must submit its quality assurance processes and procedures that will ensure compliance with § 29.22(a)(4), as required by § 29.21(b)(2). The Department will also review data provided by the SRE to ensure that the quantifiable requirements of this subpart were and are being achieved. The Department does not intend for § 29.21(c)(1)(ii) to establish minimum benchmarks that SREs must meet to receive re-recognition. Rather, the Department intends to use all available relevant data to enhance quality assurance and ensure that the processes and procedures submitted as required by § 29.21 are resulting in the recognition of high-quality IRAPs that meet the requirements of § 29.22(a)(4). Thus, for example, the SRE’s application for re-recognition must demonstrate policies and procedures that will ensure its IRAPs will provide

apprentices with a safe working environment and industry-recognized credential(s) during participation or upon completion of the program, among other requirements. If, however, the same SRE’s data submitted pursuant to § 29.22(h) indicated that apprentices are completing the SRE’s requirements and are not earning industry-recognized credentials, such data may well reveal that an SRE’s quality assurance processes and procedures are and were inadequate.

#### Obligation To Notify the Administrator of Substantive Change—§ 29.21(c)(2)

Paragraph (c)(2) of § 29.21 requires that an SRE notify the Administrator and provide all related material information about any major change that could affect the operations of the recognition program. The requirement that an SRE notify the Administrator if the SRE makes a substantive change to its recognition processes was not carried forward in the final rule in light of the requirement added to § 29.22(p), discussed below, that requires an SRE to notify the Administrator when an SRE makes a significant change to its policies or procedures. Changes under § 29.21(c)(2) would include involvement in lawsuits that materially affect the SRE; changes in legal status; or any other change that materially affects the SRE’s ability to function in its recognition capacity. Likewise, the SRE must notify the Administrator and provide all related material information if it seeks to recognize apprenticeship programs in new sectors or occupations. Paragraph (c)(3) of § 29.21 further states an SRE must notify the Administrator of major changes that could affect its recognition program, prior to their implementation. Such changes include seeking to recognize IRAPs in new sectors or geographical areas. In light of the information received, the Administrator will evaluate whether the SRE remains qualified for recognition under § 29.21(b).

The Department received one comment on this paragraph. The commenter suggested that language be added stating that conflicts of interest arising after recognition should be considered substantive changes that must be submitted to the Administrator. In addition, the commenter suggested that major expansions of programs, major changes to the type of program offered, or changes to the type of credential offered should be considered substantive changes.

The Department appreciates the concern that a conflict of interest could constitute a material change. The Department addressed this concern by

moving the conflict of interest requirement to § 29.21(b)(6) and thus requiring all SREs to submit processes, procedures, organizational structures, or a combination thereof that mitigate actual or potential conflicts of interest. Once recognized by the Department, SREs must comply with their own policies and procedures as stated in § 29.22(p), discussed below. Notably, as explained, § 29.22(p) contains a requirement that the Administrator be notified if the SRE makes significant changes to its processes or procedures, which would require the SRE to notify the Department about changes in procedures that address conflicts of interest.

The Department agrees that changes to the type of credential offered would constitute major changes that affect the operation of the SRE and thus require notification to the Administrator.

Because all SREs are required to develop competency-based standards, changes from one type of apprenticeship program to another, such as a change from a time-based program to a competency-based program, are no longer permissible. Thus, an SRE could revise its competency-based standards without notifying the Department if the SRE developed the standards using its existing processes and procedures. If, however, the SRE changed its processes and procedures for setting competency-based standards, § 29.22(p) would require that the Administrator be notified of the change in process.

The Department made no changes to this paragraph in response to the comment. The Department did, however, add the word “calendar” to § 29.21(c)(2)(iii) to clarify that days are calculated as calendar days. This change was made throughout the rule.

#### Denials of Recognition—§ 29.21(d)

Paragraph (d) of § 29.21 outlines the requirements associated with any denials of recognition after the Department receives a prospective SRE’s application. The Administrator’s denial must be in writing and must state the reason(s) for denial. The denial must also specify the remedies that must be undertaken prior to consideration of a resubmitted application and must state that a request for administrative review may be made within 30 calendar days of receipt of the notice. Under the final rule, the denial must also explain that a request for administrative review made by the applicant must comply with 29 CFR part 18’s service requirements. Additionally, the final rule clarifies that the appeal procedures in § 29.29 apply to appeals under § 29.21(d).

The Department received no comments on this paragraph and added clarifying language to the first sentence stating that the requirements for denials of recognition “are as follows.” The Department also edited § 29.21(d)(2) to clarify that notice to the Office of Administrative Law Judges must comply with the service requirements contained in 29 CFR part 18. This change is intended to account for any future change to the regulations promulgated by the Office of Administrative Law Judges.

#### Section 29.22 Responsibilities and Requirements of Standards Recognition Entities

Section 29.22 describes the responsibilities of and requirements for SREs, including recognizing high-quality IRAPs, developing policies and procedures on a range of issues, reporting data to the Department and the public, and giving notice to the public of complaints and fees. The Department received many comments on this section, as described in detail below, and made several changes in response to those comments. In particular, the Department clarified some of the standards of high-quality apprenticeship programs in § 29.22(a)(4) and strengthened the SRE’s requirement that an SRE validate and attest, in § 29.22(b), both at initial recognition and on an annual basis, that its IRAPs meet the standards of § 29.22(a)(4) and any other SRE requirements. The Department also included a requirement in § 29.22(d) that the SRE disclose to the Administrator its policies and procedures for ensuring consistent assessments of IRAPs for recognition and compliance with subpart B.

As explained in the earlier discussion of § 29.21, the Department moved paragraphs (e) and (f) concerning conflicts of interest from § 29.22 to § 29.21 and relettered the paragraphs in § 29.22 accordingly. Therefore, within § 29.22 of the final rule, paragraph (g) regarding 5-year recognition of IRAPs is now paragraph (e); paragraph (h) regarding the quality-control relationship between the SRE and its IRAPs is now paragraph (f); paragraph (i) regarding joint employer status is now paragraph (g); paragraph (j) regarding SRE reporting of IRAP data is now paragraph (h); and paragraph (k) regarding equal employment opportunity (EEO) policies and procedures is now paragraph (i).

The Department also added two additional requirements to the quality-control relationship between the SRE and the IRAP in § 29.22(f) (previously (h)) and included additional reporting

requirements in § 29.22(h) (previously (j)), requiring information to be made publicly available and reported to the Department. The Department received comments to other sections of the rule concerning complaints against SREs and IRAPs and derecognition of SREs. These comments resulted in the Department’s decision to add paragraphs (j) through (m) to § 29.22. Among other things, these paragraphs clarify the notice an SRE must give of the right to file a complaint against an SRE or an IRAP and of SRE derecognition. The Department also added § 29.22(n) to require that the SRE make publicly available any fees that it charges to IRAPs, § 29.22(o) to ensure that records relating to IRAP recognition and compliance are maintained, and § 29.22(p) to clarify that the SRE must follow its own policies and procedures and notify the Administrator when it makes significant changes to either.

#### SRE Requirements for Recognizing High-Quality IRAPs

Paragraph (a) of § 29.22 describes various obligations of SREs and identifies the characteristics of high-quality apprenticeship programs. The Department received numerous comments about this paragraph, particularly regarding the characteristics of high-quality apprenticeships set forth in § 29.22(a)(4). Many commenters contrasted the requirements of paragraph (a) of § 29.22 with the requirements for registered apprenticeship programs. Others detailed the successes of their registered apprenticeship programs and the importance of safeguarding the welfare of apprentices. Some commenters faulted the rule for providing the SREs with too much discretion, stating that the rule did not provide adequate protection against exploitation because IRAPs would admit “apprentices” yet provide limited or inadequate training and pay them less than the prevailing wage rates. Commenters expressed concern about industry providing inadequate training and substandard working conditions to create a low-skilled, low-wage labor pool.

Other commenters expressed support for the rule’s flexibility and for allowing SREs to set industry-relevant requirements. They praised the rule’s approach of ensuring high-quality apprenticeships and adequate protection for apprentices while at the same time providing flexibility to allow for increasing apprenticeships and promoting innovation in industries that may not yet have robust apprenticeship programs. Commenters favorably remarked that IRAPs would create

healthy competition with registered programs, would not be restricted by the presence of union-sponsored programs, and would encourage modernization of and investment in training by SREs, IRAPs, and registered apprenticeships.

These comments and the Department's responses and changes to the final rule are detailed in the paragraph-by-paragraph section below. Among other things, the Department's changes enhance its oversight of SREs by adding additional reporting requirements for SREs and quality assurance measures. The changes also strengthen the requirements for the quality-control relationship between an SRE and its IRAPs, the protections for apprentices by enhancing the requirements for high-quality IRAPs, the SREs' oversight of IRAPs, and further adding measures concerning SRE responsibilities. The Department also received comments that it deemed not applicable or appropriate to address in this rule, such as a suggestion to require employers to use e-Verify for the employment eligibility of apprentices and a suggestion to specify whether SREs would be eligible for State-specific funding or benefits.

#### Timeliness of SRE Recognition

Paragraph (a)(1) of § 29.22 provides that SREs must recognize or reject apprenticeship programs seeking recognition in a timely manner. The Department received comments suggesting that IRAP applications be subject to a public comment period of 60 days before an SRE's recognition of the IRAP. Commenters noted that this would ensure transparency and the quality of the IRAPs by allowing industry participation before IRAP recognition. Commenters also stated that a notice-and-comment period would allow the public to verify that the IRAP is not for an occupation in the construction industry. Other commenters suggested that the Department require a firm deadline by which IRAPs would be notified of their recognition status, noting that the Department imposes such a deadline on SRE recognition. A commenter also recommended requiring SREs to provide a clear reason for rejecting an IRAP.

The Department acknowledges the comments about ensuring transparency and high quality. The Department has determined, however, that public notice and an opportunity to comment on the recognition of IRAPs is not necessary. SREs are best positioned to determine whether an IRAP meets the standards of a high-quality apprenticeship program, in accordance with the parameters of this rule. The Department has

prescribed the standards of a high-quality apprenticeship program in § 29.22(a)(4) and has taken steps elsewhere in the rule to strengthen existing oversight measures. SREs are responsible for ensuring that IRAPs meet the standards of a high-quality apprenticeship program established by the Department, and both SREs and IRAPs are subject to the quality-control requirements established in this rule. The SRE is responsible for ensuring that its IRAPs continue to meet the requirements of this rule, and this SRE responsibility, coupled with the Department's oversight of SREs, provides the apprentices with protection against low-quality or exploitative IRAPs. The SRE may derecognize IRAPs that fail to meet the requirements of a high-quality apprenticeship program set forth in § 29.22(a)(4), and the Department may derecognize SREs for failure to comply with the requirements of this subpart.

Further, the Department determined that a notice-and-comment period for the recognition of each IRAP is not necessary as the SRE itself must conduct a thorough vetting process to ensure that potential IRAPs meet the requirements of § 29.22(a)(4). As discussed in § 29.21 above, SREs must demonstrate that they have the expertise to set standards for apprenticeship programs in the industries or occupational areas for which they seek recognition, and SREs must also demonstrate that they have the capacity and quality assurance processes and procedures to comply with the requirements of § 29.22(a)(4). SREs' responsibilities as contemplated by this rule require due diligence and thorough vetting of prospective IRAPs.

With respect to concerns about IRAPs in the construction sector, as discussed in greater detail below, the Department has revised proposed § 29.31 (finalized as § 29.30). The Department will not recognize SREs that recognize IRAPs engaged in any construction activities as described in § 29.30, and the Department prohibits SREs from recognizing as IRAPs programs that train apprentices in construction activities as described in § 29.30. The Department has determined the responsibilities of both the Department and the SRE are sufficient to prevent the recognition of IRAPs that would train apprentices in construction activities as defined in § 29.30, obviating the need for a public notice-and-comment period for IRAP recognition.

The Department notes the requirement in § 29.22(d) that the SRE must disclose to the Administrator its policies and procedures for ensuring consistent assessment of IRAPs for

recognition. The Department anticipates such policies and procedures will include the timeframe for IRAP recognition and how the SRE will notify prospective IRAPs of recognition or rejection. The Department declines to require a certain timeframe or requirement for SRE notice to prospective IRAPs given the different types and needs of SREs and IRAPs.

The Department has revised several other sections of § 29.22 to incorporate concerns about the quality and transparency of IRAPs. For example, as explained in detail below, the Department added language to strengthen some of the components of high-quality programs, such as a training plan, a mentorship program with experienced mentors, and an apprenticeship agreement. The Department also added sections concerning the quality-control relationship between SREs and IRAPs, the Department's oversight of SREs, and the Department's ability to collect and evaluate data concerning the performance of IRAPs and SREs. The Department added the phrase "as an IRAP" to clarify that the program is seeking recognition as an IRAP from the SRE. Otherwise, the final rule adopts paragraph (a)(1) of § 29.22 as proposed.

#### Informing the Administrator of IRAP Recognition

Paragraph (a)(2) of § 29.22 requires an SRE to inform the Administrator within 30 calendar days if it has recognized a new IRAP or suspended or derecognized an existing IRAP. The SRE must also inform the Administrator of the name and contact information of the IRAP. This information will assist the Administrator in fulfilling his or her obligations under § 29.24 (Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs).

The Department changed the phrase "terminated the recognition of" to "derecognized" for clarity and consistency. Finally, the Department added the term "calendar" to the requirement for the SRE to inform the Administrator within 30 calendar days to clarify the relevant timeframe.

Some commenters asked about transparency regarding SRE decisions to decline to recognize or terminate the recognition of an IRAP. One commenter suggested that an SRE be required to inform the Administrator when the SRE declines to recognize a new IRAP, in addition to giving notice to the Administrator of approval or termination of approval. The commenter also suggested that the SRE be required to inform the Administrator of the

reason for declining to recognize or terminating the recognition of an existing IRAP. The commenter stated that the Administrator would benefit from such information to determine the effect on the safety and welfare of apprentices and to ensure objective and impartial decision-making with respect to recognition of IRAPs. Commenters also raised concerns that the public would not be aware of IRAP recognition until months after recognition because the SRE is required to notify only the Administrator within 30 calendar days of the recognition. Otherwise, the SRE is only required to inform the public about the IRAPs it recognizes on an annual basis under paragraph (h) of § 29.22.

The Department acknowledges commenters' concerns about SRE transparency in its decisions concerning IRAP recognition. However, as explained below in the discussion of § 29.22(d), the Department decided to require each SRE to submit to the Department its policies and procedures for assessing IRAPs in a consistent manner. The Department will have the opportunity to review these policies and procedures during the SRE recognition process. The Department declines to require additional information concerning an SRE's decision not to recognize an IRAP or the reasons for an SRE's derecognition of an IRAP. Rather, the Administrator can rely on § 29.23 to request such information if needed. If, for example, the Department receives complaints about an SRE's conduct with respect to recognition of IRAPs or if a compliance assistance review reveals irregularities in the SRE's processes or procedures, the Department may request further information as necessary. Further, the Department may initiate suspension or derecognition proceedings, if warranted.

Regarding the concern that the public would not be aware of the existence of IRAPs in a timely manner, the Department notes that, as discussed in further detail in § 29.24, it plans to regularly update its publicly available list of SREs and IRAPs. Thus, the public will have access to timely information on the Department's website. The Department also expects that SREs and IRAPs will themselves publicize the existence of new IRAPs in order to inform the public and recruit prospective apprentices.

#### SRE Requirement To Provide Information to Administrator

Paragraph (a)(3) of § 29.22 requires SREs to provide to the Administrator any data or information the Administrator is expressly authorized to collect under this subpart. This rule

identifies the specific circumstances under which the Administrator is authorized to collect from SREs any information related to the requirements of this subpart, including the documentation identified in this subpart or required to be maintained under this subpart. This provision will enable the Administrator to request information, as needed, to ascertain SREs' conformity to the subpart under § 29.23 (Quality Assurance). The Department did not receive any substantive comments on this section. The final rule adopts the provision as proposed.

#### Standards for High-Quality IRAPs

Paragraph (a)(4) of § 29.22 states that SREs may only recognize and maintain the recognition of IRAPs that meet certain requirements, which the Department determined are standards of high-quality apprenticeship programs. These standards of high quality include paid work; work-based learning; mentorship; education and instruction; obtaining industry-recognized credentials; a written training plan and apprenticeship agreement; safety and supervision; and adherence to EEO obligations. In addition to the requirements that IRAPs must meet, SREs, in consultation with their industry experts, must set competency-based standards for the training, structure, and curricula of the industries or occupational areas in which they are recognized.

#### General Discussion About High-Quality IRAPs

The Department received a number of comments asking for additional clarity as to what constitutes a "high-quality" IRAP generally. Commenters suggested specific changes to the rule, such as further defining certain terms as addressed above in the discussion of § 29.20; including a progressive wage structure; enhancing safety and welfare protections; and requiring evaluation and enhanced quality control. Some commenters disagreed with the Department's proposal that SREs be responsible for recognizing IRAPs, suggesting that the Department is abdicating its responsibility to safeguard apprentices under the NAA. Other commenters expressed concern about the possibility that multiple, diverse training standards would exist within a single industry, which would lead to a "balkanization" of credentials that would confuse the markets. Some commenters remarked that the lack of clarity and specificity of requirements would discourage the development of IRAPs and worker participation in them. Commenters also expressed concern

that IRAPs seem similar to internships that already exist in industries such as the technology industries.

Other commenters expressed support for greater flexibility for industry participation and an industry-driven apprenticeship model that can both expand apprenticeship in new industries while also tailoring apprenticeship programs to best serve industries' needs for a skilled workforce. A commenter suggested that the Department set standards for IRAPs that parallel the registered apprenticeship system and include: (1) Written classroom and on-the-job training requirements; (2) established wage progressions; (3) journeyworker to apprentice ratios; (4) mandatory safety training for apprentices; (5) instructors who are subject matter experts trained in educational methods; and (6) nondiscrimination in the operation of the program.

The Department made changes to certain paragraphs in § 29.22(a)(4), as described in further detail below, to clarify some of the high-quality requirements for IRAPs that satisfy the NAA's direction that the Department formulate and promote labor standards that safeguard the welfare of apprentices. The Department also made changes to other sections of § 29.22 to address comments about the quality-control relationship between SREs and the IRAPs they recognize, data collection by the Department and the SREs, and assessment of performance. As for the industry-driven model envisioned by this rule, the Department has determined that empowering SREs to recognize IRAPs allows the flexibility necessary to encourage more apprenticeships in new industry sectors while also ensuring that apprenticeships meet the standards of high quality determined by the Department. Further, this rule intentionally diverges from the registered apprenticeship program requirements. The Department considers IRAPs separate and distinct from registered apprenticeship programs because of the industry-driven characteristics of the programs, as determined by SREs rather than the Department. Although the Department has drawn from some of the characteristics of the registered apprenticeship model, it declines commenters' suggestions to model IRAPs after registered apprenticeship programs. Rather, as reflected in the discussion of specific sections below, the Department has established a rigorous framework for SRE and IRAP recognition while at the same time providing the needed flexibility to allow industry-driven innovation. The

Department acknowledges commenters' concerns about the possibility of varying standards within industries, but views SREs and their industry experts as best-positioned to set standards consistent with the requirements in this rule in accordance with market conditions. The Department views variances in standards and programs to be a benefit in increasing the competitiveness and utility of IRAPs.

The Department has addressed several of the commenters' concerns in various parts of the final rule. As discussed below, the Department added language to proposed § 29.22(a)(4)(ii), (v), (vi), and (vii) to clarify the standards of a high-quality apprenticeship program and strengthen requirements to better safeguard the welfare of apprentices. The Department has also added § 29.22(a)(4)(x), which requires IRAPs to have an apprenticeship agreement with each apprentice that establishes the employment relationship and sets forth the terms and conditions of the apprentice's employment and training. The Department has also added measures concerning quality assurance (§§ 29.22(f), 29.23), data collection (§ 29.22(h)), and performance assessment (§§ 29.22(h), 29.23). The changes are discussed in further detail in each paragraph below. It bears repeating that the NAA is written in general and discretionary terms, and directs that the Department only formulate and promote labor standards that safeguard the welfare of apprentices. The Department has used its expertise and policy judgment in making these particular changes, which it believes well-exceed the NAA's standard.

A commenter suggested that the Department make IRAP recognition contingent upon a process for the IRAP to use data to identify program strengths and necessary improvements.

The Department has declined to affirmatively require that IRAP recognition by an SRE be contingent upon a process for the IRAP to use data to identify program strengths and necessary improvements. However, this could be required by an SRE, as the Department anticipates that the SRE would make a decision about any such requirements through its own processes and procedures and its quality-control relationship with its IRAPs, as provided in § 29.22(f). The Department notes that there is no such requirement on registered apprenticeship programs. Further, the Department's data and reporting requirements set forth in § 29.22(h) include program-level data and performance outcomes for IRAPs, which allows the Department, the SREs,

the IRAPs, and the public to review and assess IRAP performance.

Commenters suggested that Universal Design for Learning (UDL)<sup>14</sup> be included as a core component of high-quality industry-recognized apprenticeships. A commenter observed that UDL could ensure that more people successfully transition to well-paying and meaningful occupations through apprenticeship training because of UDL's focus on designing training and employment opportunities for a broader range of learners. Two commenters suggested adding to § 29.22(a)(4) a requirement that an IRAP "ensure[ ] digital material and technology accessibility in work experiences and classroom or related instruction, including information and communication technology (ICT) and websites." The commenters noted that the Department has already adopted UDL as a requirement for Trade Adjustment Assistance Community College and Career Training grant funds. They also noted that the Department selected a pilot site focused on universally designing apprenticeship pathways in advanced manufacturing as part of the Apprenticeship Inclusion Models grant and provided funding for YouthBuild, which uses UDL to increase young people's engagement in STEM careers.

Under this rule, SREs and IRAPs would be free to include UDL in their apprenticeship programs, and the Department expects some may choose to do so to the extent UDL is useful and allows them to reach a broader pool of potential apprentices. The Department also notes that IRAPs are required to adhere to Federal, State, and local EEO laws and that SREs are required to have policies and procedures that reflect comprehensive outreach strategies to reach diverse populations. However, the Department declines to make UDL a requirement for IRAPs. The Department views the SREs as better positioned to determine the appropriate training models and approaches for their programs and to provide the necessary support to their IRAPs in implementation.

<sup>14</sup> UDL is defined in 20 U.S.C. 1003 as:

[A] Scientifically valid framework for guiding educational practice that—

(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

Other comments submitted on this section are discussed in the paragraph-by-paragraph discussion below. The Department changed § 29.22(a)(4) to clarify that SREs must only recognize "as IRAPs" and maintain "such" recognition of "apprenticeship programs" that meet the requirements set forth in (i)–(x). The Department made a change throughout § 29.22(a)(4) to use the term "program" rather than "Industry Program" or "IRAP" to refer to an apprenticeship program that is seeking recognition as an IRAP from an SRE.

#### 1. IRAP Training Requirements— § 29.22(a)(4)(i)

Paragraph (a)(4)(i) of § 29.22 states that a program must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks. The Department sought comments on these requirements and on whether it should set a minimum skill level or competency baseline for IRAPs similar to the registered apprenticeship program's requirement that apprentices gain "manual, mechanical, or technical" skills.

Several commenters saw the need for the Department to include defined apprenticeship durations in IRAP training requirements to ensure the necessary time and support to gain mastery of key competencies. Commenters also stated a need for a minimum skill level or competency baseline for training requirements akin to the registered apprenticeship program requirements. Some commenters argued that the lack of uniform standards for competencies by the Department could result in exploitation of apprentices, a lack of meaningful and substantive work experiences, and confusion about industry standards. In contrast, other commenters recommended that there be no minimum-skill or competency levels set for IRAPs because of the varying needs of diverse and growing industries.

The Department has determined that the proposed text struck a permissible balance, containing sufficient detailed requirements while allowing flexibility for the needs of specific industries. The Department has considered and determined to not set minimum-skill or baseline-competency standards because they would not be uniformly applicable within or across industries. The requirement that IRAPs "must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks" sets a functional yet sufficiently rigorous standard by which IRAPs gain recognition.

Though there are no prescriptive requirements to provide a certain baseline of skills or competency, the rule sets the overall framework within which IRAPs may structure their apprenticeship programs. This is to ensure that IRAPs do not simply provide training for roles that require only general knowledge and minimal or no skill. In other words, an IRAP should provide apprentices with training beyond general skills and knowledge that most or all potential workers would already have (*e.g.*, rudimentary computer literacy or basic job etiquette such as promptness). Rather, the purpose is to equip the apprentice with marketable skills that are sought by employers. Though there is freedom within this framework to create innovative IRAPs, the requirement remains that these apprenticeship programs be designed to impart specialized skills that are industry-essential and meet the high-quality requirements set forth in this subpart.

The requirements of specialized knowledge and the performance of complex tasks are reinforced by § 29.22(a)(4)(ii). That provision requires IRAPs to be high quality and to provide apprentices with progressively advancing and industry-essential skills. For example, an IRAP that trains an apprentice to become a water treatment technician would not only impart the basic scientific knowledge but also train the apprentice on the methods for water treatment, safe working practices, water testing, data analysis, and other specialized skills necessary to perform such testing in various settings and for various purposes.

The Department views the SRE as best positioned to decide any minimum-skill and baseline-competency requirements for each particular industry or occupational area in which it is recognized, in a manner that best suits the needs and characteristics of the industry or occupational area. Similarly, and as discussed in the preamble, the Department has determined that the SRE is best suited to set the requisite standards for its industry(ies) or occupational area(s). Thus, the final rule adopts the provision as proposed.

## 2. IRAP Training Plan—§ 29.22(a)(4)(ii)

Paragraph (a)(4)(ii) of § 29.22 states that a program must have a written training plan, consistent with its SRE's requirements and standards as developed pursuant to the process set forth in § 29.21(b)(1). The written training plan must detail the program's structured work experiences and appropriate related instruction, be designed so that apprentices

demonstrate competency and earn credential(s), and provide apprentices progressively advancing industry-essential skills.

The final rule departs from the proposed rule's original language that the apprenticeship program has "structured work experiences, and appropriate classroom or related instruction adequate to help apprentices achieve proficiency and earn credential(s); involves an employment relationship; and provides apprentices progressively advancing industry-essential skills." As discussed below, the Department has changed this paragraph to address suggestions by commenters for further clarity for both IRAPs and apprentices. The training plan must be provided to an apprentice prior to beginning an IRAP. While the proposed language was more than sufficient under the NAA, this change better protects the welfare of the apprentice by making it clear to the apprentice exactly what the apprenticeship program entails, what skills the apprentice should be mastering through the program, and the ultimate outcome of the apprenticeship program.

Several commenters suggested that this section include a requirement for a written training plan describing each program's in-class and on-the-job training requirements. A number of commenters requested that an apprenticeship agreement be required to ensure that IRAPs and apprentices are in an "employment relationship" with clear and specific terms, and some commenters argued that an apprenticeship agreement would allow SREs to monitor IRAPs more effectively.

The Department agrees with the comments that it would be beneficial to require apprenticeship agreements and to provide additional specificity regarding training opportunities for apprentices. The Department has revised the text to include a requirement for the program to have a written training plan, consistent with the requirements set by the SRE and with the standards developed or adopted by the SRE. The written training plan must also "detail the program's structured work experiences and appropriate related instruction, be designed so that apprentices demonstrate competency and earn credential(s), and provide apprentices progressively advancing industry-essential skills." Because the program's training plan must be consistent with its SRE's requirements and standards set for the industry or occupational area, the Department anticipates that the requirement for a training plan will create industry

consistency while providing apprentices valuable information about the training and work components of the apprenticeship program. Further, the finalized regulatory text clarifies that the training plan must be designed so that the apprentice both demonstrates competency and earns one or more credentials. As discussed above, the Department has determined that SREs should set competency-based standards for their IRAPs; therefore, the Department has included the requirement that the training plan be designed so that apprentices demonstrate competency.

The Department has revised this section by striking the language "classroom or" from the phrase "classroom or related instruction." The Department does not intend to create a separate classroom instruction requirement apart from "related instruction" and views the inclusion of this term as unnecessary, because classroom instruction is a type of related instruction. The exact form of the related instruction will depend on the nature of the industry or occupation and will be dictated by how the program uses related instruction to complement structured work experiences and develop an apprentice's progressively advancing skills.

The Department also removed the phrase "involves an employment relationship" and instead added a new requirement, in § 29.22(a)(4)(x), that IRAPs have an apprenticeship agreement with each apprentice, consistent with the requirements of this subpart. The apprenticeship agreement sets forth the terms and conditions of the employment and training of the apprentice. The Department expects that apprenticeship agreements will include the duration of the apprenticeship, wages and any wage progression, any costs or expenses charged to apprentices, and the competencies and industry-recognized credential(s) to be attained during the program or by completion. The Department has concluded that having a separate requirement regarding the apprenticeship agreement will provide greater clarity about the "employment relationship" requirement previously included in this paragraph.

A commenter suggested that apprenticeships should include structured, supervised training in addition to work-based training. Commenters remarked that the absence of required standards related to minimum related instruction hours, minimum on-the-job training hours, test validations, and progressive wage steps would cause a "race to the bottom" for

employers and industries without meaningful and helpful training for the trainees. Similarly, other commenters requested that the Department establish minimum on-the-job learning and related technical instruction requirements. Some commenters proposed that training content should include interpersonal and soft skills in addition to technical skills. A commenter cautioned against training apprentices in occupations that may become obsolete in the near future due to technology and automation. Others questioned the meaning of certain phrases, such as “progressively advancing” and “industry-essential” skills, as vague and needing definition. A commenter expressed concern that, in the commenter’s view, the rule does not ensure that apprentices gain proficiency in all aspects of their trade, rather than training on a specific task within their trade. A commenter questioned how “related instruction” would be monitored and evaluated. Another commenter noted that there was no requirement for the “structured work experience” to be full-time employment. Commenters also expressed concern that there were no requirements regarding the qualifications of IRAP instructors or trainers. One commenter suggested that the Department emulate a State model of using “training agents” to provide training and supervision to apprentices and subject such agents to sanctions, such as an inability to train apprentices or bid on public construction projects, if they fail to meet certain requirements. Other commenters faulted the rule for not containing apprentice-to-journeyworker ratios and suggested a one-to-one or two-to-one ratio for on-the-job training.

Other commenters cautioned against adding further requirements on IRAPs in order to allow flexibility to make industry- and occupation-specific decisions. Commenters suggested that any progressively advancing skills requirement should be consistent with industry determinations, rather than set by the Department, because of evolving workplaces and the differing skills needed across industries. A commenter stated that including Department-set standards requirements would be duplicative, because SREs must already engage in a process to ensure that the programs they recognize impart the skills and competencies apprentices need to succeed in their industry. Some commenters expressed support for the proposed language’s balance of ensuring high-quality programs while also providing flexibility for SREs and employers to develop apprenticeship

programs for a wide variety of jobs and occupational areas. Some commenters also supported the Department’s proposal to have industry-set standards for IRAPs, because such standards would be tailored to the specific occupations and industries.

The Department has prescribed the standards for high-quality apprenticeship programs that IRAPs must meet in order to obtain and maintain recognition. The standards are specific and rigorous, and SREs are responsible for ensuring that their IRAPs meet each of the standards at initial recognition and on an ongoing basis. In addition to the Department’s standards for IRAP recognition, SREs are required to set standards, in consultation with industry experts, for the requisite training, structure, and curricula for apprenticeship programs as set forth in § 29.21(b)(1). The Department has determined that SREs are in the best position to set industry-specific skills-attainment levels or competency standards within the parameters of this rule. Within the framework prescribed by the Department, SREs may establish standards for their IRAPs.

The Department similarly declines to set minimum requirements for “progressively advancing” and “industry-essential” skills, because of the flexibility needed to determine what is appropriate for each industry and occupational area. The Department is concerned that definitions in regulatory text—which would need to be both fixed and short—could lack flexibility, fail to accommodate particular industries, and become outdated. Accordingly, the Department intends the common meaning of the words found in “progressively advancing industry-essential skills”: That the skills taught build upon one another such that they lead to an advanced level of skills that are relevant in the particular industry of the IRAP and for which the credential(s) will be granted. Consistent with that common meaning, the rule gives SREs the latitude to set standards for “progressively advancing” and “industry-essential” skills. The Department expects that SREs’ standards will further develop these terms in a manner that is relevant to the particular industry or occupational area. Similarly, the Department anticipates that SREs will apply the concept of “progressively advancing” skills based on the characteristics of the industry and occupation, such that apprentices build skills throughout the program that will result in the competencies necessary for them to operate as independent workers in their fields. As

discussed above, the Department anticipates that adding the requirement of a training plan consistent with the SRE’s requirements and standards will address many of the concerns about the lack of certain standards of apprenticeship in the rule. In this regard, the Department notes that subpart A, pertaining to registered apprenticeships, similarly does not contain occupation- and industry-specific standards or require such highly specific standards regarding the training content, test validation, or full-time structured work experience that some commenters requested. The training plan required by this paragraph, in conjunction with the other requirements set forth in § 29.22(a)(4), strikes an appropriate balance. It sets forth parameters of IRAPs to make sure that apprentices are receiving valuable education and skills training in a safe environment without overly prescribing programmatic requirements.

Regarding the concerns about adequate training and supervision and apprentice-to-journeyworker ratios, the Department has strengthened the mentorship requirement at § 29.22(a)(4)(vi) to require “ongoing, focused supervision and training by experienced instructors and employees.” The Department declines to prescribe further requirements concerning trainers or instructors, with the expectation that IRAPs will provide the necessary training and supervision needed to meet the standards of high-quality apprenticeship in § 29.22(a)(4). The Department further emphasizes that the quality-control relationship between the SRE and the IRAP, as well as the quality-control relationship between the SRE and DOL, as set forth in this subpart, will provide an appropriate check on the quality of the instruction and training. The SRE must ensure that its IRAPs continue to meet the requirements of § 29.22(a)(4), which provides oversight to protect against low-quality programming or actions that may harm apprentices. The Department also notes that § 29.22(a)(4)(v) requires the IRAPs provide a work environment consistent with Federal, State, and local safety laws and with any additional safety requirements of the SREs, which may include measures concerning ratios. The Department decided not to prescribe ratios for mentors or trainers, because ratios would not be uniformly applicable across industries. SREs have the ability to set ratios for supervision, training, mentorship, or safety purposes if they deem such ratios appropriate, and the Department expects SREs to determine whether ratios would serve a



useful function in the industries or occupational areas in which they recognize IRAPs.

Two commenters suggested adding to § 29.22(a)(4)(ii) a requirement that classroom or related instruction incorporate UDL. The commenters described the policy considerations for UDL and suggested these changes to encourage the participation and retention of individuals with disabilities in apprenticeship programs.

As discussed below, IRAPs are required to abide by applicable EEO laws and SREs must have policies and procedures that reflect comprehensive outreach strategies in order to reach diverse populations. The Department anticipates that some SREs and IRAPs may adopt additional measures regarding the inclusion and retention of individuals with different learning abilities, and would welcome such efforts, but the Department declines to impose UDL requirements in the final rule for the same reasons it has elsewhere declined to incorporate UDL.

Commenters inquired about the absence of any requirements concerning probationary periods for apprentices and faulted the proposed rule for not including parameters or limitations on any probationary period. Commenters specifically pointed to the registered apprenticeship requirements at § 29.5(b)(8) that a probationary period not exceed 25 percent of the program or one year, whichever is shorter. A commenter expressed concern that IRAPs would have lengthy probationary periods in order to “skew” completion rates and program outcomes. Commenters also suggested that the rule should prohibit IRAPs from terminating apprentices without cause after the end of their probationary periods and instead only allow termination “for good cause,” after notice to the apprentice and a reasonable opportunity for corrective action. Some commenters also noted that the rule did not include any disciplinary standards to ensure a fair work environment. Other commenters faulted the rule for lacking protections for apprentices against arbitrary termination or suspension.

The Department acknowledges comments calling for specific requirements for probationary periods as in the registered apprenticeship program. The Department has decided, however, not to prescribe a requirement for a probationary period or the length of probationary periods in the requirements of § 29.22(a)(4), nor to impose specific requirements regarding disciplinary standards. The Department has determined that probationary periods would not be suitable for all

IRAPs because IRAPs will vary in duration and content. For example, a shorter IRAP program that results in a certificate of completion should not be required to have a probationary period that a multi-year IRAP with multiple credentials may choose to include as a part of its program. The Department anticipates that some IRAPs will choose to have probationary periods for apprentices while others will not include probationary periods as a part of their programs. IRAPs must comply with any specific requirements their SREs may require concerning probationary periods, termination for cause, or allowing for notice and a period of corrective action. The same is true for any SRE requirements regarding disciplinary standards and requirements for suspensions and termination of apprentices. Given the varying needs of IRAPs, the size and nature of the employers offering IRAPs, and the possibility that IRAPs will vary greatly by duration, content, and other qualities, the Department has determined to allow SREs the flexibility of deciding whether additional requirements are industry appropriate, what requirements to impose (if any), and how to apply any such requirements to their IRAPs.

### 3. Credit for Prior Knowledge and Experience—§ 29.22(a)(4)(iii)

Paragraph (a)(4)(iii) of § 29.22 requires programs to ensure that, where appropriate, apprentices receive credit for prior knowledge and experience relevant to the instruction of the program. Such credit should be reflected in progress through the program itself, or in any coursework, as appropriate.

Some commenters recommended that credits be granted through written tests, practical exams, or demonstrations of competency levels. A commenter cautioned about the risk for fraud, and another commenter recommended that any prior knowledge should be verified before an individual is granted credit. A commenter faulted the rule for failing to provide requirements to assess baseline skill level or previously learned skills the worker may have gained to reduce instructional redundancy. A commenter stated that allowing each SRE to determine how to award credit for prior learning could lead to inconsistencies within an industry.

The Department acknowledges the comments asking for greater specificity regarding credit for prior knowledge or experience. Nevertheless, the Department declines to add specificity because SREs and their IRAPs are best positioned to decide how to assess prior

knowledge and experience and what type of credit to grant each individual. Because of the individualized assessment necessary, and the varying needs of IRAPs, the Department has concluded that the rule as written contains sufficient parameters without overly prescribing requirements that would not be generally applicable. The Department also notes that subpart A similarly does not impose a more prescriptive requirement. Thus, the final rule adopts the provision as proposed.

### 4. Industry-Recognized Credentials—§ 29.22(a)(4)(iv)

Paragraph (a)(4)(iv) of § 29.22 requires programs to provide apprentices with one or more credentials that are industry-recognized during participation in or upon completion of the program. The Department received comments in support of this paragraph. A commenter agreed with the Department’s assessment that IRAP credentials will have “demonstrable consumer and labor-market value.” One commenter commended the Department’s efforts and recommended integration of higher education into IRAPs to create for-credit transferable credentials and dual enrollment opportunities for high school students through the apprenticeship model. A commenter expressed support for digital badges in online learning courses as “portable, verifiable and secure.” Some commenters commended the rule for setting appropriate standards for IRAPs without overly prescribing other requirements that could inhibit their development or expansion. A commenter also expressed that training would be simpler and less time-consuming because of the concentration on relevant job skills.

On the other hand, the Department received several comments suggesting that some credentials might be relevant only on a local or regional level and could hinder “journey-level” status and career mobility. Some expressed further concern that certain credentials could be of limited utility, because they would be specific to the employer only and not recognized by other employers within the industry. A commenter recommended that the Department require credentials to be “competency-based, industry-recognized, and portable,” contending that industry recognition and portability requirements are both essential for industries to attract and retain talent. Another commenter suggested that the Department require IRAPs to consult with labor-market information entities and State or Local Workforce Development Boards, as applicable, in

developing credentials. Another commenter faulted the proposed rule for, in the commenter's view, allowing multiple SREs to set their own criteria without regard for the level of respect of the credential or a timely, accurate way to measure its value.

The Department appreciates comments in support of its proposed approach to credentials. The Department also acknowledges the comments calling for nationally recognized credentials and anticipates that some IRAP credentials will achieve clear national recognition. The Department does anticipate that IRAPs will provide credentials that are portable. For example, an IRAP may require apprentices to pass a nationally recognized exam that measures competencies necessary for the apprentice's occupation. By requiring that credentials reflect the specific competencies needed for any given industry or occupational area the Department believes that IRAPs will enhance apprentices' mobility. In other words, even if the credential itself includes the licensing requirements of a specific area or reflects training specific to certain geographic conditions or even the requirements of a specific employer, the mastery of the competencies upon which the credential is based would result in industry-specific skills that likely could be transferred to a new workplace.

The Department notes that the SRE's role is important with respect to credentials, both in recognizing IRAPs that provide credentials that are industry-recognized and in its oversight of IRAPs. The Department also has oversight of SREs, and by extension their IRAPs, and it will collect information from each SRE about each credential offered by its IRAPs. These measures address the commenters' concerns that IRAPs may simply offer employer-specific credentials that have no broader value to other employers. The Department does not share commenters' concerns about IRAPs providing credentials with limited value, particularly because of the requirements that competency-based standards be set by SREs and that credentials be industry-recognized. Additionally, the Department is responsible for evaluating each SRE's expertise to set competency-based standards, each SRE is responsible for overseeing its IRAPs' compliance with this subpart, and each IRAP is responsible for meeting the requirements of both the Department and its SRE to provide high-quality apprenticeship programs. As for the commenters' suggestion that the

Department require credentials to be portable by modifying the text of the final rule, as discussed above, the Department believes that since the credentials are competency-based they will provide value regardless of an apprentice's geographic location. The Department agrees with the commenters who suggested that IRAPs would benefit from consultation with Workforce Development Boards and other entities in developing credentials. The Department anticipates that some IRAPs may engage in such consultation to ensure that the credentials offered are industry-recognized. The Department notes, however, that SREs will likely fulfill such a role through their own expertise and engagement with industry partners and experts. Thus, the Department declines to impose such a consultation requirement upon IRAPs.

Some commenters suggested specific characteristics as necessary for a successful credential program. A commenter remarked that a credential as contemplated by this rule does not nearly match the rigor of credentials that are certified by third-party organizations. This commenter identified, in its view, four characteristics, echoed by other commenters, of a successful credential program: (1) Oversight by an independent national accrediting body; (2) standards that ensure that the program curriculum is comprehensive enough to cover the broad range of tasks needed to perform at an entry-level in the field anywhere in the country; (3) national recognition to ensure credential portability; and (4) continuing education. Another commenter stated that a credential should be empirically based, derived from industry needs, and include a structured process to identify the knowledge, skills, and attributes for a specific job/function. The commenter also noted the importance of a valid assessment process that measures an individual's knowledge and skills necessary for practice. Another commenter contrasted its rigorous certification process, including independent third-party testing as an aspect of credentialing, with the lack of established processes or standards in the IRAP model. Several commenters questioned how the Department would assure the quality of credentials. A commenter cautioned that a skills gap does not equate to a credentials gap and that the market would dictate the value of the credential rather than the IRAP. Other commenters expressed concern that a "certificate of completion" would result in narrow, employer-specific training that would not result in a career

pathway or economic security. One commenter suggested adding that the process for attaining credentials "include front-end, diagnostic assessments for credentials that verify an individual's foundational knowledge and skills needed to succeed in the industry program." A commenter stated that the Department should explain that IRAP credentials are not equivalent to those issued by an independent body that administers a valid and reliable assessment that may include written and practical tests.

The Department appreciates the insight and efforts of employers regarding portable credentials in their industries and successful registered apprenticeship programs. The Department has determined that SREs should decide how to structure their programs for imparting industry-relevant credential(s), and put in place the requirements for IRAPs' apprentices achieving such credential(s). The Department's requirement that the credential must be industry-recognized is specifically designed to ensure that the credentials are relevant beyond any individual employer. The Department further disagrees that national recognition is required for a credential to be portable. An employer in one corner of the country might place value on a credential issued by an SRE serving only another portion of the country. The Department appreciates suggestions about accrediting or certification bodies that would provide a third-party evaluation and assessment of credentials and assessment tools that would measure an apprentice's knowledge and skills necessary for practice. The Department agrees that this may be a useful model for some SREs and IRAPs and envisions that SREs may rely upon or provide such structures for their IRAPs. The Department declines to mandate such requirements, however, because the Department does not view them as broadly applicable to all potential IRAPs. The Department also agrees with the comment that some IRAPs may have a process for attaining credentials that would include front-end, diagnostic assessments to ascertain baseline skills and knowledge but does not perceive a need to revise the rule to account for such assessments. The Department disagrees with the comment that IRAP credentials would not be equivalent to those issued by an independent body. As stated above, some SREs may provide for such a credentialing process for the IRAPs they recognize.

Regarding the concerns about the value of credentials, whether it be a certificate or any other credential, this

rule provides SREs with an important role in evaluating credentials in order to determine initial and continued recognition for IRAPs. The Department notes that certain data and performance metrics elsewhere in the rule, including credential attainment and post-apprenticeship employment rates, enhance oversight of various aspects of IRAPs as it relates to the credentials they provide. Additionally, the Department has strengthened the quality-control relationship between the SRE and the IRAP, as discussed in § 29.22(f), and the quality-assurance mechanisms of the Department, as discussed in § 29.23. Therefore, the Department has concluded that the flexibility provided for in this paragraph, combined with the enhanced oversight and performance assessment in other parts of the rule, would lead to meaningful assessment of such programs and the credentials they offer and would result in industry adjustments of the IRAP model, and credentials in particular, to better suit both industries and apprentices.

A commenter recommended that the Department offer the public an additional opportunity to comment on any subsequent Department standards to ensure credential validity. The Department is not issuing standards regarding credentials other than what is in the existing requirements of this rule.

Commenters suggested that the absence of a recording requirement with a registration agency that would track individuals' credentials would mean that the credential would lose its value if the SRE ceased to exist. Similarly, a commenter noted that apprentices in registered programs receive formal written recognition of their credentials by the Federal or State apprenticeship agency, in contrast to the current rule.

The Department understands the concerns expressed by commenters but disagrees that a credential would lose its value if an SRE ceases to exist. First, the credential is not the only measure of attainment that an IRAP will provide, as the IRAP must use competency-based standards to equip the apprentice with industry-essential skills. As a result, simply completing an IRAP could demonstrate an apprentice's competency in the relevant industry or occupation. Second, credentials are not tied solely to an SRE. An SRE may provide the credential, but so could an IRAP or a third-party certification provider. The credential is required to reflect specific competencies needed for any given occupation and would continue to be a relevant measure of attainment. The Department acknowledges that there is not a State-

or Department-based recognition of the credential, but that is neither the purpose of the rule nor a desired outcome, because of this rule's focus on industry-driven, not government-driven, measures. Third, as stated throughout this preamble, the NAA does not obligate the Department to mirror all standards used in the registered program, but only to follow the NAA's broad and general direction to formulate and promote apprenticeship standards and bring together employers and labor for the formulation of programs of apprenticeship. The credentialing provision of this rule is within the Department's discretion in implementing the NAA.

A commenter recommended that the Department create a public national database of IRAPs, their associated credentials, and the portability of those credentials in order to monitor credential value on a national level.

The Department declines to adopt such a specific requirement in the rule. The Department notes that it is already required to publish a list of SREs and IRAPs under § 29.24. The Department also notes that it included a requirement in § 29.22(h) that the SRE make publicly available certain data about IRAPs and performance outcomes, which it must also submit to the Department. Among the required data are the industry-recognized credentials attained by apprentices for each IRAP. The Department may decide to centralize and make publicly available this information but has determined that it is not necessary to revise the language of this rule to do so. Finally, the Department notes that portability is not a concept that likely could be identified in the manner the commenter suggested, because even credentials facially associated with a specific geographic region could be relevant to and valued by an employer outside of that region.

For these reasons, the final rule adopts the provision as proposed.

##### 5. Working Environment Adherence to Safety Laws—29.22(a)(4)(v)

Paragraph (a)(4)(v) of § 29.22 requires that programs provide a working environment for apprentices that adheres to all applicable Federal, State, and local safety laws and regulations. The final rule adds a requirement that programs must also comply with any additional safety requirements of the SRE. The final rule deletes the word "safe" as a modifier for "working environment" because the Department intends this provision to require programs to provide a workplace that adheres to all applicable safety laws, and SRE requirements.

Several comments expressed concern about this paragraph and called for increased safety standards, such as a requirement for a journeyworker-to-apprentice ratio, regular safety trainings, and other safety measures. A commenter questioned how a "safe working environment" would be defined, who would enforce that standard, whether that standard would include a ratio of apprentices to journey-level workers, and what the methods of investigation and discipline for violations would be. Other commenters provided citations connecting increased workplace accidents to higher apprentice-to-journeyworker ratios. Several commenters expressed concern that SREs and IRAPs would be motivated more by profit than safety, in contrast to the registered apprenticeship programs. Commenters expressed concerns about increased injury to apprentices and lower quality work that would thereby increase risk and injuries to the public. One such example was a comment about individuals providing energy or water to the public without proper certified training requirements. There were several comments from the construction industry concerning the need for rigorous safety standards, including curriculum, hands-on training, and safety courses. Some commenters stated that, in their view, the Department was not carrying out what they characterized as a statutory duty to safeguard the welfare of apprentices. A commenter also suggested that worksites be warranted for safety and that worksites be required to adhere to environmental standards. Another commenter noted that certain Occupational Safety and Health Administration (OSHA) trainings are not mandatory; thus, IRAPs may decide not to offer apprentices certain introductory safety training before assignment to a job site, to the detriment of the apprentices, yet still be in compliance with Federal law.

The Department agrees that apprenticeships should have adequate safety requirements. For this reason, the Department's proposal included a requirement that IRAPs provide a working environment for apprentices that adheres to all applicable Federal, State, and local safety laws and regulations. The Department notes that, in addition to any applicable general Federal OSHA standards, OSHA industry-specific standards as well as State and local standards may also apply. OSHA regulations contain detailed industry-specific standards for industries such as maritime (29 CFR parts 1915, 1917–19) and agriculture (29

CFR part 1928), in addition to its general industry standards (29 CFR part 1910). OSHA also has numerous compliance assistance manuals for industries that detail how OSHA standards apply to a particular industry. The Department's OSHA website contains information for employers about the standards that are applicable to them and how to obtain compliance assistance. It is incumbent on all employers, including employers offering IRAPs, to both know and comply with any legally required safety standards applicable to their industry.

In addition, the Department has changed the proposed text to add a requirement to the final rule that IRAPs comply "with any additional safety requirements" established by their SREs. This requirement permits SREs to determine whether additional safety requirements are warranted for each of their industries or occupational areas, what those requirements should be, and how to best implement them for each of their industries and occupational areas.

The Department has determined in its discretion that this additional requirement that IRAPs adhere to any additional safety requirements of their SREs is an effective and appropriate way of ensuring safety standards that are industry-specific and enforceable without imposing requirements across all industries that may not be universally applicable, relevant, or necessary. The Department expects that SREs will create additional safety measures for industries or occupations for which such measures are reasonable to help ensure the safety of apprentices and to ensure that IRAPs are aware of any industry-specific safety standards that go beyond those imposed by law. SREs may develop policies and procedures that include safety requirements similar to those found in registered apprenticeships, such as journeyworker-to-apprentice ratios, regular safety training, and required safety skills-building in the training plan or curriculum. Requiring SREs and IRAPs to maintain a working environment that adheres to safety laws while giving SREs the option of requiring additional safety measures allows SREs to make individualized assessments of the characteristics and needs of the IRAPs they recognize without imposing requirements that are not relevant or reasonable for the industry. The Department expects that SREs associated with new industries and occupations, for example, may consider imposing safety requirements beyond those required by existing law.

SREs are best positioned to create additional relevant and industry-

specific safety requirements, as warranted, which they can monitor through their quality-control relationship with their IRAPs. Additionally, the Department's quality assurance role allows the Department to evaluate the SRE's ability to fulfill its responsibilities to ensure that their IRAPs continue to satisfy the standards of high-quality apprenticeships, including ensuring a work environment for apprentices that adheres to safety laws.

#### 6. Structured Mentorship Opportunities—§ 29.22(a)(4)(vi)

Paragraph (a)(4)(vi) of § 29.22 requires that the program provide structured mentorship opportunities so that apprentices have guidance on the progress of their training and their employability. Mentors support apprentices during their work-based learning experience, and can provide guidance on company culture, specific position functions, and workplace policies and procedures. Mentors can also help develop learning objectives for apprentices, and assist in measuring apprentices' progress and proficiency.

Several commenters suggested that additional language be included regarding the characteristics of mentorships. A commenter questioned whether mentors would be required to have any direct experience or training in adult education. Other commenters compared this paragraph to the requirements for registered apprenticeships, noting that it lacked similar instructor qualification requirements or periodic reviews of apprentices' performance. One commenter suggested that mentorship include "on-going, focused supervision and training by experienced instructors and employees."

The Department agrees generally with the commenters' suggestions to add more specific guidelines for mentorships. The Department has included language in this provision describing structured mentorship opportunities as "involving ongoing, focused supervision and training by experienced instructors and employees." The Department envisions that mentors will also play a role in measuring an apprentice's progress and providing relevant, timely feedback about an apprentice's work. The Department has added this language to ensure that apprentices receive quality supervision and feedback by individuals experienced in the relevant industry and occupation, such as those who have attained a mastery of industry-essential skills and competencies. The level of experience may vary widely—for

example, a mentor in an emerging industry or occupation may have a different level or type of experience than a mentor in a well-established industry or occupation. The Department also expects that the mentorship opportunities may vary by industry but intends for "ongoing" mentorship to mean that IRAPs will have to establish and maintain mentorship opportunities throughout the duration of the apprenticeship program that provide consistent and meaningful mentorship for apprentices by individuals who are experienced in their industries. The Department added clarifying regulatory text to confirm this intent.

#### 7. Apprentice Wages—§ 29.22(a)(4)(vii)

Paragraph (a)(4)(vii) of § 29.22 requires that programs ensure apprentices are paid at least the applicable Federal, State, or local minimum wage. The program must also provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices' wages will increase. The final rule added the requirement that the program's charging of costs or expenses to apprentices "must comply with all applicable Federal, State, or local wage laws and regulations, including but not limited to the Fair Labor Standards Act [(FLSA)] and its regulations." It also added the following language: "This rule does not purport to alter or supersede an employer's obligations under any such laws and regulations."

Some commenters expressed concern with the IRAP's ability to charge costs to apprentices, as suggested in paragraph (a)(4)(ix), and thereby either saddle apprentices earning minimum wage with debt or reduce wages to below minimum wage, or both. A commenter noted that there is nothing in the rule preventing an IRAP from charging apprentices costs or expenses and then closing their operations before the apprentices have the opportunity to earn the sought-after credential(s). One commenter urged the Department to prohibit "that any membership, periodic dues or other fees be payable to any private organization such as a [sic] labor unions or trade associations as a condition of continuing training in the IRAP or securing a post-program job."

The Department added language to the final rule to make clear that any "costs or expenses," such as the "costs related to tools or educational materials" referenced in paragraph (a)(4)(ix) of § 29.22, that are charged to apprentices must comply "with all applicable Federal, State, or local wage laws and regulations, including but not

limited to [FLSA] and its regulations.” The revised language further provides, “This rule does not purport to alter or supersede an employer’s obligations under any such laws and regulations.” When applicable, the FLSA restricts costs that employers may pass along to their employees. In general, if a cost is primarily for the benefit or convenience of the employer, the employer may not charge the employee for such costs if doing so would decrease the employee’s wages below minimum wage or allow the employer to avoid overtime obligations. Because of the fact-specific nature of this inquiry, the Department expects SREs and IRAPs to scrutinize any costs or expenses charged to apprentices for compliance with the FLSA, where applicable. For example, FLSA regulations state that “tools of the trade” are primarily for the benefit of the employer. Therefore, the costs of purchasing or renting tools used in the employee’s work may not reduce an employee’s wage below the minimum wage for all hours worked in a workweek. See 29 CFR 531.3(d) and 531.32(c). Whether “educational materials” would primarily benefit the employer or employee would be a fact-based inquiry depending on the nature of the education and the materials. In addition to the FLSA, State and local minimum wage laws may have their own additional restrictions. Accordingly, the language added to the final rule clarifies that employers charging costs or expenses to apprentices must comply with applicable Federal, State, and local wage laws. And notably, workplaces that employ apprentices, including those under IRAPs, are subject to government and private enforcement for violations of wage-and-hour laws. This rule does not affect those generally applicable and enforceable obligations. The Department declines to add any other requirements regarding dues, memberships, or other fees, as they may vary by industry or unnecessarily limit potential apprentices’ choice of IRAPs.

In addition to the legal considerations, the Department also anticipates that SREs and IRAPs will consider market forces and the competitiveness of their program offerings, which will serve as checks against unnecessarily passing along costs to apprentices. The Department expects SREs to conduct appropriate quality control with regard to any costs or expenses charged to apprentices. Further, both the quality-control relationship between the SRE and the IRAP and the apprenticeship agreement between the IRAP and the apprentice

provide protection to the apprentice against an IRAP charging costs or expenses and then failing to deliver on its program.

Several commenters suggested the rule should require apprentices be paid prevailing wage rather than minimum wage. Many commenters expressed concern about the lack of a progressive wage requirement and, in their words, potential exploitation of apprentices. A commenter described the benefits of a progressive wage structure in attracting higher quality craftworkers to the field, giving apprentices an incentive to improve their skills, and ensuring that contractors are paying what they termed a fair wage commensurate with the increasing skills of more advanced apprentices. Another commenter expressed concern that requiring adherence only to the minimum wage would drive down area wage rates and weaken the middle class. The same commenter remarked that the lack of a progressive wage structure would result in cheap and fast training and industries flooded with low-wage workers moonlighting as “apprentices.” A commenter similarly remarked that substandard wages without a guarantee of benefits could create a spiraling effect and eventual “race to the bottom” across industry. Another commenter urged the Department to require wage increases commensurate with skill attainment. A commenter noted the importance of appropriately incentivizing continued participation in the program with a predictable wage and increasing wages on pace with actual or anticipated skill development. The commenter expressed concern that the absence of a progressive wage could leave apprentices financially unable to complete their programs and therefore at a disadvantage in the labor market. Another commenter noted that substandard contractors would avoid paying apprentices prevailing wages in order to be more competitive in their bids on construction projects.

Other commenters expressed support for the Department’s proposal. A commenter stated that other factors might outweigh wage progression in certain industries. The commenter offered the examples of retention, career advancement, and access to increased benefits programs, such as tuition subsidies. The commenter also noted that the wages of apprentices may vary based on geographic location and the size of the employer. Another commenter also expressed support for empowering IRAPs to determine “what wages apprentices will receive and under what circumstances apprentices’ wages will increase.” The commenter

noted that having the IRAPs be in control of wages is important to scaling the apprenticeship model. The commenter also noted that various factors, including geography, would make a standardized wage progression model difficult to adopt and would serve as a barrier to apprenticeship expansion.

The Department acknowledges commenters’ concerns about the lack of a wage progression as a hallmark of a high-quality IRAP. As clearly articulated in the rule, IRAPs must ensure that apprentices are paid at least the applicable Federal, State, or local minimum wage and must notify apprentices of circumstances under which wages will increase. Thus, apprentices will have the information necessary to make informed decisions about IRAPs and compare wage offerings of different IRAPs. The Department anticipates that some IRAPs will choose to implement a progressive wage structure for their apprentices—for example, in a multi-year apprenticeship program. As commenters noted, there could be benefits to the IRAP and the apprentice in clearly delineating a wage structure that would allow apprentices to earn more as they advance in skill. The Department has determined, however, that SREs and IRAPs are more closely attuned to market conditions in their industries and geographic areas and therefore better positioned to make decisions about how to structure their wages. Further, in order for IRAPs to be competitive and attract talent to their programs, they will want to incentivize apprentice participation by distinguishing their programs from others and offering wages and the possibility for wage increases that are both competitive in the relevant market and attractive to apprentices.

The Department declines to require a progressive wage structure, primarily because of the expectation that IRAPs will vary in duration and will represent a broad spectrum of industries with different market wage trends. Further, a progressive wage structure could limit employer participation in IRAPs, particularly for employers that would offer IRAPs that are limited in duration. This, by extension, could reduce or eliminate choices for individuals seeking apprenticeship opportunities. The Department expects SREs will be able to determine the contours of a progressive wage structure, if any, as it specifically relates to the industries in which it will be recognizing IRAPs. The Department anticipates that any consideration of a progressive wage structure will take into account local market industry wages, employer size,

and other benefits offered by IRAPs. The Department emphasizes that there is a requirement in § 29.22(a)(4)(ix) that the IRAP disclose to the apprentices any costs or expenses prior to the apprentice's agreement to participate in the program. This information will allow apprentices to make informed choices about which IRAPs to consider and to consider market wages as compared to what the IRAP is offering in their decision-making. Also, as discussed further below, the Department has added § 29.22(a)(4)(x) to require apprenticeship agreements that will set forth the terms and conditions of employment, to include wages and any wage progression and any costs or expenses charged to apprentices. Finally, with respect to concerns about the potential for unfair competition in the construction sector due to lower apprentice wages, such concerns are moot given that the Department has decided for other reasons to exclude construction activities from this subpart, as explained in detail in this preamble's discussion of § 29.30.

Some commenters suggested that the Department clarify that IRAP participants are not "apprentices" for purposes of meeting the Davis-Bacon Act's wage requirements. Commenters cited 29 CFR 5.5(a)(4)(i), which refers to a narrow exception to the prevailing wage requirement for apprentices, whereby apprentices working on a Federal construction contract may be paid less than the Davis-Bacon prevailing wage if they are in a registered apprenticeship program, and only if the program's apprentice-to-journeyworker ratios are maintained. The commenters urged the Department to exclude IRAPs from the Davis-Bacon apprentice exception. Commenters also questioned how State prevailing wage laws would apply to apprentices. Commenters also expressed concerns about the different requirements for IRAP wages, EEO, and safety as compared to the registered apprenticeship programs. Another commenter further expressed concern about unfair competition for those contractors that have already invested heavily in creating first-rate registered apprenticeship programs. The commenter requested that the final rule clearly specify that IRAP apprentices are not eligible for the exception from Davis-Bacon and State prevailing wages as recommended by Task Force Recommendation 17. The commenter further stated that ineligibility should also extend to any IRAP that applies for and is subsequently granted official status as a registered apprenticeship

program under the expedited process set forth in proposed § 29.25.

The Department acknowledges the concerns raised by commenters with respect to the Davis-Bacon exception. The Department is confident, however, that the text of the regulation at issue, 29 CFR 5.5(a)(4)(i), is sufficiently clear that it only applies to registered apprenticeship programs registered by OA or by an SAA recognized to register programs for Federal purposes (and not state agencies acting as SREs). See 29 CFR 5.5(a)(4)(i) (restricting the exception to apprentices who are employed "in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office"). IRAPs are, by definition, not registered apprenticeship programs. The regulation further states that "[t]he allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program," which also helps clarify that 29 CFR 5.5(a)(4)(i) is not applicable to IRAPs. Given that 29 CFR § 5.5(a)(4)(i) clearly only applies to registered apprenticeship programs, the Department sees no need to insert language in this rule that the Davis-Bacon exception does not apply to IRAPs.<sup>15</sup>

Additionally, the Department declines to opine on the applicability of State prevailing wage laws to IRAP apprentices because whether an IRAP apprentice would qualify as an apprentice under a State prevailing wage law depends on the specific State law at issue and the extent to which such laws track the Federal Davis-Bacon Act varies. Finally, as discussed below, the Department has removed from the final rule proposed § 29.25, which allowed for expedited registration for IRAPs to become registered apprenticeship programs. However, any IRAP that subsequently registers its

<sup>15</sup> Likewise, apprentices in IRAPs do not fit within the "trainee" exception to the Davis-Bacon prevailing wage requirement. 29 CFR 5.5(a)(4)(ii). A trainee must be "registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by [ETA] as meeting its standards for on-the-job training programs and which has been so certified by that Administration." 29 CFR 5.2(n)(2). Although the Administrator will recognize SREs under this final rule, IRAPs themselves will not be recognized or approved by the Administrator and apprentices under such programs therefore do not qualify for the "trainee" exception. No regulatory changes are necessary to clarify this point.

program under subpart A would qualify as a registered program for purposes of the Davis-Bacon Act.

Thus, other than clarification regarding compliance with the FLSA and all other applicable Federal, State, or local wage laws and regulations with respect to any costs or expenses charged to apprentices, the final rule adopts the provision as proposed.

#### 8. EEO Requirements—§ 29.22(a)(4)(viii)

Paragraph (a)(4)(viii) of § 29.22 requires that programs affirm their adherence to all applicable Federal, State, and local laws and regulations pertaining to EEO. Many commenters expressed concern that the Department did not propose a similar requirement for IRAPs as for registered apprenticeships, as set forth in 29 CFR part 30. These commenters stated that, in their view, the proposed rule would create two vastly different sets of EEO standards for apprenticeships and suggested that the Department require IRAPs to comply with 29 CFR part 30. Others argued that certain parts of 29 CFR part 30, such as the requirement for Uniform Guidelines on Employee Selection Procedures in 29 CFR 30.10, should apply to IRAPs. Many commenters stated that the Department's proposal would lead to fewer apprenticing women, veterans, and minorities, because of inherent gaps in EEO laws and the failure to include robust affirmative action requirements. Some commenters suggested that the adherence to EEO laws would not protect apprentices against discrimination on the bases of age, disability, sexual orientation, and genetic information. Other commenters expressed concern that Title VII of the Civil Rights Act of 1964 would only apply to apprentices/training programs controlled by joint labor-management committees. Several commenters pointed out specific differences between the proposed rule for IRAPs and the requirements of 29 CFR part 30, such as an EEO pledge, anti-harassment training, and affirmative action plans. Commenters also expressed concern that not holding IRAPs to the same 29 CFR part 30 requirements would hurt women, minorities, veterans, and people with disabilities.

On the other hand, a commenter agreed with the Department's general approach to EEO requirements. The commenter suggested that IRAPs should be held responsible for their noncompliance with EEO requirements, rather than the SREs, because SREs should not be expected to enforce human resources policies and Federal laws. Another commenter cautioned

against the “mission creep” of subjecting SREs and IRAPs to a regime similar to EEO oversight performed by the Department’s Office of Federal Contract Compliance Programs (OFCCP). The commenter supported the Department’s decision to give SREs the responsibility of ensuring that EEO requirements are met to allow small businesses to focus on serving program participants while at the same time protecting apprentices from discrimination.

The Department has determined that requiring compliance with Federal, State, and local EEO laws is a reasonable means of formulating and promoting standards to safeguard the welfare of apprentices. And by referencing legal requirements generally, rather than codifying particular steps and requirements, this regulation seamlessly accommodates future developments in EEO laws while providing clear guidelines in the present. This approach is a policy choice that accords with the final rule’s aim to encourage a flexible yet rigorous apprenticeship model.

As discussed in the preamble, apprentices are employees that benefit from the same protections during the employment relationship as any other employees of the employer offering the IRAP. The Department notes that Federal EEO laws are not limited to title VII and include all Federal anti-discrimination laws enforced by the Equal Employment Opportunity Commission (EEOC), including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Genetic Information Nondiscrimination Act. Many States and local jurisdictions have additional EEO requirements, with enforcement mechanisms similar to the EEOC. SREs, IRAPs, employers, and educational institutions are also free to implement EEO policies that go beyond legal requirements. Further, EEO protections are not limited to apprentices in programs controlled by joint labor-management committees; any “covered” employer, as defined by applicable Federal, State, and local EEO laws, would be required to adhere to those laws during the employment relationship with the apprentice. Additionally, if an IRAP is a Federal contractor or subcontractor covered by Executive Order 11246, section 503 of the Rehabilitation Act, or the Vietnam Era Veterans’ Readjustment Assistance Act, then it is also subject to the nondiscrimination and affirmative action provisions enforced by OFCCP. Requiring IRAPs to adhere to well-established anti-discrimination laws

also provides apprentices statutory remedies for EEO violations.

Additionally, as discussed in the preamble, the Department has clarified its oversight responsibilities for SREs and strengthened the requirements for the quality-control relationship between the SRE and its IRAPs. This means that the Department has a mechanism to derecognize an SRE, and an SRE has a mechanism to derecognize an IRAP, for violations of this subpart, including EEO violations. The statutory remedies provided by existing EEO laws, in conjunction with oversight of SREs and IRAPs, thus provide the necessary framework for both individual remedies and institutional accountability.

The Department’s approach to affirmative action is set forth in § 29.22(i), which creates the requirement for SREs to ensure a comprehensive outreach strategy to prospective apprentices. The Department has concluded that this is a useful approach, permitted but not mandated by the NAA, because smaller IRAPs would benefit from the SRE’s capacity for such outreach. An SRE can structure its policies and procedures to ensure comprehensive outreach strategies that are consistent with and tailored to its nature, size, network, and geographic reach, as well as the nature and size of the recognized IRAPs and the scope of the SRE’s relationships with those IRAPs. The Department recognizes the comments requesting additional affirmative action provision akin to those in 29 CFR part 30. The Department also recognizes comments cautioning against additional requirements similar to those in 29 CFR part 30. The Department declines to add any additional requirements beyond what is in § 29.22(i) as discussed further below. The Department views the requirements to adhere to Federal, State, and local EEO laws and regulations to be both sufficient and clear. Thus, the final rule adopts this provision as proposed.

#### 9. IRAP Disclosure of Costs and Expenses to Apprentices— § 29.22(a)(4)(ix)

Paragraph (a)(4)(ix) of § 29.22 requires that the programs disclose to apprentices, before they agree to participate in the program, any costs or expenses that will be charged to them (such as costs related to tools or educational materials). Disclosure of such costs is necessary before apprentices agree to begin a program so that apprentices can accurately calculate their anticipated earnings. The final rule clarified that such disclosure must be

“to apprentices” and “before they agree to participate in the program.”

Several commenters opposed charging costs and expenses to apprentices. A commenter asserted that passing on such costs to apprentices defeated the purpose of the NAA and urged the Department to require that any expenses be limited such that they would not effectively reduce apprentices’ hourly pay below the minimum wage. Another commenter argued that the prospect of unregulated costs is contrary to apprenticeships’ basic nature as “earn and learn programs.” A commenter asked whether there would be a cap on costs and requested clarification about when in the process IRAPs would be required to disclose them to apprentices. Commenters also suggested that IRAPs be required to disclose all costs and expenses to apprentices rather than only “ancillary” costs and expenses.

The Department agrees with the commenters’ suggestions to require disclosure of all costs and expenses, rather than only “ancillary” costs and expenses. The Department has struck the term “ancillary” from the final rule.

Regarding the concerns about charging any costs or expenses to apprentices, as discussed in § 29.22(a)(4)(vii) above, the Department has explicitly stated that any costs and expenses must comply with all applicable Federal, State, or local wage laws and regulations. The Department also has clarified the language of § 29.22(a)(4)(ix) to require that an IRAP must disclose the costs and expenses “to apprentices, before they agree to participate in the program,” thereby protecting the apprentice from being subjected to onerous fees without his or her prior knowledge. The Department anticipates that the additional requirement for an apprenticeship agreement, discussed below, will result in further disclosure of costs and expenses charged to apprentices, if any, throughout the course of the apprenticeship program. The Department neither requires nor prohibits IRAPs from charging costs or expenses to apprentices, except that, as noted, the final rule prohibits the charging of such costs or expenses if doing so would violate any applicable Federal, State, or local wage laws or regulations. The Department does, however, expect SREs and IRAPs would consider carefully whether to impose such costs, given the nature of the relevant industries and occupations. The Department also expects that market forces and competition for apprentices will keep costs down.

#### 10. Apprenticeship Agreement— § 29.22(a)(4)(x)

As discussed above, and in response to several comments on the topic, the Department has added a new paragraph in § 29.22(a)(4)(x), that requires programs to maintain a written apprenticeship agreement for each apprentice that outlines the terms and conditions of the apprentice's employment and training. The apprenticeship agreement must be consistent with its SRE's requirements.

In addition to many comments urging the Department to consider requiring apprenticeship agreements, commenters provided specific suggestions regarding the content of such agreements. The Department received comments requesting that an apprenticeship agreement incorporate the requirements for registered apprenticeships, such as the number of hours to be spent in related instruction in technical subjects related to the occupation; a statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process; a statement of the wages to be paid to the apprentice and whether the required related instruction is compensated; a statement regarding the duration of a probationary period; a statement concerning the circumstances under which an apprenticeship agreement may be canceled, to include termination for good cause, notice to the apprentice, and an opportunity for corrective action; an equal opportunity statement; ratios of apprentices-to-journey level workers; and information about dispute resolution concerning the apprenticeship agreement. A commenter also suggested adding a statement concerning safe equipment, facilities, and training, and adding a request for demographic data, to include the apprentice's race, sex, and ethnicity, in addition to disability status.

The Department agrees with the suggestion of many commenters that an apprenticeship agreement between the apprentice and the program will clearly set out expectations for both, consistent with the requirements of this subpart. Accordingly, an apprenticeship agreement must contain the terms and conditions of the apprentice's employment and training, which the Department expects will include topics such as the duration of the apprenticeship, wages and any wage progression, costs or expenses charged to the apprentice, and the competencies and industry-recognized credential(s) to be attained by completion. The

Department expects this provision to take the place of the phrase "involves an employment relationship" that was previously in § 29.22(a)(4)(ii), because the apprenticeship agreement will contain the specific parameters of the employment relationship in a way that provides structure and clarity to the IRAP and the apprentice. Further, the Department anticipates that this provision will complement the requirement in § 29.22(a)(4)(ii) for a written training plan that describes structured work experience and related instruction, leads to competencies and credential(s), and provides progressively advancing industry-essential skills, and that some IRAPs may choose to incorporate the training plan into the apprenticeship agreement either explicitly or by reference.

The Department expects that specifics of the apprenticeship agreement will vary, based on the SRE's requirements and the particular circumstances of each IRAP. Therefore, the Department declines to specify the content of apprenticeship agreements. This provision is not intended to, nor is it required to, mirror the requirements for an apprenticeship agreement set forth in subpart A. Rather, the agreement required by this section is intended to be a written agreement defining the employment relationship and containing the terms and conditions of employment that would memorialize the understanding and expectations of both the IRAP and the apprentice, similar to how employers and other types of workers engage in written contracts. This will allow prospective apprentices to understand what they are signing up for before joining an IRAP.

The Department also declines to require that certain demographic data be a part of the apprenticeship agreement and notes that it has added an SRE reporting requirement on this point at § 29.22(h)(10). With respect to other comments about adding to apprenticeship agreements statements regarding a safe working environment and EEO protections, the Department notes that these are mandatory requirements for IRAPs under § 29.22(a)(4). IRAPs may choose to include such statements in their apprenticeship agreements, and the Department views such statements as beneficial to give apprentices notice of their rights in the workplace. Employers offering IRAPs, however, would be bound by these requirements regardless of whether they explicitly mention them in an apprenticeship agreement. The Department further notes that employers must comply with all mandatory

workplace-notice requirements set forth in Federal, State, and local laws.

#### SRE Validation of High-Quality Programs

Paragraph (b) of § 29.22 states that an SRE must validate that IRAPs it recognizes comply with paragraph (a)(4). This means that the SRE must in fact validate IRAP compliance, and affirm to the Administrator that an IRAP it recognizes is a high-quality program, as reflected by its conformity to what (a)(4) and the SRE require. Validation under § 29.22(b) should be conducted at initial recognition and prior to the attestation provided to the Administrator under § 29.22(a)(2), when an SRE informs the Administrator that it has recognized an IRAP. Validation under § 29.22(b) should also be conducted on an annual basis after recognition, with an attestation provided to the Administrator annually.

Multiple commenters questioned the Department's use of the term "validate" in the context of this section. Although not specifically tied to this section, and as described in various other parts of the preamble, several commenters also questioned the Department's oversight of SREs and expressed that, in their view, the proposed rule did not contain sufficient requirements to safeguard the welfare of apprentices.

In the context of this paragraph, the requirement that the SRE must "validate" its IRAPs' compliance with paragraph (a)(4) of § 29.22 and the requirements of its SRE means that the SRE must affirm to the Administrator that an IRAP it recognizes is a high-quality program as reflected by its conformance to the requirements of § 29.22(a)(4)(i) through (x) and any other requirements of the SRE. In response to the concerns regarding the term "validate" and comments received generally about the need for ongoing oversight, the Department included a requirement that the SRE validate compliance and provide a written attestation of the IRAP's compliance with the requirements of § 29.22(a)(4), both at the time of recognition and on an annual basis thereafter. This enhances the requirement to "validate," which some commenters remarked was insufficiently vague, and also adds an ongoing requirement to ensure continued compliance with § 29.22(a)(4) and the SRE's requirements. The Department anticipates that the quality-control relationship between the SRE and its IRAPs as required by § 29.22(f), will consist of an ongoing assessment of the IRAP's compliance with § 29.22(a)(4) that would facilitate an annual attestation to the Department.



The Department has determined that requiring an SRE to attest to IRAP compliance annually creates additional protection of apprentices and Departmental monitoring of SRE oversight of IRAPs. Finally, as with other provisions, if the Administrator determines that an SRE's IRAPs are not in compliance despite the SRE's attestation, the Administrator has the option to take appropriate action against the SRE under this subpart.

#### SRE Disclosure of Credential(s) To Be Attained

Paragraph (c) of § 29.22 requires SREs to publicly disclose the credentials that apprentices will earn during their participation in or upon completion of an IRAP, as is the norm in the private sector. An SRE could disclose these credentials on its website, for example. The Department received a comment suggesting that the credential be disclosed to the apprentice in an apprenticeship agreement. The Department acknowledges this comment and anticipates that an apprenticeship agreement, added to the final rule at § 29.22(a)(4)(x), could include the credential(s) attained during or at the completion of the program. The Department also notes that the training plan in § 29.22(a)(4)(ii) will likely include the credential(s) to be attained. The Department removed the word "successful" as a modifier for "participation" to make this paragraph consistent with § 29.22(a)(4)(iv). The Department has also added the word "publicly" to clarify that the SRE must disclose the credentials to the public so that the public has a way to assess what IRAPs are offering. Otherwise, the Department has adopted this provision as proposed.

#### SRE Policies and Procedures for Recognizing IRAPs

Proposed paragraph (d) of § 29.22 stated that SREs' "policy and procedures for recognizing Industry Programs must be sufficiently detailed that programs will be assured of equitable treatment, and will be evaluated based on their merits. A Standards Recognition Entity must ensure that its decisions are based on objective criteria, and are impartial and confidential." The Department has revised this paragraph for clarity and included a requirement that SREs provide to the Administrator its policies and procedures at the time of application. The final rule provides: "An SRE must establish policies and procedures for recognizing, and validating compliance of, programs that ensure that SRE decisions are impartial,

consistent, and based on objective and merit-based criteria; ensure that SRE decisions are confidential except as required or permitted by this subpart, or otherwise required by law; and are written in sufficient detail to reasonably achieve the foregoing criteria. An SRE must submit these policies and procedures to the Administrator." The Department has clarified that SREs are required to have sufficiently detailed policies and procedures in place for recognition of IRAPs and validating their compliance with this subpart. This is to ensure that the decisions of SREs are based on the quality of entities' programs, not other factors. By requiring confidentiality, this provision also respects the privacy of entities seeking recognition, since seeking recognition could entail providing confidential business information.

A commenter questioned the confidential nature of the decisions, stating that the Department or the public could benefit from learning about the reasons for the SRE's decision-making without a disclosure of confidential business information. Another commenter faulted the rule for the lack of specificity in the SRE's recognition of IRAPs other than the requirement that policies and procedures are "sufficiently detailed" so IRAPs "will be assured of equitable treatment" and evaluated "based on their merits."

The Department acknowledges the commenters' concerns and has added the requirement that the SRE submit its policies and procedures to the Administrator at the time of application. This is intended to add transparency and accountability in crafting impartial merit-based policies and procedures. It allows the Department to evaluate, both at initial recognition and re-recognition, these policies and procedures for fair evaluation based on the merits. Though the NPRM's proposed regulatory text did not explicitly contain the requirement that these policies and procedures be submitted to the Administrator with the SRE's application, the form embedded in the NPRM specifically requested descriptions of policies and procedures related to IRAP recognition and assessment. The Department intends for such policies and procedures to be reviewed prior to recognition as an SRE because SREs must demonstrate that they are capable of recognizing IRAPs and fairly assessing IRAPs for compliance with this subpart. The Department also notes that the SRE must notify the Administrator of any significant changes to these policies or procedures, in accordance with § 29.22(p). For example, a change in the

evaluation criteria would constitute a significant change, and an SRE would need to notify the Administrator when it makes these changes.

As for the concern about the confidentiality of the process, the Department does not intend for any statement about confidentiality to inhibit the Department from seeking or obtaining necessary information to discharge its own obligations under this subpart but rather to protect confidential business information from unnecessary disclosure. Thus, the Department has clarified the limitations on confidentiality to provide that that SRE decisions are confidential "except as required or permitted by this subpart, or otherwise required by law."

#### SRE Recognition of an IRAP

The Department has redesignated § 29.22(g) in the proposed rule as § 29.22(e) in the final rule. In addition, paragraphs (e) and (f) of § 29.22 in the proposed rule concerning conflicts of interest were not adopted as part of § 29.22 of the final rule. To streamline the final rule, the Department has determined that the provisions contained in paragraphs (e) and (f) of § 29.22 in the proposed rule should be revised and relocated to § 29.21 in the final rule. This realignment was adopted because § 29.21 of the final rule focuses on whether a potential SRE would be qualified to act in the capacity of an SRE as recognized by the Department, while § 29.22 of the final rule focuses on an SRE's oversight duties with respect to an IRAP once the SRE has been recognized. Paragraph (e) of § 29.22 of the final rule requires that SREs must not recognize IRAPs for longer than 5 years at a time, and prohibits SREs from automatically renewing recognition.

Some commenters argued that, in their view, the proposed rule did not require a formal, clear, rigorous process for recognition or monitoring of IRAPs. Two commenters expressed that the 5-year timeframe for an IRAP's recognition may be too long. One commenter stated that permitting "hundreds of untested SREs and thousands of untried and unproven IRAPs to be created and operate for five years is an abrogation of the Department's responsibility to protect apprentices." But a different commenter agreed with the Department's assessment that a 5-year time period "is appropriate for ensuring that already-recognized SREs continue to account for the development and evolution in competencies needed within the industries and occupations to which their standards relate." Some commenters suggested that IRAP

recognition be provisional, for a period of 1 year, after which the SRE would evaluate the IRAP for continued recognition.

A commenter stated that there were no pathways in the proposed rule to transfer an apprentice to another comparable program if the IRAP is not re-recognized or goes out of business before the apprentice completes and receives a credential. Two commenters argued that the proposed rule did not address how SREs would monitor their IRAPs or how SREs would be held accountable for programs that do not achieve positive results for apprentices. A commenter supported the flexibility granted to SREs in the design, policies, and procedures for monitoring IRAPs because SREs are knowledgeable about their industries.

The Department acknowledges the suggestions provided by the commenters concerning the oversight and monitoring of IRAPs but has opted not to include these in the final rule. The Department believes the rule strikes an appropriate balance between required SRE oversight and flexibility to choose how to operate. Under § 29.22(a)(4) of the final rule, the SRE is charged with only recognizing and maintaining the recognition of IRAPs that meet the specific requirements in § 29.22(a)(4)(i) through (x). Given these requirements, the Department maintains that 5 years is a reasonable amount of time for an IRAP's recognition. The 5-year time period provides the SRE with a comprehensive body of longitudinal data concerning the IRAP's consistency in maintaining minimum standards for each apprentice's safety and welfare. In addition, the 5-year timeframe seeks to balance factors such as the transactional costs of IRAP re-recognition, the rapidly changing nature of industries and occupations, the value of occupational credentials, and the need to monitor and assess IRAP operations on a regular basis.

In addition, the Department declines to mandate a provisional recognition period of 1 year for IRAPs. SREs are required to attest annually to an IRAP's compliance with the requirements set forth in this final rule, as discussed in § 29.22(b). SREs are also required to make publicly available and report to the Department certain IRAP-related data and outcomes on an annual basis, as discussed in § 29.22(h) of the final rule. These requirements, as well as the quality-control relationship between the SRE and its IRAP, provide SREs with the necessary information to determine whether to derecognize an IRAP or provide additional support and guidance in an effort to bring the IRAP

into compliance. Although the Department does not require a provisional recognition period, the SRE may decide to provisionally recognize an IRAP, or provide additional monitoring or assistance during this period.

Accordingly, apart from the redesignation of this provision as § 29.22(e) in the final rule and the addition of nonsubstantive textual edits for clarity, the Department adopts this provision as proposed.

#### Quality Control Relationship Between the SRE and Its IRAPs

Paragraph (f) of § 29.22, which was proposed as § 29.22(h), requires that SREs and IRAPs be in an ongoing quality-control relationship and provides general guidelines for that requirement. The specific means and nature of the relationship between the SRE and an IRAP will be defined by the SRE, provided that the relationship: (1) Results in reasonable and effective quality control that includes as appropriate, consideration of apprentices' credential attainment, program completion, retention rates, and earnings; (2) does not prevent the IRAP from receiving recognition from another SRE; and (3) does not conflict with this subpart or violate any applicable law. The final rule added two more requirements to the quality-control relationship: That it involve periodic compliance reviews and include policies and procedures for suspension or derecognition of IRAPs.

Several commenters argued that the proposed rule should have included specific quality-control requirements for SREs to oversee IRAPs effectively. Some commenters requested that there be precise monitoring requirements, such as annual or biannual compliance reviews. A commenter questioned whether SREs are expected to conduct site visits, require documentation from their IRAPs, or provide technical assistance to their IRAPs and under what circumstances an SRE would place an IRAP on an improvement plan. Another commenter argued that the key to effective quality control is a program standard approved by the Department or a State. A commenter recommended that the Department delineate requirements for the quality-control relationship, such as using the SRE's assessment of apprentices' post-program earnings, job placement, test scores, or apprentice or employer satisfaction as useful data points for evaluating programs. The same commenter also encouraged the Department to explore enforcement and monitoring mechanisms for the SRE's quality-

control relationship with the IRAPs it recognizes.

The Department appreciates the comments received on this topic and has further clarified the quality-control relationship between the SRE and the IRAPs it recognizes. The Department has added two requirements to the quality-control relationship between the SRE and the IRAP. The quality-control relationship must involve "periodic compliance reviews by the SRE of its IRAP to ensure compliance with the requirements of [§ 29.22(a)(4)] and the SRE's requirements" and must include "policies and procedures for the suspension or derecognition of an IRAP that fails to comply with the requirements of [§ 29.22(a)(4)] and its SRE's requirements." Although the Department declines to prescribe the frequency with which an SRE must conduct compliance reviews, the Department anticipates that SRE compliance reviews will occur on at least an annual basis. SREs have an annual data reporting requirement under § 29.22(h) and are required to submit an annual attestation under § 29.22(b) that the IRAPs they recognize continue to meet the requirements of § 29.22(a)(4), and the Department anticipates that the SRE will take all steps necessary to accurately report this information to the Department given the consequences if it does not do so. The Department anticipates that SREs will engage in a combination of quality-control measures, such as requiring documentation and providing technical assistance. Although the Department has not prescribed the situations under which an IRAP would be suspended or derecognized, the Department instead requires that the SRE develop policies and procedures to take such actions. The SRE may also develop policies and procedures for performance improvement plans or corrective action plans if it deems appropriate. The Department views these additions to the quality-control relationship as enhancing IRAPs' accountability for providing high-quality training and safeguarding the welfare of apprentices.

One commenter suggested that many IRAPs may have a single individual in charge of quality assurance and the quality of the IRAP could potentially suffer if the individual leaves the program.

The Department recognizes that smaller IRAPs may be unable to maintain multiple individuals tasked with quality-assurance responsibilities, but the Department has determined that an IRAP is responsible for its personnel, including personnel turnover that may occur, and is responsible for continuing

to comply with the requirements of a high-quality apprenticeship program. The Department declines to attempt to regulate IRAPs' personnel matters and expects that IRAPs will continue to fulfill their obligations under this subpart regardless of personnel changes. The Department notes that an IRAP may seek assistance from its SRE and utilize the SRE's expertise to comply with its responsibilities under this subpart. If the IRAP does not continue to fulfill its obligations, the SRE will hold the IRAP accountable as appropriate under the framework established by the Department.

#### Joint Employment Relationship

The Department has redesignated § 29.22(i) in the proposed rule as § 29.22(g) in the final rule. In addition, paragraphs (e) and (f) of § 29.22 in the proposed rule concerning conflicts of interest were not adopted as part of § 29.22 of the final rule. As noted above, paragraphs (e) and (f) of § 29.22 in the proposed rule were revised and relocated to § 29.21 in the final rule to streamline the rule. Accordingly, the Department has redesignated § 29.22(g), § 29.22(h), and § 29.22(i) in the proposed rule as § 29.22(e), § 29.22(f), and § 29.22(g) in the final rule, respectively. Paragraph (g) of § 29.22 in the final rule makes clear that an entity's participation as an SRE of an IRAP does not make the SRE a joint employer with the entity(ies) that develop or deliver IRAPs.

The Department did not receive any comments related to paragraph (i) of § 29.22 in the proposed rule. Accordingly, the final rule retains the provision as proposed. However, as noted above, this provision has been redesignated as paragraph (g) of § 29.22 in the final rule.

#### SRE Data Publication and Reporting

##### § 29.22(h)—General Overview

Proposed § 29.22(j) of the NPRM (now redesignated as § 29.22(h) in this final rule) stipulated that an SRE must make publicly available on an annual basis the following information on each IRAP it recognizes: (1) Up-to-date contact information for each program; (2) the total number of apprentices annually enrolled in each program; (3) the total number of apprentices who successfully completed the program annually; (4) the annual completion rate for apprentices; (5) the median length of time for program completion; and (6) the post-apprenticeship employment rate of apprentices at completion. The preamble of the NPRM explained that the publication of this information

would provide employers and prospective apprentices the details necessary to make informed decisions about IRAPs. However, the preamble also invited public comment on which performance measures would be most helpful in assessing IRAP impact and quality assurance, and specifically stated that “the Department is considering setting performance measures related to post-apprenticeship employment and wages and employer retention.” The preamble also emphasized that “[t]he Department has a keen interest in minimizing burden [sic] on SREs and [IRAPs], and therefore also solicits comment on the most efficient approach to data collection.”

In response to its request for public comments concerning the addition of performance measures to evaluate the success of IRAPs recognized by SREs, the Department received substantial input from a wide range of commenters. None of the comments received specifically advocated the deletion or modification of the information initially proposed by the Department in the NPRM at § 29.22(j)(1) (IRAP contact information), § 29.22(j)(2) (the total number of apprentices annually enrolled in each IRAP), § 29.22(j)(3) (annual total of apprentices who successfully completed an IRAP), or § 29.22(j)(5) (the median length of time for IRAP completion). While there was broad support for retaining the six initial provisions on IRAPs proposed in § 29.22(j) of the NPRM, a number of commenters expressed support for refining or expanding the number of data and outcomes metrics in order to better assess the size, scope, and effectiveness of IRAPs, while others expressed concern that the collection of additional data from SREs and IRAPs would impose unwarranted burdens on these parties.

In discussing the preamble text for § 29.22(h) of this final rule, the Department first describes the addition of a reporting requirement in the introductory clause of § 29.22(h); it then discusses (in order of appearance) those paragraphs of § 29.22(h) where changes were adopted based on comments received (§ 29.22(h)(6), (7), (8), (9) and (10)); it proceeds to discuss those sections of § 29.22(h) where changes were made to the text administratively (§ 29.22(h)(2) and (4)); and it then refers to the paragraphs of § 29.22(h) where no changes were made to the text as it appeared in the NPRM (§ 29.22(h)(1), (3), and (5)). The final paragraphs of the § 29.22(h) preamble discussion summarize those comments and suggestions that the Department has declined to adopt in this final rule.

The Department notes that both SREs and the IRAPs they recognize are free to collect and publish data relating to program outcomes beyond the specific metrics that are stipulated in § 29.22(h) of this final rule; indeed, such additional voluntary collection initiatives could provide the chief beneficiaries of these programs (*i.e.*, potential apprentices and employers) with valuable performance information that may encourage broader participation by these parties in IRAPs. The Department believes that employer participation in IRAPs will be a key indicator of success showing that the program is beneficial to both employers and apprentices. As participation in IRAPs increases, the Department may consider additional performance measures.

##### 1. Adding an SRE Reporting Requirement to DOL on IRAP Outcomes at § 29.22(h)

Multiple commenters suggested that the Department require SREs to submit outcomes data on the IRAPs they recognize directly to the agency on a regular basis, in addition to making it publicly available. One of these commenters opined that the requirement in the NPRM that SREs “make publicly available” certain information about an IRAP was “insufficient to rigorously assess the size, scope, and effectiveness” of these programs, while another commenter maintained that the Department cannot hope to provide meaningful quality assurance without requiring SREs to collect information on the outcomes of the IRAPs they oversee. However, another commenter took the position that the Department should not require SREs to provide specific information as part of a reporting requirement, but rather should require SREs to simply submit a plan for such reporting in their applications for recognition by the Department. One commenter argued that the Department should consider the potential burdens and negative ramifications of a performance and reporting system for IRAPs, while another commenter expressed the view that the Department should refrain from requiring SREs to meet overly burdensome reporting and data requirements similar to those of the current registered apprenticeship system. A commenter reasoned that, in their view, because SREs may tailor their programming to distinct populations for industries with which they have a strong relationship, the Department should refrain from setting specific performance measures for IRAPs.

The Department agrees with those commenters who suggested that requiring SREs to report IRAP data and outcomes directly to the Department on a regular basis will help the Department monitor and evaluate these programs and entities. Accordingly, in addition to retaining the requirement that SREs make publicly available certain outcomes information concerning the IRAPs they recognize, the provision of the final rule that addresses program data and outcomes (which has been redesignated as § 29.22(h) in the final rule) has been modified to stipulate that SREs must also report this same information directly to the Department. The final rule also clarifies that SREs must both publish this IRAP data and report it to the Department on an annual basis. The format for SREs to publish and report industry program data will be prescribed by the Administrator in subsequent sub-regulatory guidance; the Department anticipates that the prescribed format will allow electronic publishing and reporting to reduce SREs' time and paperwork burdens. The Department also intends to work with SREs to explore the use of administrative data sources to collect required outcome information. Such sources offer the chance to collect information in a more valid, consistent manner and at a lower cost. In determining what types of IRAP data and outcomes are most appropriate for collection, reporting, and publication by SREs, this final rule balances the potential benefits to the public of gaining access to additional program-level data against the legitimate concerns raised by some commenters that requiring SREs and IRAPs to provide outcomes data beyond that specified in the NPRM could impose undue burdens.

Subsequent to the publication of this final rule, the Department intends to issue a **Federal Register** notice requesting public comment on the information collections required under § 29.22(h) and submit an ICR to the Office of Management and Budget (OMB) for review and approval in accordance with the PRA. This ICR will provide further details concerning the IRAP outcomes and metrics that are stipulated in § 29.22(h).

## 2. § 29.22(h)(6)—Post-Apprenticeship Employment and Retention Rates

As previously noted, § 29.22(j)(6) of the NPRM proposed that SREs should make publicly available “[t]he post-apprenticeship employment rate of apprentices at completion.” One commenter suggested that the Department expand the list of outcomes

metrics in the final rule to include post-program employment rates at the second and fourth quarters following a former apprentice's completion of an IRAP; this commenter further suggested that the post-employment data be disaggregated by race, ethnicity, gender, disability status, and other characteristics to measure equitable impact across these populations. Two other commenters agreed that the Department should require SREs to collect information on the post-program employment status of former apprentices who completed IRAPs. One of these commenters recommended that the text of the NPRM's proposed § 29.22(j)(6) should be refined so that SREs would collect information on the post-apprenticeship employment rate of former apprentices at 6- and 12-month intervals after IRAP completion. This commenter further opined that the collection of this data would facilitate performance comparisons between IRAPs, registered apprenticeship programs, and other work-based learning models.

A number of commenters recommended that IRAPs should be assessed according to their retention rates. One of these commenters expressed its view that it would be reasonable for Department to require SREs to collect information from the IRAPs they recognize concerning “the post-completion hire rate at the sponsoring company.” A commenter also opined that the collection of both employment and retention data (measured up to 6 months after learners exit a training program) are two of the four core outcomes metrics for measuring the success of workforce programs under WIOA. However, another commenter stated that retention rates after defined periods of time post-completion are more likely to be subject to circumstances beyond the apprenticeship program's control and less likely to reflect on the quality and effectiveness of the program and, therefore, should be excluded.

As noted above, the Department expressed its willingness to consider post-apprenticeship retention rates as an additional performance metric in the preamble of the NPRM. After considering the comments proposing the addition of a new data point to assess an employer's retention of the apprentices they trained, the Department has concluded that the inclusion of such outcomes information in the final rule would be useful to potential apprentices in evaluating the quality of IRAPs. Accordingly, the Department is modifying the outcomes metric contained in this provision (now redesignated as § 29.22(h)(6) of the final

rule) to require that SREs make publicly available—and also report to the Department on an annual basis—the post-apprenticeship employment retention rate, calculated at 6- and 12-month intervals after program completion.

## 3. Attainment of Industry-Recognized Credentials—§ 29.22(h)(7)

Several commenters suggested that the Department should expand the program outcome data in the final rule to include information on the attainment of industry-recognized credentials for each IRAP. One of these commenters noted that credential attainment is one of the four core outcomes metrics for measuring the success of workforce programs under WIOA. Another commenter opined that the Department should require SREs to make public the number of credentials attained per year by IRAP apprentices, and the success rates of apprentices on final examinations, including the overall success rate, first attempt success rate, and second attempt success rate. A commenter further suggested that SREs should require IRAPs to disclose data on credential status and the acceptance by employers of credentials received, along with information on the value of being credentialed as opposed to being un-credentialed.

After considering the relative value of these credential-related data points to potential apprentices in assessing the relative quality of IRAPs, the Department agrees with the inclusion of some, but not all, of the outcome metrics recommended by the commenters. Accordingly, the Department has revised the text of the final rule (at § 29.22(h)(7)) to require that SREs make publicly available—and also report to the Department on an annual basis—information about the attainment of industry-recognized credentials by apprentices in each of the IRAPs that they have recognized. The final rule also stipulates that SREs must, on an annual basis, make publicly available and report to the Department data on the number of industry-recognized credentials that are conferred by each of the IRAPs they have recognized. However, the Department declines to adopt the suggestions made by various commenters requesting the collection, reporting, and publication of data on apprentice success rates on IRAP examinations, on the acceptance by employers of credentials attained, or on the relative value of being credentialed or un-credentialed. The Department is concerned that the procurement of such

outcomes data by SREs and IRAPs would prove unduly burdensome, and may discourage such programs and entities from participating in this initiative while providing minimal benefit to the Department and prospective apprentices.

#### 4. Post-Program Wages—§ 29.22(h)(8)

A wide range of commenters suggested that the Department should require the collection of the average wage rates of former apprentices upon program completion as an additional outcomes metric in the final rule. As noted above, the Department expressed its willingness to consider post-apprenticeship wages as an additional program performance metric in the preamble of the NPRM. One of the commenters observed that the collection of wage data (measured up to 6 months after learners exit a training program) is one of the four core outcomes metrics for measuring the success of workforce programs under WIOA. Another commenter further proposed that the Department collect wage rates paid to IRAP graduates upon completion, as well as the employment and wage rates of such individuals at 1- and 5-year intervals after program completion. However, a commenter expressed the view that the Department should not include post-completion wage rates as a performance measure, because wage rates do not include overtime hours and benefits, and because wage information is often embedded in the confidential terms of an employment contract.

After considering the relevancy and value of this post-program wage information to potential IRAP participants, the Department agrees substantially with those commenters who advocated for the collection of this key outcomes data point. Accordingly, the Department has included in the final rule (at § 29.22(h)(8)) a requirement that SREs make publicly available—and also report to the Department on an annual basis—information about the average wage rates of an IRAP's former apprentices, calculated 6 months after program completion. However, the Department takes the position that requiring the collection of wage data at 1- and 5-year intervals after IRAP completion—as one of the commenters suggested—does not align with WIOA data-collection requirements, and would also impose lengthy and burdensome collection, reporting, and publication duties upon SREs and the IRAPs that they recognize. The Department is also concerned that the imposition of more protracted administrative requirements with respect to the collection of post-completion wage data

could discourage the participation of potential SREs and IRAPs in this initiative.

#### 5. Training Cost per Apprentice—§ 29.22(h)(9)

In recommending that the Department not set a program-wide average fee for SREs, a commenter opined that each industry, occupation, and SRE will have different costs. However, another commenter expressed concern that the NPRM did not contain cost estimates for the training component of IRAPs. This commenter expressed the view that with the substantial recent growth in registered apprenticeships, there is a large body of data available from such programs concerning yearly training costs.

After considering the comments received pertaining to IRAP training costs, the Department has determined to include an additional outcomes metric (at § 29.22(h)(9) of the final rule) for SREs to collect, report, and publish information about the training cost per apprentice for each of the IRAPs that the SRE recognizes. The Department believes that the availability of such data would be useful to the public in evaluating the efficiency and cost-effectiveness of private-sector IRAPs relative to other workforce training and development programs that are taxpayer-funded. Such information also may help employers considering the IRAP model decide to participate, given the efficiencies and expertise that SREs are expected to bring.

#### 6. Basic Demographic Information on IRAP Participants—§ 29.22(h)(10)

Multiple commenters suggested that DOL should require the collection of demographic data on IRAP apprentices. After considering these comments, the Department has decided to include an additional reporting requirement (at § 29.22(h)(10) of the final rule) for SREs to collect, report, and publish basic demographic information about the apprentices participating in the IRAP that the SRE recognizes (which may include, for example, the voluntary provision of data on the sex, race, and ethnicity of apprentices). The Department believes that the availability of such demographic data—which SREs must publish on an aggregated basis to protect the privacy of apprentices—will be useful to the public in evaluating whether IRAPs have been successful in attracting populations that have historically been underrepresented in apprenticeship programs. In this regard, the Department has determined that the potential benefits to consumers of gaining access to such data outweigh the

potential administrative burden associated with the collection of such data by SREs and IRAPs.

#### 7. Technical Modifications to § 29.22(h)(2) and (4)

In addition to incorporating an IRAP program outcomes data reporting requirement for SREs and adding to (or modifying) the outcomes metrics originally listed in the NPRM, the Department has made minor technical adjustments to certain other program measures that are now contained in § 29.22(h) of the final rule. For example, § 29.22(j)(2) of the NPRM proposed that SREs make publicly available “[t]he total number of apprentices annually enrolled in each program”; in the corresponding provision of the final rule at § 29.22(h)(2), the Department has added language clarifying that, in tallying the number of apprentices in an IRAP, both new and continuing apprentices should be counted. In addition, the word “enrolled” in § 29.22(j)(2) of the NPRM has been deleted in the corresponding provision of the final rule at § 29.22(h)(2) and replaced with the word “training” to more accurately reflect the nature of an apprentice's experience in an IRAP.

In addition, § 29.22(j)(4) of the NPRM proposed an SRE make publicly available “[t]he annual completion rate for apprentices” for each IRAP it recognizes; in the corresponding provision of the final rule at § 29.22(h)(4), the requirement for SREs to report and publish the annual completion rate for apprentices in the IRAPs that they recognize has been modified to include a mathematical formula for calculating this rate. While the Department did not receive any comments suggesting this particular textual modification, one commenter suggested that any future Federal funding for IRAPs should be made contingent on such programs meeting certain minimum standards, including a minimum completion rate. The Department was also concerned that the absence of a clear definition of the term “completion rate” could lead to the reporting and publication by SREs of IRAP completion rates that are not readily comparable, because they may have been computed differently across IRAPs (e.g., apprentices that withdrew from an IRAP could be treated differently than apprentices that transferred between IRAPs). In addition, because the term “completion rate” is already defined with respect to its application to registered apprenticeship programs in subpart A of the final rule, providing a clear definition for that

same term in the context of IRAPs is warranted under the circumstances.

It should also be noted that the original proposed text contained in § 29.22(j)(1), (3), and (5) of the NPRM (which correspond to § 29.22(h)(1), (3), and (5) of the final rule) has not been amended in the final rule.

#### 8. Other Comments Received Concerning § 29.22(h)

Several commenters also recommended a variety of additional outcomes metrics that the Department should adopt to evaluate the effectiveness of SREs and the IRAPs that they recognize. For example, a commenter recommended adding measures for the IRAP participation of members of special populations to bring the regulation into conformity with the Strengthening Career and Technical Education for the 21st Century Act, Public Law 115–224 (2018) (as codified at 20 U.S.C. 2301 *et seq.*). A commenter urged DOL to encourage SREs to make use of existing State longitudinal data systems and/or other such sources of labor-market information to make determinations on the IRAPs they recognize. Multiple commenters recommended that DOL promote integration at the State level of information about incomes with such State longitudinal data systems. Several other commenters suggested that DOL should consider aligning publicly reported information collections with core indicators of performance under WIOA.

After considering these comments, the Department takes the view that requiring SREs to utilize State labor-market information or longitudinal data systems in making determinations on IRAP recognitions, or adjusting the final rule to require SREs and IRAPs to align publicly reported information collections with core indicators of performance under WIOA, would impose unnecessary or unworkable administrative burdens on these parties, and may discourage them from pursuing the IRAP option for apprenticeship expansion. Accordingly, the Department declines to adopt these recommendations.

A commenter suggested that SREs and IRAPs should be required to collect and make publicly available the same program and apprentice information as the DOL Registered Apprenticeship Partners Information Data System (RAPIDS) database does, including the collection of individual and aggregated data on apprentice demographic information, education level, current apprenticeship program enrollment status (including information

concerning participation in and duration of on-the-job learning and related instruction), the employer identification number (EIN) of the entity employing the apprentice, apprentice wage rates at enrollment and completion of the IRAP, apprenticeship completion rates, attainment of industry-recognized credentials, and complaints and grievances filed (*e.g.*, EEO complaints). Another commenter opined that RAPIDS or a similar system should be used to ensure that States know which programs are available to participants, which will help States oversee the SREs and programs operating within their borders. Other commenters urged DOL to align any data collection protocols established for IRAPs with the data collection and evaluation requirements of registered apprenticeship programs. Multiple commenters recommended that SREs and IRAPs should be required to publicly disclose, at a minimum, the information required of American Apprenticeship Initiative (AAI) grant recipients.

In response to these comments, the Department observes that many aspects of the new and more flexible IRAP model of apprenticeship are distinctive; these features do not align closely with the requirements of the existing registered apprenticeship framework, nor are they required to do so. As noted previously, requiring SREs to report IRAP data and outcomes directly to the Department on a regular basis will help the Department effectively monitor and evaluate these new programs and entities. Accordingly, the Department declines to adopt these suggestions with respect to data alignment.

Multiple commenters recommended that the Department maintain a public, online database with information about SREs and the IRAPs they recognize. One of these commenters recommended that this database include the complete application submitted by entities seeking to be recognized as SREs, all submissions to the Administrator by SREs regarding the recognition of IRAPs, and the complete performance data submitted to the Administrator regarding each IRAP recognized by the SRE. Another commenter advised that the database include information about the credentials offered by IRAPs, and the portability of these credentials. A commenter recommended that, in addition to disclosing performance metrics, IRAPs should be required to use these performance metrics to conduct self-evaluations, and that these self-evaluations should be made public. A commenter suggested that DOL should require SREs to assess

apprentices' post-program earnings, along with pre-program earnings.

After considering these comments, the Department takes the view that the Department need not establish an online database of IRAP program information when the final rule (at § 29.24) already provides that SREs will make information on IRAPs publicly available. The Department also believes that it would be unnecessarily intrusive to require SREs to make public their applications for recognition, along with information concerning the SRE's recognition of IRAPs. Similarly, the Department believes that requiring IRAPs to utilize their performance data to conduct and publicize self-evaluations, or to collect information on an apprentice's pre-program earnings, would discourage many employers from establishing such programs. And as noted above, portability is not a concept that likely could be identified in the manner the commenter suggested, because even credentials facially associated with a specific geographic region could be relevant to and valued by an employer outside of that region.

A commenter encouraged the conduct of additional research about IRAP programs' returns on investment. Another commenter opined that the Department should allow room for variation in required performance measures among industries. A commenter suggested that multiple ways to report performance data, including an online form, should be instituted in order to minimize the data collection burden on SREs as well as IRAPs.

The Department is committed to reducing paperwork burdens on SREs and IRAPs by making available electronic methods for the reporting and transmittal of data concerning these programs. Accordingly, the Department intends to develop an online reporting form for use by SREs to facilitate the transmittal of the IRAP program information described in § 29.22(h) of the final rule. The Department also intends to work with SREs to explore the use of administrative data sources to collect required outcome information. Such sources offer the chance to collect information in a more valid, consistent manner and at a lower cost. The Department is also interested in conducting research studies after the publication of this final rule to assess the effectiveness and cost effectiveness of IRAPs, particularly when compared with publicly financed workforce training and development programs.

### SRE Policies and Procedures for IRAPs' EEO Requirements

Paragraph (i) of § 29.22, which was proposed as § 29.22(k), generally requires SREs to have policies and procedures that would require IRAPs to protect apprentices from discrimination, as well as assist in recruiting for and maximizing participation in apprenticeships. The SRE must also assign responsibility to an individual to assist IRAPs with matters relating to this provision.

Commenters questioned whether apprentices and their mentors, trainers, and others working with them during the IRAP would be required to have anti-harassment training similar to the requirements of 29 CFR part 30. Many commenters urged the Department to apply the anti-harassment requirements of 29 CFR part 30 to IRAPs. Commenters noted that registered apprenticeship programs are required to implement procedures for addressing complaints of harassment and intimidation. Other commenters suggested that SREs and IRAPs be required to have policies and procedures, modeled by the Department, for: Anti-harassment training in compliance with 29 CFR part 30, HIPAA compliance, whistleblower protections, conflicts of interest, intellectual property, complaints, lobbying, expenses, investments, and gifts and entertainment. Another commenter attached sample policies and procedures regarding discrimination and harassment.

The Department has carefully considered these comments. The NAA does not expressly mandate any particular EEO or outreach requirements. Rather, the NAA's directions are broad, general, and purposely leave a great deal to the Department's discretion. The final rule's EEO provisions—both what they include and what the Department has declined to include—reflect the Department's policymaking judgment and expertise based on weighing numerous factors, detailed below, including already existing legal protections, additional measures that may be helpful to apprentices and employers, sensitivity to administrative burdens, the need to preserve SREs' and IRAPs' flexibility, and the recognition of differences in industries and geographic areas.

As discussed in relation to § 29.22(a)(4)(viii), above, the Department has determined that adopting the EEO protections codified in applicable Federal, State, and local laws are appropriate for IRAPs—which protect apprentices just as other types of

workers—is a reasonable way to formulate and promote standards safeguarding the welfare of apprentices. The Department notes that the SRE is responsible for developing policies and procedures that both require IRAP adherence to applicable Federal, State, and local EEO laws and facilitate such adherence. Regarding the latter, the Department intends SREs to develop policies and procedures that take into account their IRAPs' needs for compliance assistance and complaints resolution. In the rule, the Department lists the requirement that SREs have policies and procedures regarding potential harassment, intimidation, and retaliation, such as the provision of anti-harassment training and a process for handling EEO and harassment complaints from apprentices. The Department has determined that this is an appropriate role for SREs and in line with both its compliance-assistance function and SREs' quality-control relationships with IRAPs. By explicitly identifying anti-harassment training in the rule, the Department requires SREs to ensure that such training is provided, whether the training is provided by the SRE, by an SRE partner, or by the employer offering the IRAP. Similarly, the Department requires the SRE or the employer to have a complaint mechanism for addressing discrimination and harassment complaints. For example, an SRE may assist a smaller employer offering an IRAP by providing centralized anti-harassment training and establishing a mechanism for receiving complaints from apprentices concerning discrimination. Larger employers with well-established EEO processes and procedures may not need such SRE assistance. By not prescribing specific processes, the Department seeks to maximize an SRE's ability to satisfy this provision in ways that best serve the IRAPs and employers that the SRE works with.

The Department declines commenters' suggestions for additional requirements on SREs and IRAPs for policies and procedures related to HIPAA, whistleblower protections, conflicts of interest, intellectual property, complaints, lobbying, expenses, investments, and gifts and entertainment. As an initial matter, conflicts of interest and complaints are already addressed in this rule. Additionally, IRAPs are required to comply with any Federal, State, or local laws applicable to them, including HIPAA and whistleblower protections, regardless of any specific requirement in this rule. The Department notes that

subpart A does not include such provisions, and declines to include such provisions in subpart B.

Many commenters questioned the Department's departure from the affirmative action requirements of 29 CFR part 30. A commenter remarked that the Department is providing a weak requirement to recruit underserved groups and contrasted it with the robust requirements for registered apprenticeships. The commenter urged the Department to apply the same set of requirements to IRAPs as to registered apprenticeship programs. Many other commenters similarly argued that the Department should apply the affirmative action requirements of 29 CFR part 30 to IRAPs. Several commenters provided statistics about the numbers of women, veterans, and minorities in apprenticeship programs and highlighted their intentional and sustained efforts to increase diversity through affirmative action plans. Another commenter similarly noted it requires sustained and aggressive effort to recruit women, minorities, and individuals with disabilities to apprenticeships in some industries. One commenter observed that SREs are only required to have policies for outreach strategies, but IRAPs are under no obligation to implement such strategies. A commenter stated that the Department's NPRM did not require that the SRE approve an IRAP's selection procedure for apprentices or require that any selection procedure comply with the Uniform Guidelines on Employee Selection Procedures. The same commenter stated that, in its view, there was no required analysis by the SRE or the IRAP to determine if any part of the recruitment and selection process is creating a barrier to the entry of qualified women and minorities into the apprenticeship program.

A commenter argued that innovation is not necessary in Federal civil rights protections, urging the Department to provide more proactive education and assistance to IRAPs on outreach to diverse populations. Another commenter noted that there are no requirements for an SRE to report on the demographic characteristics of IRAP apprentices. A commenter encouraged the Department to task SREs with verifying that IRAP programs conduct outreach and recruitment activities to all potential workers in a program's region, consistent with 29 CFR 30.3(b)(3). The commenter stated that this would improve alignment between IRAPs and the workforce system by empowering local workforce stakeholders to leverage WIOA-funded referral services. The commenter also

argued that requiring SREs to ensure IRAPs engage in this same recruitment and outreach as in 29 CFR 30.3(b)(3) would ensure efficiency in workforce investments in a local area, bolstering access to work-based learning programs for a diverse set of workers and ensuring businesses have the broadest pipeline of potential candidates to fill open positions.

The Department acknowledges the comments asking for additional affirmative action requirements. Nevertheless, the Department has determined that the requirements in this section, in conjunction with the EEO requirements at § 29.22(a)(4)(viii), impose sufficient obligations on both IRAPs and SREs to ensure compliance with EEO laws and further impose an obligation on SREs to have policies and procedures that reflect comprehensive outreach strategies. The Department views SREs as better positioned than the Department to decide how to structure their policies and procedures to ensure comprehensive outreach strategies, which could depend on the nature and size of the SREs, their networks and geographic reach, the nature and size of the IRAPs they recognize, and the SREs' relationship with their IRAPs. The Department declines to incorporate the affirmative action provisions of 29 CFR part 30 into this subpart.

The Department disagrees with the commenter's concern about IRAPs not being required to implement SRE outreach strategies. The rule is drafted so as to place the responsibility on the SRE to have policies and procedures that reflect comprehensive outreach strategies to reach diverse populations that may participate in IRAPs—this includes articulating what role, if any, the IRAPs will play in such outreach strategies. IRAPs would then be required to follow the policies and procedures of the SRE, should the SRE deem it appropriate to impose specific requirements on IRAPs. Paragraphs 29.22(f)(4) and (5) regarding the quality-control relationship between the SRE and the IRAP make clear that an SRE must ensure the IRAP's compliance with the SRE's requirements and must have policies and procedures for suspension or derecognition of an IRAP that fails to comply with the SRE's requirements.

The Department acknowledges that it is not requiring SREs to monitor IRAPs' apprentice selection processes or to apply the Uniform Guidelines on Employee Selection Procedures. The SRE may develop policies and procedures to address apprentice selection processes if it so chooses. The Department declines to impose specific

requirements because IRAPs must follow Federal, State, and local EEO laws, which prohibit discrimination in hiring, and because SREs must have policies and procedures in place to ensure that IRAPs do so. Similarly, though the Department is not requiring SREs to conduct barrier analyses for women and minorities, an SRE may choose to do so. Further, as discussed in § 29.22(h), the Department is requiring SREs both to report to the Department and to make publicly available aggregate demographic information (such as sex, race, ethnicity) about participants. By collecting, reporting, and publishing such information, SREs will benefit from understanding the populations they are reaching through their outreach efforts and can adjust their efforts accordingly, including by providing additional support to IRAPs if they opt to do so. The Department may also request any information under § 29.23 that it deems necessary to determine whether the requirements of this paragraph are met. The Department has determined that these requirements, in conjunction with the quality-control and quality-assurance processes set forth in this rule, are sufficiently robust to ensure that IRAPs have additional support and assistance to understand and comply with their legal obligations—though regardless of participation as IRAPs these employers should already be complying with applicable laws. Simultaneously, IRAPs will benefit from an SRE's ability to conduct more extensive outreach efforts to diverse populations and to offer any needed support and assistance.

With respect to requiring SREs to verify that IRAPs conduct outreach and recruitment activities to all potential workers in a program's region, as mandated by 29 CFR 30.3(b)(3), the Department declines to impose such a requirement. As discussed above, the SRE is the entity primarily responsible for determining in what manner comprehensive outreach will be conducted and by whom. The SRE itself may decide to be responsible for outreach, rather than placing such responsibility on its IRAPs.

Additionally, the Department declines to apply the language of 29 CFR 30.3(b)(3) to SREs because the prescriptive nature of 29 CFR 30.3(b)(3)'s requirements for universal outreach and recruitment may not be universally applicable to or feasible for SREs given the potential diversity of SREs in terms of size, the industry(ies) in which they will be recognizing IRAPs, how many IRAPs they will be recognizing, and their geographic reach. The Department determined that the

exact requirements for recruitment and outreach are best determined by the SRE within the framework and requirements set forth by the Department.

A State Agency commented that it is in a better position than SREs to provide training and outreach to promote IRAPs, noting that the responsibility placed on SREs could be burdensome and potentially pose a conflict of interest for an entity focused on approving IRAPs. Similarly, a commenter stated that Workforce Development Boards could serve a brokering role in helping SREs establish relationships and referral processes with existing community-based providers. The commenter supported the Department's position to require SREs to engage in recruitment, stating that SRE outreach would increase the chances that IRAPs result in apprenticeship programs that reflect the communities in which they are located. Another commenter also supported the Department's decision to make SREs responsible for ensuring that EEO requirements are met, noting the Department's approach allows small businesses to focus on serving apprentices while also ensuring that their apprentices are protected from discrimination. Other commenters urged outreach to community-based organizations and education providers.

The Department agrees with commenters' observations that SREs can partner with others, such as States, networks, community partners, and industry partners, to create and implement comprehensive outreach strategies to reach diverse populations that may participate in IRAPs. The rule allows for such flexibility, and the Department encourages SREs to draw upon their relationships to conduct broad outreach and thereby increase participation in apprenticeships, especially in light of the skills gap and the opportunity it presents to involve previously sidelined workers. The Department anticipates that SREs' policies and procedures would largely reflect the needs of the employers offering IRAPs. For example, an SRE that primarily works with large corporations may devolve requirements for outreach to the extent fulsome recruiting programs already exist at these corporations. An SRE that works with smaller employers may itself create promotional materials and circulate opportunities within its network, schools, community organizations, and other membership groups that have not historically considered apprenticeships. With respect to the concern that SREs are not as well-positioned to be tasked with outreach responsibilities, the Department anticipates that SREs will



structure their policies and procedures in a way that utilizes their existing partnerships and resources.

A commenter recommended that the Department not impose any outreach requirements on the SRE. Rather, the commenter recommended that the SRE impose such requirements on the IRAPs by requiring them to attest or provide written documentation that they are adhering to Federal, State, and local laws pertaining to EEO, are proactively seeking “to reach diverse populations that may participate” in the IRAP program, and have established policies against “harassment, intimidation, and retaliation.” The commenter urged the Department to place the responsibility for compliance with EEO requirements on the IRAP rather than the SRE because the SRE should serve a compliance and assistance role rather than function as an enforcer of human resources policies and EEO laws. The commenter expressed concern about SREs bearing liability for the conduct of their IRAPs. Another commenter also cautioned the Department against prescribing any additional EEO requirements in this rule.

The Department intentionally placed outreach obligations on the SRE, because it anticipates that the SRE may have a broader reach and more resources to provide outreach to diverse populations on behalf of all of its IRAPs, which would be especially beneficial for smaller employers. The Department emphasizes that SREs bear the responsibility for complying with this paragraph, including having policies and procedures that require IRAPs’ adherence to applicable Federal, State, and local laws pertaining to EEO. The SRE must facilitate such adherence through its policies and procedures regarding potential harassment, intimidation, and retaliation. Regarding the concern that SREs will be held responsible for their IRAPs’ actions, the Department notes that the employer offering the IRAP, not the SRE, has the employment relationship with the apprentice, as discussed in § 29.22(a)(4)(x) and (g). Depending on relevant law, the employer would incur liability for violations of any applicable EEO laws just as it might for other types of workers. The Department emphasizes, however, that it could take action to suspend or derecognize an SRE if it deems that the SRE has failed to substantially comply with its responsibilities under this subpart, as discussed in § 29.27, including any failure to comply with the requirements of § 29.22(i). The Department intends that an SRE tailor its assistance to IRAPs based on the reasonably known needs of

the employers offering IRAPs recognized by the SRE.

Finally, the SRE is also required to assign responsibility to an individual to assist IRAPs with matters relating to this paragraph. For example, an SRE could designate a staff member in its human resources department to address questions from employers participating in its IRAPs. The Department did not receive any specific comments on this clause other than comments already discussed above. Thus, the Department has adopted § 29.22(i) as proposed.

#### SRE Policies and Procedures for Addressing Complaints Against IRAPs

Paragraph (j) of § 29.22 was added to the final rule. This paragraph requires that an SRE have policies and procedures for addressing complaints against IRAPs. Complaints may be filed by apprentices, prospective apprentices, an apprentice’s authorized representative, a personnel certification body, or an employer. SREs must make publicly available a list of the aggregated number of complaints pertaining to each IRAP in a format and frequency prescribed by the Administrator.

Several commenters suggested that the rule be amended to allow complaints to be filed against IRAPs. One commenter noted that there is no reason that an apprentice would have a basis to file a complaint against the SRE, and that complaints are much more likely to concern IRAPs. Another commenter stated that an apprenticeship program requires an evolving environment, which is often driven by complaints from apprentices and training agents. Another commenter raised concerns that an apprentice would have no recourse to resolve a complaint against an IRAP if the SRE were improperly influenced by bribes or other inducements. The commenter suggested that procedures be implemented to allow apprentices to file complaints against an IRAP in a manner that parallels § 29.12(c) in subpart A. Several commenters proposed that a process similar to proposed § 29.26 (finalized as § 29.25) be implemented that would allow for apprentices to file complaints regarding an IRAP with the Department. A commenter proposed that the Department publish a description of all complaints filed against IRAPs and the result of the complaint.

The proposed form contained a requirement for SREs to have a complaint and appeals process, but the proposed form was removed from the final rule for the reasons described above. The Department agrees with

commenters that the final rule should include a process to file complaints against an IRAP, and therefore has added § 29.22(j) to the final rule. The Department also agrees with the commenters who noted that apprentices are more likely to have complaints against IRAPs than SREs, and that apprenticeship programs may improve on the basis of complaints filed and feedback given. The Department weighed these concerns in adding paragraph (k) to the final rule. The Department determined, however, that SREs would be in the best position to resolve complaints involving IRAPs, because SREs recognize IRAPs and are responsible for remaining in a quality-control relationship with the IRAP consistent with the requirements of this rule. The Department has no reason to believe that bribes or inducements would be offered to SREs to impact the outcome of complaints against IRAPs. An allegation of improper conduct on the part of an SRE would be addressed through the complaint and review process against SREs in §§ 29.25 and 29.26.

The Department has determined that publishing a description of all complaints and their outcomes would be particularly difficult to administer. Many complaints may involve personal identifying information or sensitive details. However, the Department agrees that the existence of complaints against an IRAP is a useful measure that apprentices may weigh in electing to participate in a particular IRAP. For that reason, the Department has elected to require that SREs publish the aggregated number of complaints against each IRAP in a form and frequency prescribed by the Administrator.

#### Providing Notice of the Right To File Complaints

Paragraph (k) of § 29.22 has been added to the final rule. It requires an SRE to notify the public about the right to file a complaint with the SRE according to the process provided for in § 29.22(j) above. This paragraph reincorporates the list of entities in paragraph (j) that may file a complaint, as well as the requirement that any complainant be associated with the IRAP against which the complaint is filed. This requirement has been added to increase transparency and to inform the public about who has the right to file a complaint.

One commenter proposed that SREs be required to proactively inform apprentices, employers, and others about their rights to file a complaint. The Department agrees with the comment and therefore added paragraphs (k) and (l) of § 29.22 to the

final rule. The Department decided to require notification to the public to emphasize that complaint procedures should be broadly disclosed. As with § 29.22(j) above, an SRE's actual complaint processes and procedures must only extend to apprentices, prospective apprentices, an apprentice's authorized representative, a personnel certification body, or employers that are associated with the IRAP for the reasons explained above.

Paragraph (l) of § 29.22 was added to the final rule. It requires that an SRE notify the public about the right to file a complaint against it with the Administrator as set forth in § 29.25. The requirement was added because SREs were determined to be in the best position to publicize the right to file such complaints.

#### SRE Notice of Derecognition

Paragraph (m) of § 29.22 is a new paragraph that was added to the final rule. This paragraph requires an SRE that has received notice of derecognition pursuant to § 29.27(c)(1)(ii) or (3) to inform IRAPs and the public of its derecognition status. As discussed below in § 29.28, Derecognition's Effect on Industry-Recognized Apprenticeship Programs, a few commenters expressed concern over lack of specific notification to IRAPs and impacted apprentices when the Department derecognizes an SRE. One commenter suggested that the Department should notify not just the SRE but also the IRAPs and associated apprentices under the SRE of this action.

The Department shares commenters' general concerns regarding notification to IRAPs and impacted apprentices when an SRE has been derecognized. As discussed below in § 29.28, Derecognition's Effect on Industry-Recognized Apprenticeship Programs, the final rule requires the Administrator to update the publicly available list of SRE status to include derecognition, and to notify impacted IRAPs. Additionally, to maximize opportunities for impacted IRAPs and the public to learn about an SRE's derecognition status, the Department has added requirements for SREs regarding notification about derecognition. Final § 29.28(m) requires SREs to notify impacted IRAPs and to inform the public of their derecognition status. The Department may issue instructions that provide operational details for an SRE's notification of IRAPs and the public. Any such instructions will be available on a Departmental website so that SREs, IRAPs, and the general public can easily access the information.

#### SRE Notice of Fees Charged to IRAPs

Paragraph (n) of § 29.22 was added to the final rule. This paragraph requires an SRE to publicly disclose any fees it charges to IRAPs. The fee information should be in an electronic format that is easily accessible to the public; for example, an SRE could provide this information on its website. This requirement was not in the proposed rule. In the proposed rule, the Department stated in the economic analysis that it anticipates that SREs may charge a fee to IRAPs to help offset their costs, and that such a fee is "neither required nor prohibited."

Multiple commenters expressed concern about the lack of transparency and oversight of SREs and urged the Department to include stronger transparency and oversight provisions in the final rule.

The Department took the recommendations for greater transparency under advisement, and under paragraph (n) is requiring SREs to publicly disclose their fee information because this information will increase transparency and help IRAPs make informed decisions. Information about SRE fees should help potential IRAPs decide whether to participate in the program, and if so, from which SRE to seek recognition.

One commenter expressed appreciation for the Department's introduction of a "fee structure" and recommended that the Department not set a program-wide average fee because each industry, occupation, and SRE will have different costs. Another commenter stated that the lack of a requirement for IRAPs to make a financial contribution to the operation of SREs "raises serious concerns regarding the long-term viability of this system." In contrast, a commenter encouraged the Department to prohibit SREs from charging fees, arguing that such fees may lead to a "pay to play" apprenticeship system. Two commenters questioned why the Department proposed an apprenticeship system that will allow SREs to charge fees, thereby creating a significant burden for employers, when OA charges no fees for the same services. A commenter argued that SRE fees might block participation by employers in distressed areas with fewer resources. Several commenters expressed concern that, in their view, allowing SREs to charge fees would create a potential access barrier for small businesses. A commenter similarly expressed concern that some associations are unlikely to ask their members to pay an additional application fee that would fall outside

other membership costs, thereby resulting in substantially higher costs for such entities should they choose to participate as SREs.

In light of the wide variety of entities that may become recognized SREs and the wide variation in costs SREs will incur, the Department has maintained its stance in the final rule of neither requiring nor prohibiting SRE fees and allowing each SRE to set its own fees. The IRAP is designed to be a market-driven program. In the credentialing industry, many credentialing entities charge an application fee, an annual fee, or both to recoup their expenses.

Likewise, some SREs may find it necessary to charge fees to recoup their expenses. In contrast, some SREs may already charge a membership fee unrelated to this program, and therefore choose not to charge an additional fee directly tied to the recognition of IRAPs. Since participation in the IRAP is not compulsory, any costs incurred by SREs and IRAPs will be incurred voluntarily.

A commenter questioned "the ethics" of requiring local partners such as community colleges, high schools, and non-profit organizations, to pay fees to SREs for program approval.

Given that this is designed to be a market-driven program, the Department is neither requiring nor prohibiting SRE fees. Accordingly, an SRE may choose not to charge a fee to any IRAP or it may choose to waive its fees for educational institutions or non-profit organizations. And, based on the presence or absence of SRE fees, an educational institution or non-profit organization may seek recognition from a different SRE or may choose not to participate at all. The Department believes this level of flexibility is likely to result in higher quality apprenticeships, and in more entities participating in IRAP initiatives and seeking to address the skills gap.

Several commenters expressed concern about potential conflicts of interest related to fees and their effect on an SRE's decisions about which programs to recognize or derecognize.

To alleviate concerns about conflicts of interest, the Department has added a provision in § 29.21(b)(6) that requires prospective SREs to demonstrate in their application that they can effectively mitigate any potential or actual conflicts of interest. As explained above, the Department added this provision in an effort to ensure that each SRE applicant addresses any potential conflicts of interest through specific policies, processes, procedures, structures, or a combination thereof that will be assessed by the Department before the entity may be recognized as an SRE.

One commenter recommended that the Department require SREs to submit information on their business plans, including how they will finance the costs of conducting quality assurance activities.

As described above, paragraph (b)(3) of § 29.21 was amended to incorporate a requirement for an entity to indicate in its application that it has the financial resources to operate as an SRE. The Department anticipates that requiring a prospective SRE to address its financial resources at the application stage will help ensure the future financial stability of an SRE. In its application, a prospective SRE is welcome to mention whether it plans to rely on fees to recoup its expenses, and the Department expects that many SREs would rely on such fees.

#### SRE Records Retention Responsibilities

Paragraph (o) of § 29.22 has been added to the final rule. This paragraph requires SREs to ensure that records regarding each IRAP, including whether the IRAP has met all applicable requirements of this subpart, are maintained for a minimum of 5 years.

Many commenters argued that the Department lacks authority under the NAA to create the IRAP model. The basis for some of these concerns is the need for government oversight of apprenticeship. Several commenters expressed concern that the proposed rule does not provide adequate quality assurance of SREs and IRAPs. While commenters generally agree that it is necessary for information to be collected for the Department to effectively perform its functions with respect to IRAPs, some commenters expressed concerns about establishment of overly burdensome reporting or data collection requirements.

The Department has considered the various comments received and agrees that the final rule should clarify the Department's oversight of SREs and strengthen the regulatory requirements pertaining to SRE record retention. For this reason, the Department made changes to § 29.22 by adding this paragraph. In the proposed rule, the SRE record retention requirement was included in the Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form. This record maintenance requirement, in conjunction with the provision in § 29.23(c) specifying that the Administrator may use information described in § 29.22 to discharge recognition, review, suspension, and derecognition duties, clarifies and strengthens the Administrator's oversight role with respect to quality

assurance. In addition, it helps demonstrate that the Department is promoting standards of apprenticeship, consistent with the directions in the NAA, by requiring additional accountability from SREs. Requiring SREs to retain records will significantly aid the Administrator in ensuring that SREs are recognizing apprenticeship programs that adhere to the standards of high-quality apprenticeships. Similarly, this record retention requirement complements and strengthens the reporting requirements described in § 29.22(h). As explained earlier in this preamble, the Department has broad discretion and authority under the NAA in formulating and encouraging apprenticeship standards and programs. The record retention requirement is not expressly mandated by the NAA. The Department views the record retention requirement, among many other requirements promulgated by this final rule, as complying with and exceeding the open-ended standards in the NAA.

#### SRE Requirement To Follow Policies and Procedures and Notify Administrator of Significant Changes

Paragraph (p) of § 29.22 was added to the final rule. This paragraph requires SREs to follow any policy or procedure submitted to the Administrator or otherwise required by this subpart, and to notify the Administrator when it makes significant changes to its policies or procedures.

Many commenters argued that the Department lacks authority under NAA to create the IRAP model. The basis for some of these concerns is the need for government oversight of apprenticeship. In addition, many commenters expressed concern that the proposed rule does not provide adequate quality assurance of SREs and IRAPs. Some commenters encouraged the Department to coordinate with other Federal agencies to align policies and procedures. Moreover, some commenters suggested that the Department identify specific policies and procedures. Other commenters expressed support for allowing SREs flexibility to customize their approach to changing industry needs.

The Department has considered the various comments received and agrees that the final rule should clarify the Department's oversight of SREs and strengthen the regulatory requirements pertaining to SRE policies and procedures. For this reason, the Department made changes to § 29.22 by adding this paragraph. In the proposed rule, the SRE policy and procedure requirements were included in the Industry-Recognized Apprenticeship

Program Standards Recognition Entity Application Form. The Department agrees with commenter concerns about SREs maintaining flexibility to establish policies and procedures. Thus, specific requirements were not added to the final rule. Paragraph (p)'s policies and procedures requirement, in conjunction with the provision in § 29.23(c) specifying that the Administrator may use information described in § 29.22 to discharge recognition, review, suspension, and derecognition duties, clarifies and strengthens the Administrator's oversight role with respect to quality assurance. These measures are consistent with and an appropriate way for Department to follow the NAA's directive to promote standards of apprenticeship and bring together employers and labor for the formulation of programs of apprenticeship. By enhancing oversight and accountability of SREs, these measures help the Department ensure that SREs are recognizing apprenticeship programs that adhere to the standards of high-quality apprenticeship.

#### Conflicts of Interest

Proposed paragraph (e) of § 29.22 was not carried forward into the final rule. As proposed, it would have prohibited SREs from recognizing their own apprenticeship programs unless they provide for impartiality and mitigate conflicts of interest via specific policies, processes, procedures, structures, or a combination thereof. The proposed paragraph was revised and moved to § 29.21(b)(6) in response to comments, as explained below.

Numerous commenters suggested that SREs should not be allowed to recognize their own programs as IRAPs. One commenter argued that doing so would lead to fraud, waste, and abuse, and would compromise program integrity. Multiple commenters questioned whether an accreditation entity could ever accredit its own programs without introducing bias, with one commenter suggesting that the American Bar Association or Accreditation Council for Graduate Medical Education would never be allowed to own or consult for law or medical schools, respectively. A second entity suggested that accreditation bodies should never be in a position to regulate their own products. Other commenters argued that the proposed rule's suggestion that SREs establish firewalls would be insufficient to address conflicts. A commenter stated that an apprentice aggrieved by an IRAP may have no recourse other than to file a complaint with an SRE that, in some

cases, could effectively be the same entity.

Other commenters suggested that the prohibition on an SRE recognizing its own IRAPs needed to be strengthened. One commenter proposed that Section V.E. of the proposed form needed strengthening because it allowed strengthening to attest that no conflicts were present. A different commenter requested that the Department identify the “bright lines” in relation to the roles of SREs versus employers, institutions of higher education, and other partners that are necessary to develop high-quality apprenticeships. Several commenters proposed that officers, directors, and managers of SREs should be prohibited from owning or controlling any entities offering IRAPs. Still other commenters requested that the Department impose clear standards regarding impartiality and conflict minimization.

One commenter proposed that in light of proposed § 29.25, an SRE could recognize its own program to receive expedited registration and benefits under subpart A, including Davis-Bacon wage rates and funding under WIOA.

Several commenters expressed a concern that proposed paragraph (e) seemed to allow SREs to approve apprenticeship programs over other sponsors who may be competitors. One commenter suggested that allowing a self-interested entity to regulate a competitor violates due process.

Still other commenters suggested that the conflict of interest approach in the proposed rule was reasonable. One commenter suggested that the approach struck the appropriate balance between putting in place meaningful measures to mitigate conflicts while simultaneously minimizing burdens. One commenter noted that the Department’s provisions for demonstrating impartiality appeared similar to those in ANSI 17024. Another commenter noted the importance of allowing SREs to offer consultative services in order to expand apprenticeship opportunities, and the commenter urged the Department to take a reasonable approach to meeting the SRE impartiality requirements.

The Department agrees that an SRE recognizing its own programs presents actual or potential conflicts of interest, so the Department has decided to require that all SREs demonstrate that they can effectively mitigate such conflicts of interest. To accomplish this, proposed § 29.22(e) was moved to § 29.21(b)(6) where other application requirements to become a recognized SRE are addressed. The Department has decided not to prohibit SREs from recognizing their own IRAPs, because

the Department has found such a prohibition unnecessary if an SRE mitigates the inherent conflicts of interest according to the policies and procedures submitted with its application for recognition. In addition, many types of companies, such as professional services firms, routinely mitigate conflicts of interest.

As part of the application process, the Department intends to require, at a minimum, that each entity disclose potential conflicts and provide a firewall between SRE and prospective IRAP staff, or assign key tasks to an independent third party. The Department expects that a firewall would prohibit program designers from involvement in recognition decisions and would prohibit SRE personnel who receive complaints from reporting through the same supervisory channels as IRAP managers. To ensure that SREs are recognizing apprenticeship programs that adhere to the standards of high-quality apprenticeships, the Department envisions that SREs’ processes would further require that the recognition, quality-control, and suspension and derecognition processes and procedures are designed and administered to treat any nonaffiliated IRAPs equitably. DOL intends to enforce such processes, procedures, or structures involving potential conflicts of interest through the quality assurance process in 29.23 and the review process in 29.26.

The Department shares the concern that the right of an apprentice to file a complaint under § 29.22(j) and (k) could be jeopardized where the IRAP and the SRE are related entities. The Department anticipates that SREs’ conflict of interest policies and procedures will address this possibility, guarantee fairness, and guarantee an apprentice the right to file a complaint without being subject to retaliation. An apprentice may also file a complaint against an SRE, in accordance with § 29.25, that could lead to the Administrator’s review of the SRE under § 29.26. Additionally, certain Federal, State, and local laws, such as EEO laws, prohibit retaliation for filing a complaint and, if applicable, provide apprentices another avenue of relief.

The Department agrees that the conflict-of-interest provisions in proposed § 29.22(e) needed strengthening, which the Department has accomplished by requiring every SRE to address conflicts of interest in their applications. The Department has also eliminated the form in the proposed rule that contained an attestation relating to conflicts of interest, and has replaced the attestation with the substantive requirements now

contained in § 29.21(b)(6). The Department agrees that officers, directors, and managers of SREs that own or control prospective IRAPs would present a potential conflict of interest. The Department expects that such conflicts would be disclosed and mitigated as part of the application requirement imposed by the final text of § 29.21(b)(6).

In response to the comment concerned with an SRE’s ability to recognize its own program to receive expedited registration and benefits under subpart A, the Department notes that proposed § 29.25 was not carried forward into the final rule, as explained below. Accordingly, IRAPs will not be able to receive expedited registration under subpart A.

The Department does not share the concern that an SRE’s ability to recognize its own programs would somehow allow SREs to regulate competitors. Seeking recognition as an IRAP is a voluntary process, and any employer may decide to meet its workforce training needs by using registered apprenticeship under subpart A, industry-recognized apprenticeship under subpart B, or any other model of the employer’s choosing. In fact, even without this regulation, the Department expects that various entities could—and would, given the nature of the skills gap and the opportunities it represents—develop relationships and apprenticeship programs to help equip America’s workers with the skills they need.

The Department appreciates the opinion of commenters who found the Department’s proposed approach to put in place meaningful but not burdensome protections and who found the Department’s proposed approach to be similar to impartiality requirements in ANSI 17024. The Department has revised the text of proposed § 29.22(e) in the final rule, as discussed above, in order to strike a balance between minimizing burdens while mitigating conflicts of interest.

Paragraph (f) of proposed § 29.22 would have required that an SRE either not offer services, including consultative and educational services for example, to IRAPs that would impact the impartiality of the SRE’s recognition decisions, or the SRE must provide for impartiality, and mitigate any potential conflicts of interest via specific policies, processes, procedures, structures, or a combination thereof. This proposed paragraph was amended and moved to § 29.21(b)(6) in response to comments, as explained below.

Numerous commenters suggested that SREs should be prohibited from offering

consultative services. One commenter suggested that the prohibition on offering consultative services should be extended to related entities or subsidiaries of the SRE. One commenter proposed that consultative services be further defined to make the paragraph clearer. A different commenter questioned who would be able to provide consultative services to IRAPs, other than SREs.

One commenter proposed that a conflict of interest that develops after an SRE's recognition should constitute a substantive change that must be submitted to the Administrator. Several commenters proposed that the potential conflicts and the mitigation processes, procedures, or structures be subject to a public disclosure requirement. One commenter suggested that best practices for preventing conflicts be collected in an online repository. Another commenter proposed that all communications between SREs and IRAPs be made publicly available.

Other commenters suggested that evidence of conflicts should trigger heightened scrutiny from the Department. A commenter questioned how often the Department would identify conflicts of interest.

Numerous commenters suggested that conflicts beyond those discussed in proposed § 29.22(e) and (f) could be present. Several commenters pointed to the potential for financial conflicts. Multiple commenters suggested that SREs will have a financial incentive to recognize as many IRAPs as possible. One such commenter suggested that SREs provide a plan for how they will sustain losses from reduced fees if the SRE must derecognize IRAPs. The commenter suggested that such a financial tension has been a central challenge for the higher education accreditation system. A different commenter suggested that subpart B may develop into a pay-to-play apprenticeship system whereby only employers with significant resources are able to afford recognition. A commenter suggested that the financial incentive to seek fees throws into question the impartiality and objectivity of an SRE's processes, procedures, or structures.

One commenter suggested that the Department establish conflict of interest mitigation requirements specific to the type of organization identified in § 29.20(a)(1). One commenter proposed an extensive list of proposed revisions to the rule for addressing conflicts of interest. Among the proposals were that only non-profit organizations should be eligible to become recognized SREs, that all SRE expenses related to standards-setting and training be paid by a trust,

that SREs and IRAPs be required to provide to the Department any documentation relating to compliance, and that the Department should develop model policies to address anti-harassment, whistleblower protections, HIPAA compliance, conflicts of interest, complaints, intellectual property, lobbying, expenses, and gifts and entertainment.

Still other commenters suggested that the conflict of interest approach in the proposed rule was reasonable. One commenter suggested that the approach strikes the appropriate balance between putting in place meaningful measures to mitigate conflicts while simultaneously minimizing burdens. One commenter noted that the Department's provisions for demonstrating impartiality appeared similar to those in ANSI 17024. Another commenter noted the importance of allowing SREs to offer consultative services in order to expand apprenticeship opportunities, and the commenter urged the Department to take a reasonable approach to meeting the SRE impartiality requirements.

The Department agrees that SREs are likely to be in the best position to offer consultative services to IRAPs and therefore decided not to prohibit the practice in the final rule. Were SREs to be prohibited from offering such services to employers or prospective IRAPs, the restriction could stifle the expansion of high-quality apprenticeships. In order to strengthen the provisions in proposed § 29.22(f), the Department has moved the requirement to § 29.21(b)(6), thereby requiring every SRE to address conflicts of interest arising from offering services in the SRE's application. Proposed § 29.22(e) and (f) have been combined into one paragraph in § 29.21(b)(6) because proposed § 29.22(e) and (f) addressed different potential conflicts, but imposed the same substantive requirement of mitigating such conflicts through policies, procedures, structures, or a combination thereof. The text of proposed § 29.22(f) has also been amended to clarify that an SRE certifying its own IRAPs or offering consultative services are nonexclusive examples of the types of conflicts that an entity applying to be an SRE must address. The language in proposed § 29.22(f) has been further broadened by clarifying that providing services to actual or prospective IRAPs may present a conflict of interest.

While the Department has determined that related entities or subsidiaries need not be prevented from offering services, the Department agrees that the actions of entities related to the SRE could lead to potential conflicts of interest. To

address this concern, the Department has added § 29.21(b)(4) to the final rule. This paragraph requires entities applying to become recognized SREs to disclose relationships with subsidiaries or related entities that could impact the SRE's impartiality. The Department intends that such actual or potential conflicts would be mitigated by providing processes, procedures, structures, or a combination thereof as required by § 29.21(b)(6).

The Department agrees that ambiguity existed in the term "consultative services." The final rule deletes the term "consultative" and instead requires that an SRE address its processes, procedures, structures, or a combination thereof for providing services to actual or prospective IRAPs. The Department has determined that any compensated service that SREs offer to actual or prospective IRAPs that is not required by this subpart and not described in the SRE's processes and procedures could present a potential conflict. The Department intends for "services" to be broader than "consultative services", and to apply to any type of advice, assistance, or consultation not required by this subpart for which the SRE seeks compensation. Services required by this subpart include, for example, recognizing or rejecting applications from IRAPs, collecting data from its IRAPs, and remaining in an on-going quality-control relationship with its IRAPs, as well as any services included in the SRE's policies and procedures submitted to the Department. If, however, an SRE were to offer employers advice regarding credentialing or offer training courses to non-IRAPs, such services would fall within § 29.21(b)(6), unless they were required by the processes and procedures submitted to the Department.

The Department agrees with the commenter who suggested that a conflict of interest that develops after an SRE is recognized should constitute a substantive change that would result in the SRE updating its policies and procedures and notifying the Administrator. The language in proposed § 29.22(e) and (f) required an SRE to either not recognize its own programs and not offer consultative services, or, that it describe in detail in its application how it would mitigate any potential conflicts of interest. The Department anticipates that some SREs may not know during the application process whether an affiliated employer, local, or other related entity may wish to apply for recognition or request services. The Department resolved this comment by requiring that all entities

mitigate conflicts of interest in their applications to become recognized SREs. In addition, the Department added § 29.22(p) to the final rule, which requires that SREs follow all policies and procedures submitted to the Department and that SREs notify the Administrator when they make significant changes to their policies or procedures. Accordingly, an SRE could notify the Department in its application that the SRE will not recognize any related entity or subsidiary as an IRAP. If the SRE unexpectedly received an application for recognition from a related entity, but did not have policies and procedures in place sufficient to mitigate the conflict of interest, the SRE would not be allowed to recognize the prospective IRAP unless updated policies and procedures were provided to the Administrator.

The Department has determined that requiring SREs to publicly disclose their conflict of interest procedures for compilation in a publicly available repository would be difficult to administer for a variety of reasons. The Department anticipates that such policies and procedures would be highly individualized such that a State agency's procedures would be of little benefit to a non-profit organization. Furthermore, such procedures would normally include potentially sensitive information about business operations as well as employees or officers that would be burdensome to redact on a rolling basis. The Department has similarly determined that requiring all communications between SREs and IRAPs to be publicly disclosed would constitute an immense and unnecessary burden.

The Department agrees that conflicts of interest may require heightened scrutiny of applicants, and the Department strengthened the conflict of interest requirements related to the application, as explained above. The Department did not establish a cycle for identifying conflicts of interest. Most Departmental review of potential conflicts of interest subsequent to an SRE's recognition would likely occur because an SRE provided updated processes and procedures under § 29.22(p), as part of the quality assurance processes provided for in § 29.23, and through the review process under § 29.26.

The Department agrees that potential or actual conflicts of interest could arise beyond an SRE recognizing its own IRAPs or offering services to current or prospective IRAPs. The Department, therefore, has amended the regulatory text of the final rule to make the list of conflicts that must be addressed

nonexhaustive. Regarding potential financial conflicts, the Department notes that entities must demonstrate their ability to be financially stable for the next 5 years under § 29.21(b)(3). The Department will ensure that an entity's application accounts for the possibility of having to suspend or derecognize IRAPs if necessary, thereby ensuring that its financial viability is not based on certifying as many IRAPs as possible at the expense of recognizing only high-quality programs.

The Department removed the attestation in Section V.E. of the proposed Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form that would have addressed conflicts of interest by requiring an attestation. By replacing the attestation in the proposed form with the application requirement in § 29.21(b)(6), the Department is requiring that entities must address actual or potential conflicts of interest in their applications or be ineligible for recognition from the Department. In addition, the Department requires in § 29.21(a) that all entities attest that information provided is true and accurate. Thus, an entity that makes a false statement regarding conflicts of interest in its application may still be subject to potential criminal penalties under 18 U.S.C. 1001.

The Department agrees that different types of entities that are eligible to become recognized SREs could present different potential conflicts of interest. The Department anticipates that applicants will be in the best position to identify and mitigate actual or potential conflicts of interest that may be unique to the type of entity applying. No change to the text has been made in response to this comment.

The Department agrees that SREs should be required to provide requested materials to the Administrator, so the wording in § 29.23(b) has been changed from *should* to *must*. However, no change to the text has been made to require IRAPs to share information with the Department, because the Department collects no information directly from IRAPs. The Department declines to limit SRE eligibility to non-profit organizations or to require that operating expenses be paid from a trust. The Department envisions that model policies will necessarily be situation-specific and that a model policy for a consortia of private entities may not meet the needs of model policies for an educational institution or community colleges. Model policies would necessarily be dependent on the type of entity, the variety of actual and potential conflicts present, and the

geographic scope of the entity. The Department cannot provide model policies tailored to each type of organization and each type of potential conflict in the preamble to the final rule.

#### Section 29.23 Quality Assurance

Section 29.23 provides that the Administrator may request and review materials from an SRE to determine whether the SRE is in conformity with the requirements of the subpart and may conduct periodic compliance assistance reviews. It also states that SREs must provide requested materials, consistent with § 29.22(a)(3), and clarifies that the Administrator may use the information described in this subpart to recognize, review, suspend, or derecognize SREs.

Many commenters expressed concern that the proposed rule did not provide adequate monitoring and quality assurance of SREs and IRAPs. Commenters also warned that the proposed rule did not provide sufficient authority to the Department to take action when IRAPs fail to protect apprentices. A few commenters stated that the proposed rule lacked quality assurance mechanisms to hold IRAPs or SREs accountable for poor program outcomes. Other commenters faulted the Department for not including a quality assurance mechanism for direct review of IRAPs.

The Department has made changes to § 29.23(a) and (b) and added a new paragraph (c), as discussed further below, to strengthen its oversight of SREs. The Department acknowledges commenters' concerns about oversight of IRAPs. Nevertheless, the Department declines to add additional measures in this section for Departmental oversight of IRAPs. The Department believes that SREs, following all the requirements of this rule, are best situated to directly monitor IRAPs, especially given SREs' responsibilities for recognizing IRAPs, developing and implementing policies and procedures applicable to the industries and occupational areas in which they will be recognizing IRAPs, and ensuring that the IRAPs they recognize continue to meet the standards of high-quality apprenticeships as set forth by the Department. It is also worth noting that the Department will be collecting and assessing data about the performance of IRAPs, as discussed in § 29.22(h). Further, as discussed in § 29.22(a)(4), the Department's standards of high-quality apprenticeship set forth the requirements for safeguarding the welfare of apprentices and ensuring quality training, progressively advancing skills, and industry-relevant credentials. As the rule makes clear, an

IRAP must comply with the requirements of high-quality apprenticeships and with its SRE's policies and procedures. The SRE must also establish a quality-control relationship with its IRAPs that meets the requirements of § 29.22(f). This rule gives the responsibility of monitoring IRAP compliance to the SREs in the first instance; the Department then exercises its oversight authority to ensure that SREs and, by extension, the IRAPs they recognize are meeting the requirements of this subpart. Thus, the Department retains ultimate oversight authority of the IRAP program through its oversight of SREs. In response to several comments, discussed below, the Department has added language to § 29.23 to clarify its quality assurance role.

Commenters recommended that the Department require regular reviews and assessments of SREs and IRAPs by the Administrator. One commenter recommended that the Department conduct such assessments on a quarterly basis. Another commenter compared SREs to SAAs in the registered apprenticeship context and suggested that the Department similarly conduct assessments through on-site reviews, self-assessments, and reviews of SREs' policies and procedures.

The Department agrees with commenters' suggestions regarding the Administrator's ability to conduct reviews of SREs, but not the mandated frequency, and has added that the Administrator "may conduct periodic compliance assistance reviews of [SREs]" to § 29.23(a). The Department intends that these reviews be an assessment of the SRE's compliance with this subpart and an opportunity to provide assistance that the SRE may need to come into compliance with this subpart. The Department envisions engaging in a collaborative process with the SRE, as appropriate, to assist the SRE in achieving compliance prior to initiating any further review under § 29.26. The Department also notes, however, that the results of a compliance assistance review could lead to a formal review under § 29.26.

The Department disagrees with the recommendation to mandate quarterly reviews of SREs. The Department believes that the quality assurance set forth in this section, including the Administrator's ability to request information when necessary, is sufficient. Quarterly reviews of SREs would be unduly burdensome, unnecessary, and unlikely to yield useful information. Rather, the yearly SRE reporting requirements in § 29.22(h), combined with the

Department's authority under this section to conduct periodic reviews of SREs and request information as needed is the most efficient manner for the Department to obtain relevant information and monitor compliance. The Department may also initiate a review of an SRE under § 29.26 if it receives information indicating that the SRE is not in substantial compliance with this subpart or that it is no longer capable of continuing as an SRE.

The Department has also made a minor modification to § 29.23(a) to improve readability by changing "to ascertain [SREs]' conformity" to "to ascertain their conformity."

Several commenters noted that the proposed rule only requires that the SRE "should" provide materials requested by the Administrator, suggesting an aspirational goal rather than a requirement to comply with the Administrator's requests. The Department has changed the language in § 29.23(b) from "should" to "must" and added "to the Administrator" to clarify that SREs are required to provide any program information to the Administrator upon request.

Another commenter recommended adding a provision to § 29.23 requiring that the Administrator regularly evaluate IRAPs using the performance data provided by SREs. Other commenters made similar suggestions about using data and performance metrics to monitor and evaluate IRAPs and SREs. The Department agrees with the commenters' recommendation to add an additional provision to § 29.23 concerning data and performance information. To address this, the Department has added a new provision at paragraph (c): "The information that is described in this subpart may be utilized by the Administrator to discharge the recognition, review, suspension, and derecognition duties outlined in § 29.21(c)(1), § 29.26, and § 29.27 of this subpart." The Department has added this provision to clarify that any information collected under this subpart, which includes information provided to the Department under § 29.22(h), may be used to monitor and evaluate SREs at the recognition phase, as a part of the Administrator's review of the SRE, or as a part of suspension or derecognition. The data and performance requirements detailed in 29.22(h) also allow the Department to collect and review program-level outcomes. In performing quality assurance activities, the Administrator may learn or otherwise come into the possession of commercial or financial information of SREs, IRAPs, and any other entities serviced by these entities.

FOIA exemption (b)(4) exempts from mandatory disclosure under FOIA trade secrets and certain commercial or financial information. The Trade Secrets Act prohibits the disclosure of trade secrets and confidential business information without legal authority. The Department will keep as private and confidential, and will not disclose, unless required by law, any information provided to the Department under this section that is "both customarily and actually treated as private by" the SRE or IRAP. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

As for the comment about regularly assessing the data, the Department notes that it will utilize the data at SRE recognition, every 5 years. Otherwise, the Department may also assess data annually upon receipt of the required information from SREs, in response to a complaint against an SRE, or upon review of an SRE under § 29.26. The Department has determined that there is no additional need to specify how frequently the Administrator will be assessing data and performance metrics.

#### Section 29.24 Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs

Section 29.24 requires the Administrator to make publicly available a list of SREs and the IRAPs they recognize. Section 28.28 requires the Administrator to include an SRE's suspension on this list. As discussed below, final § 29.28 now requires the Administrator to include derecognized SREs on this publicly available list mandated by § 29.24.

A few commenters discussed § 29.24. Commenters primarily sought clarification relating to implementation and maintenance of this list. Others recommended the Department make publicly available on a website many other types of documents associated with the SRE recognition process and performance data for IRAPs. Some commenters suggested more specificity with regard to how the Department will collect information necessary for the list, and the frequency and method by which the Department will make this list publicly available.

The Department added information to expand the usefulness and purpose of the list. As discussed below, final § 29.28(b) requires the Administrator to update this public list to reflect recognition, suspension, and derecognition of SREs and IRAPs. Accordingly, the Department has modified § 29.24 to include SREs suspended and derecognized under § 29.27, not just SREs favorably

recognized, as well as IRAPs that an SRE has suspended or derecognized under § 29.22. The Department's publication of a list of SREs and IRAPs now serves two purposes: To inform the public, including apprentices and potential apprentices, of IRAPs that have been recognized by an SRE; and to apprise the public and IRAPs of any changes to an SRE's recognition status, including suspension and derecognition.

The Department plans to provide SRE and IRAP recognition information in an easy-to-access, user-friendly format on the Department website. As SRE applications are reviewed and granted recognition, the Department will refresh this recognition information periodically, clearly noting the date of the most recent update. As discussed in § 29.22(h), the Department agrees with commenters' concerns about additional transparency and is now requiring performance reporting directly to the Department. As for SRE application information, the Department responded to a number of concerns from commenters regarding the SRE application process in § 29.21 by strengthening the required submissions for consideration by the Department.

The Department encourages interested parties to check the Department's website frequently for the current list of SREs and IRAPs. Any clarifications about this list of SREs and IRAPs will be issued via the Department's website.

#### Proposed § 29.25 (Expedited Process for Recognizing Industry Programs as Registered Apprenticeship Programs)

In the NPRM, § 29.25 proposed a process for the Administrator to consider IRAPs for expedited registration under subpart A's registered apprenticeship program whereby recognized IRAPs could have requested that OA register it within 60 calendar days of the Administrator's receiving all information necessary to make a decision. In this final rule, the NPRM's proposed provisions are not carried forth and are deleted. Accordingly, §§ 29.26 through 29.31 of the NPRM have been redesignated in this final rule as §§ 29.25 through 29.30.

While the Department received no comments supporting the proposed expedited registration process, some commenters questioned the purpose of the expedited registration proposal.

One commenter asserted that the proposed rule provided no explanation as to why, if an IRAP seeks approval to become a registered apprenticeship program, it receives special treatment and is handled more expeditiously than any other apprenticeship program.

Another commenter suggested that the final regulations should specify, explicitly and clearly, the ineligibility of IRAP participants from Davis-Bacon and State prevailing-wage coverage. Other commenters asserted that an expedited process for IRAPs would be insufficient to ensure IRAPs meet the same quality standards as registered apprenticeships, put organizations seeking registration under subpart A at a disadvantage, and lessen the apprenticeship opportunities for women, minorities, and other protected classes. Other commenters suggested that an expedited registration process could interfere with registered apprenticeship program management, integrity, and operations in States where an SAA is the registration agency for programs registered under subpart A. Another commenter suggested that SAAs should have the opportunity to approve or reject IRAPs based on existing State standards for registered apprenticeships. Numerous commenters suggested that the Department should remove the proposal for expedited registration.

E.O. 13801 directed the Department to assess whether proposed regulations might provide IRAPs recognized under subpart B with expedited and streamlined registration under the Department's registered apprenticeship program. Accordingly, the NPRM included proposed regulatory text that would permit such an expedited and streamlined registration. The NPRM also included some operational parameters specifically authorizing the Administrator to request additional information and requiring the Administrator to make a decision within 60 days of receiving all necessary information. None of the public comments supported the proposal permitting the Administrator to use an expedited and streamlined process for registration of IRAPs to become registered apprenticeship programs. Given this lack of public support, and upon consideration of the comments either opposing or raising questions about the need for expedited registration, Department agrees with the commenters' concerns and is not finalizing the proposal regarding expedited registration. As noted in the NPRM's preamble, DOL does not expect many, if any, apprenticeship programs to seek recognition by an SRE and registration under subpart A. The Department has determined that requirements, and associated processes and procedures, established under subpart A continue to be appropriate and useful in the administration of the registered apprenticeship system by the

Department and its partners in recognized SAAs.

#### Section 29.25 Complaints Against Standards Recognition Entities

Section 29.25 of this final rule (designated as § 29.26 in the NPRM) establishes the procedure for reporting complaints against SREs arising from SREs' compliance with the subpart. This section provides an avenue for the Administrator to learn of relevant information that might impact the SRE's continued qualification under § 29.21(b) and for potential consideration for any actions taken under § 29.26, § 29.27, or both.

Paragraph (a) of § 29.25 in this final rule provides that a complaint arising from an SRE's compliance with this subpart may be submitted by an apprentice, the apprentice's authorized representative, a personnel certification body, an employer, a Registered Program representative (someone authorized to speak on behalf of a registered apprenticeship program), or an IRAP. Some commenters suggested that the complaint process against an SRE should be open to any interested party to ensure that any party with information in regard to an SRE has an opportunity to submit information to the Administrator. One commenter supported the proposal whereby only the apprentice, the apprentice-authorized representative, an employer, or an IRAP would be eligible to initiate a complaint about an SRE in order to avoid possible conflicts of interest that may arise with other entities.

The Department's position is that an apprentice, an apprentice's authorized representative, a personnel certification body, an employer, or an IRAP are in the best position to identify potential noncompliance on the part of an SRE. While other individuals or entities may seek to gain the Department's attention and express interest in the matter, the Department may not be able to readily confirm their expertise, experience, or association with the SRE, or their particular relevance to the filing of a complaint. Nothing precludes these individuals or entities from providing the Department with information, if they believe it has relevance and usefulness to a complaint against an SRE. It is the Department's purview to assess that information and determine propriety and relevance. Therefore, the Department declines to expand the list of individuals or entities who may file a complaint against an SRE.

Additionally, the final rule deletes "a registered apprenticeship representative" from the list of individuals or entities that can file a



complaint against an SRE under this section. As detailed above in discussion of proposed § 29.25, the Department is removing from the final rule the proposal for an expedited registration process for IRAPs recognized by an SRE seeking registration under subpart A. Therefore, a Registered Program representative will not automatically be in a position of knowledge, experience, or expertise with an SRE in the context of the IRAP initiative established under subpart B, and for the reasons discussed above, cannot file a complaint. Accordingly, § 29.25(a) of this final rule carries forward the provisions proposed in the NPRM as § 29.26(a) but removes references to a Registered Program representative.

Proposed paragraph (b) described the requirements for complaints submitted to the Administrator. The proposed language required, among other things, that the complaint be in writing and be submitted within 60 days of the circumstances giving rise to the complaint, contains relevant information, and has what is needed to determine whether the complaint warrants review under proposed § 29.27 (finalized as § 29.26). Numerous commenters stated that the proposal was unduly restrictive, because complaints must be filed within 60 days of the incident the complaint arises from, not within 60 days of when the complainant acquires actual knowledge of the circumstances giving rise to the complaint. Some commenters requested the time limit for filing a complaint be extended to at least 180 days, which aligns with the time limit for filing a discrimination complaint at the EEOC. Another commenter suggested a 90-day timeframe for filing a complaint. Finally, one commenter recommended the Department provide instructions for complaints submission via online portals or specific mailing addresses.

The Department agrees with concerns that the time period for filing a complaint should be expanded and that more specificity is needed. The Department has adopted in the final rule two changes recommended by commenters. In the final rule the time period is changed from 60 days to 180 calendar days, and the starting point for the time period is the complainant's actual or constructive knowledge of the circumstances giving rise to the complaint, not simply when the circumstances occurred. The Department has also removed from paragraph (b) the proposed requirement for copies of pertinent documents and correspondence to accompany the complaint submission to the Administrator. The Administrator can

request relevant parties provide copies of these documents during the Department's review of the complaint. The Department has removed this sentence due to the potential legal issues regarding complainants' ability to possess and disclose proprietary information. The Department has adjusted final § 29.25(b) accordingly. The Department has not adopted the recommendation to include instructions for complaint submission via online portals or specific mailing addresses into the regulatory text. Website and mailing addresses may change and are easier to update on the Department's website and in technical assistance materials.

Paragraph (c) of § 29.25 in this final rule clarifies that the Department will address complaints submitted to the Department only through the review process outlined in § 29.26. One commenter recommended that the process outlined in proposed § 29.26 (finalized as § 29.25) should not be the only means to resolve a complaint against an SRE under this subpart. As discussed below, the review of an SRE established by § 29.26 is thorough and ensures a fulsome process for hearing and addressing complaints against SREs. Adhering to this singular process, rather than permitting the possibility of alternative options for handling complaints, will maintain uniformity, consistency, and transparency in the Department's oversight of SREs and administration of the IRAP program. Additionally, the Department notes that complaints or matters regarding SRE conduct that are beyond the scope of § 29.25 (such as adherence to applicable Federal, State, and local laws for EEO) should be handled by the appropriate, applicable authority. Therefore, the Department has determined that for the purposes of complaints brought against SREs under § 29.25, the Administrator's review of SREs following requirements outlined in § 29.26 is adequate and appropriate for SREs. No change was made in the regulatory text in response to this comment.

In the NPRM, proposed § 29.26(d) (redesignated as § 29.25(d) in the final rule) provided that nothing in the section would preclude a complainant from pursuing any remedy authorized under Federal, State, or local law. The Department did not receive any comments on paragraph (d). The final rule adopts the section as proposed with the exception of the two changes discussed above in § 29.25(a) and (b).

#### Section 29.26 Review of a Standards Recognition Entity

Section 29.26 of this final rule (designated as § 29.27 in the NPRM) outlines the process for the Administrator's review of SREs. It allows the Administrator to initiate a review that may ultimately result in suspension of the SRE, if the Administrator receives information indicating that an SRE is either not in substantial compliance with this subpart or may no longer be capable of continuing as an SRE. This section also provides an SRE with the opportunity to respond to the Administrator with relevant information, which could include information showing the SRE has acknowledged and taken steps to resolve any deficiency, making suspension unnecessary. The Department has made clarifying edits to this section.

One commenter suggested that proposed § 29.27 (Review of a Standards Recognition Entity) would be more accurately titled "SRE application and review process." The Department did not change the title of proposed § 29.27 (finalized as § 29.26) as suggested because a formal review under this section would involve an already-recognized SRE and not a review of an initial application for recognition. The application process to become a recognized SRE is addressed in § 29.21.

Another commenter suggested that complaints about SREs need to be heard and appropriately addressed and that a mechanism is needed for forcing immediate derecognition of an IRAP found in violation.

The Department appreciates the concern that complaints against an SRE need to be heard and appropriately addressed. The Department has determined that this section, with the clarifying edits noted below, will ensure that complaints against SREs are heard and appropriately addressed. The Department did not incorporate changes into this section that would require immediate derecognition of an IRAP found to be in violation. The Department notes that this section addresses complaints against SREs and not the IRAPs that they recognize. A review under this section could be initiated based on an SRE's failure to ensure that its IRAPs comply with this subpart. DOL anticipates that SREs would ultimately derecognize IRAPs that remain in violation of the SRE's requirements or this subpart after appropriate fact-finding is conducted. If an SRE allows IRAPs to remain out of compliance with § 29.22 or other provisions of this subpart, the SRE itself

may be suspended or derecognized. No change was made in the regulatory text in response.

Paragraph (a) of § 29.26 in this final rule explains that an Administrator may initiate review of an SRE if it receives information indicating that the SRE is not in substantial compliance with this subpart, or that the SRE is no longer capable of continuing as an SRE. For example, the Administrator may learn of such information through an SRE's notification of a substantive change under § 29.21(c)(2), a complaint under § 29.25, or an SRE's reports under § 29.22(h), among other methods. The Department does not intend for the receipt of information to be limited to formal channels such as mail or email. The Department may initiate reviews if evidence indicating that an SRE may not be in substantial compliance is available in the public domain.

Several commenters suggested that, to be allowed to operate, SREs should be required to remain in full compliance with applicable laws and regulations, rather than being allowed to be substantially compliant. A commenter suggested that full compliance would be in the best interest of apprentices. Alternatively, the commenter proposed that SREs be permitted to remain in substantial compliance for a limited period of time. One commenter proposed that substantial compliance be further defined to explain whether the Department considers some regulatory requirements to be more important than others. The commenter characterized substantial compliance as affording leeway, and suggested that the Department is bound to make arbitrary decisions if it does not further explain the types of noncompliance that will not result in suspension or derecognition.

A commenter proposed that the Department clarify how it would determine that an SRE is no longer capable of functioning. Another commenter suggested that reviews should be mandatory and ongoing, rather than left to the discretion of the Administrator.

The Department has determined that it would be most appropriate to carry forward the standard of substantial compliance in the final rule. However, the Department anticipates that SREs generally will be able to achieve full compliance with this subpart. The standard of substantial compliance allows the Administrator to suspend or derecognize an SRE for failure to fulfill any requirement of this subpart, except for minor technical, mathematical, or clerical errors that can in all likelihood be corrected by the SRE once brought to the SRE's attention. Suspending or

derecognizing SREs for minor technical, mathematical, or clerical errors that do not impact the quality of training delivered by IRAPs may not be in the best interest of apprentices because it could result in an IRAP having to apply to a different SRE for recognition. The standard of substantial compliance is not intended to suggest that certain provisions in this subpart are less important than others. The Department has determined that emphasizing certain standards over others in the review, suspension, and derecognition process would be unworkable and has determined it to be appropriate to instead focus on the underlying violation and its potential impact on apprentices. For example, the Administrator would not suspend an SRE for omitting a digit in an IRAP's address resulting in a failure to report up-to-date contact information. If, however, an SRE chose not to report updated contact information as required, the SRE would have failed to fulfill the requirements of this subpart in a manner not based on a minor technical, mathematical, or clerical error. The standard of substantial compliance is carried over from the NPRM and text in § 29.26(a) is adopted without changes.

The Department has similarly decided not to limit the period for which an SRE can be substantially compliant. The Department expects that full compliance will be achieved by SREs and, as discussed above, it has determined that certain minor deficiencies may be more appropriately addressed through the procedures provided for in § 29.23 in the first instance. However, the Department has determined that such a timeframe is not susceptible to precise definition and, even if it were, such instances can and should be handled on a case-by-case basis.

The Department intends "no longer capable of continuing" to be interpreted to encompass scenarios in which the SRE becomes unable to perform most or all required functions. Such scenarios might include an SRE no longer being financial solvent or unable to continue as a going concern, as well as the SRE's being debarred. The Department has included this second standard to minimize the uncertainty for IRAPs and apprentices in the limited, sudden situations where circumstances make it immediately evident that an SRE is no longer capable of functioning, even if a lack of substantial compliance is not immediately evident. For example, a natural disaster could irreparably damage SRE's resources and infrastructure, and as a result, its leadership announces that it is no

longer a going concern. This separate basis provides a clear basis for derecognition in this situation rather than going through the administratively inefficient process of generating a basis for derecognition based on a lack of substantial compliance. Additionally, it is conceivable that an SRE could have met all requirements of this subpart, including its reporting requirements, up until a sudden traumatic event and decision to stop operating, which could lengthen the derecognition process and create unnecessary uncertainty for IRAPs recognized by that SRE.

The Department declines to make reviews mandatory and ongoing. Reviews are intended to be in response to the Department's being made aware of an SRE's potential failure to remain substantially compliant. Moreover, the Department will also offer compliance assistance reviews under § 29.23 to any SREs that request such assistance. No changes were made to the text in response to these comments.

Paragraph (b) of § 29.26 describes the notice of review SREs would receive, and procedures the Administrator would follow in carrying out such a review. The Administrator would provide the SRE written notice of the review by certified mail, with return receipt requested. The notice would describe the basis for the Administrator's review, including potential areas in which the SRE is not in substantial compliance with the subpart and a detailed description of the information supporting review. The notice will provide the SRE with an opportunity to provide information for the Administrator's review, thereby helping to ensure that the Administrator is fully and fairly informed as the Administrator seeks to evaluate the SRE in light of paragraph (a) of this section. This opportunity also provides the SRE with the option of providing information that would show that no deficiency exists or that the identified deficiency was cured, making suspension unnecessary.

The Department did not receive any comments on this paragraph, and the final rule substantively adopts the paragraph as proposed. However, the Department has corrected the language in the proposed rule that would have required that the Administrator include potential areas of "substantial noncompliance" with a requirement that the Administrator identify potential areas in which the SRE is not in substantial compliance. The change is consistent with the Department's intention, as noted above, to require that SREs remain in substantial compliance with this subpart or risk suspension.

Referring to the standard as substantial compliance in paragraph (b) also serves to align paragraph (b) with paragraph (a).

Paragraph (c) of § 29.26 in this final rule provides that on conclusion of the Administrator's review, the Administrator will give written notice of the decision either to take no action or to suspend the SRE as provided under § 29.27. The Department did not receive any comments on this section. The final rule adopts the provision as proposed.

#### Section 29.27 Suspension and Derecognition of a Standards Recognition Entity

Section 29.27 of this final rule (designated as § 29.28 in the NPRM) describes the means by which the Administrator can suspend and, if necessary, derecognize an SRE. Such a process is necessary to ensure that an Administrator can address an SRE's failure to remain substantially compliant with this subpart or its inability to continue as an SRE. It also provides the SRE with an additional opportunity to work with the Administrator to address failures to remain in substantial compliance. Overall, these steps preserve the integrity of the recognition process necessary for high-quality IRAPs. To clarify and better align this section with the bases for review in § 29.26(a), the Department has added "or circumstances that render it no longer capable of continuing as an SRE, or both" to § 29.27(b), (c)(1), (c)(1)(i), and (c)(1)(ii) to this final rule. This indicates that both bases for review under § 29.26(a) can result in suspension or derecognition.

Paragraph (a) of § 29.27 in this final rule begins by explaining that the Administrator may suspend an SRE for 45 calendar days based on the Administrator's review and determination that any of the situations described in § 29.26(a)(1) (the SRE is not in substantial compliance with the subpart) or (a)(2) (the SRE is no longer capable of continuing as an SRE) exist.

If, after the review required by § 29.26, the Administrator has determined that suspension is appropriate, (a) requires that the Administrator must provide notice of suspension in accordance with § 29.21(d)(2) and (3). The notice must state that a request for administrative review may be made within 45 calendar days of receipt of the notice. No comments were received on this paragraph and the text is adopted as proposed.

Paragraph (b) of § 29.27 in this final rule requires that the notice set forth an

explanation of the Administrator's decision, including identified areas in which the SRE is not in substantial compliance and necessary remedial actions. It also requires that the notice explain that the Administrator will derecognize the SRE in 45 calendar days unless remedial action is taken or a request for administrative review is made.

Several commenters stated that the proposed rule lacks criteria by which DOL should determine the suspension or derecognition of SREs. In addition, a commenter proposed that the final rule "address the situation where a nascent occupation actually evolves along the continuum of becoming a bona fide profession, and determine at what point the SRE should be suspended or derecognized such that oversight can properly transition to an entity more akin to a professional association."

The Department has provided criteria for suspension or derecognition—whether the SRE is not in substantial compliance or incapable of continuing to act as an SRE. The Department will notify SREs of potential areas in which the SRE is not substantially compliant at the outset of a review, as required by § 29.26(b). The Department therefore expects that any SRE would know that the Department considers a violation of this subpart to be grounds for suspension if left uncorrected.

In response to the comment proposing that an SRE be derecognized if a nascent occupation evolves into a bona fide profession, the Department does not intend to establish procedures by which an SRE would be derecognized as a result of its success in developing a new and innovative occupation into a bona fide profession. As discussed above, an SRE would be suspended or derecognized only if the Administrator determines that the SRE is not in substantial compliance with this subpart or is no longer capable of acting as an SRE. The Department made one change to paragraph (b), which was to replace the reference in the proposed rule to substantial noncompliance with substantial compliance to align final § 29.27(b) with final § 29.26(a).

Paragraph (c) of § 29.27 in this final rule outlines the various outcomes that could follow the notice of suspension. Each outcome depends on the SRE's response to the notice. Under § 29.27(c)(1), if the SRE responds by specifying its proposed remedial actions and commits itself to remedying the identified areas in which the SRE is not in substantial compliance, the Administrator will extend the 45-day period to allow a reasonable time for the SRE to implement remedial actions. If at

the end of that time the Administrator determines that the SRE has remedied the identified deficiencies, the Administrator must notify the SRE, and the suspension will end. In the alternative, if at the end of that time the Administrator determines that the SRE has not remedied the identified deficiencies, the Administrator will derecognize the SRE and must notify the SRE in writing and specify the reasons for its determination. Such notice must comply with § 29.21(d)(2) through (3).

A commenter suggested that proposed § 29.28(c)(1)(ii) (redesignated as § 29.27(c)(1)(ii) in the final rule) should be expanded to require that DOL notify not just the SRE, but also the IRAPs and associated apprentices under the SRE, of the SRE's derecognition. DOL agrees with the suggestion that notice be provided to IRAPs, and the final rule incorporates such a requirement.

However, for reasons of readability and clarity, the Department has added the requirement to § 29.28 of this final rule (designated as § 29.29 in the NPRM), which addresses other impacts of derecognition on IRAPs. The Department notes that SREs are not required to collect personally identifiable information relating to apprentices or to provide such information to DOL, and DOL would thus be unable to reliably provide notice of an SRE's derecognition to individual apprentices. However, § 29.28 of this final rule has also been amended to clarify that the Administrator will work with SREs and IRAPs to notify all apprentices in those programs. The Department anticipates that the Administrator's notice to IRAPs would request that the IRAPs take all actions necessary to notify impacted apprentices. In addition, the Department has added a requirement that DOL publish notice of the derecognition on the public list described in § 29.24.

Another commenter suggested that all action pertaining to suspension and derecognition be made publicly available, but the Department declines to make all actions relating to suspension or derecognition publicly available. Notably, the Administrator will provide notice to the public of an SRE's suspension pursuant to § 29.27(d)(2) and an SRE's derecognition pursuant to § 29.28(b), as explained above. The Department has determined, however, that providing notice of other actions relating to suspension or derecognition, such as the initiation of a review, would be of limited benefit to the public, as many reviews may not result in suspension or derecognition.

Under § 29.27(c)(2), if the SRE responds to the notice by making a

request for administrative review within the 45-day period, the Administrator must refer the matter to the Office of Administrative Law Judges to be addressed in accordance with § 29.29. The Department determined that an appeal right is appropriate given the significant impact of suspension on SREs under paragraph (d) of § 29.27, which bars the SRE from recognizing new programs during suspension and requires the Administrator to publish the SRE's suspension publicly as described in § 29.24.

Under § 29.27(c)(3), if the SRE does not act in response to the notice under paragraphs (c)(1) or (c)(2) of this section, the Administrator will derecognize the SRE, as indicated in the notice already given to the SRE under paragraph (b) of this section. Absent recognition, an entity is no longer and may not function as an SRE under this subpart. This means the former SRE could neither recognize apprenticeship programs, nor remain listed as a recognized SRE on the Administrator's website under § 29.24. The Department received no comments on this paragraph. One grammatical change was made to replace "accord" with "accordance" in paragraphs (a) and (c)(2) of § 29.27.

Paragraph (d) of § 29.27 in this final rule explains what will take place during an SRE's suspension. Paragraph (d)(1) of this section explains that an SRE is barred from recognizing new programs during the suspension period. Paragraph (d)(2) of § 29.27 explains that the suspension will be published on the public list referenced in § 29.24.

The Department received one comment on this paragraph, suggesting that the Department clarify who will oversee IRAPs recognized by an SRE that is subsequently suspended or derecognized. The Department's response to this comment was addressed in final § 29.28, as discussed below.

An SRE that is suspended may not recognize or re-recognize IRAPs during the suspension period. Unless otherwise noted in the Department's notice to an SRE, the Department expects that an SRE would continue to perform other functions required by this subpart during any suspension period, including, for example, continuing to comply with the responsibilities provided for in § 29.22. Paragraph (d)(2) of § 29.27 explains that the Administrator will publish notice of the SRE's suspension on the public list described in § 29.24. No changes were made to the regulatory text in response to this comment.

**Section 29.28 Derecognition's Effect on Industry-Recognized Apprenticeship Programs**

Section 29.28 of this final rule (designated as § 29.29 in the NPRM) explains the effects an SRE's derecognition would have on IRAPs that it recognized. Under § 29.28(a), an IRAP would maintain its status until 1 year after the Administrator's decision derecognizing the IRAP's SRE becomes final, including any appeals. At the end of that time, the IRAP would lose its status unless it is already recognized by another SRE. A few commenters, including a State government agency and an advocacy organization, requested clarification in the final rule regarding the impact of SRE derecognition. These requests included: What happens if the SRE appeals the derecognition decision; who manages the IRAP during the appeal; who monitors the IRAP during this 1-year period; and what is the fate of the apprentices if the IRAP loses its status. An advocacy organization noted that the proposal "lacks information about how apprentices will be protected" if an IRAP loses its recognition and recommended that DOL "outline protections for learners in derecognized programs and outline DOL's role in protecting workers, especially youth and students." One of the commenters, an industry group, raised additional questions as to why an IRAP retains its status for 1 year after its SRE is derecognized, including what the basis for a 1-year time allotment is, whether another SRE would be available in rural areas or less popular trades, and what happens if the IRAP finds another SRE, but that SRE has a competing IRAP already in place. Some State government agencies expressed concern that allowing programs to receive recognition from multiple SREs could result in programs shopping around for approval following denial.

The Department shares commenters' general concerns regarding SRE derecognition and the impact on IRAPs and apprentices due to derecognition. In this final rule, the Department has significantly strengthened the recognition process and the requirements for maintaining recognition, including new operational, reporting, and performance requirements contained in §§ 29.21, 29.22, and 29.23. This final rule adds transparency regarding the significant responsibilities SREs are undertaking with their recognition, and more clearly puts potential SREs on notice regarding the Department's expectations for high-quality, high-performing programs. Additionally and importantly, along

with new § 29.28(b) discussed below, these provisions strengthen the Department's role in holding SREs accountable. From the outset, the Department believes these changes will serve as an increased deterrent against unqualified or subpar entities seeking to become recognized SREs.

With the standards the Department is putting into place in this final rule, it is possible that derecognition may need to occur. The Department intends to work closely with any SREs that need assistance to avoid that outcome. However, should derecognition occur, the Department has maintained the 1-year transition period for IRAPs to find recognition with another SRE. The Department will, to the extent practicable, assist with this process, and notes the commenters' concerns that special attention needs to be paid to rural areas. As stated in the NPRM, the Department anticipates that the IRAP will continue to adhere to the SRE's rules even if the SRE ceases to exist. That is, the final rule's requirements to become a recognized SRE, as established in § 29.21, and the detailed responsibilities and requirements of SREs set forth in § 29.22, mean that SREs will, in effect, set up a "blueprint" for how IRAPs are built and maintained. IRAPs built around such a blueprint are likely to retain their nature and structure for some period of time, even if the SRE ceases to exist.

Lastly, recognizing the concerns raised here and elsewhere, the Department strengthened notification requirements after derecognition in § 29.22(m) above and § 29.28(b) below. The Department has made no changes to this provision and adopts § 29.28(a) as proposed.

In the NPRM, paragraph (b) of proposed § 29.29 provided that if an IRAP is also registered under subpart A in the registered apprenticeship program, the derecognition of its SRE would not impact its registration status.

Although the Department received no comments on the provision, the Department has determined that this provision is not necessary since the two programs are clearly distinct. To avoid unnecessary text and potential confusion, the final rule does not carry forward this provision.

The final rule instead inserts a new provision in paragraph (b) of § 29.28 establishing two new requirements for the Administrator. First, the Administrator must update the public list of SREs required in § 29.24 to reflect derecognition status for SREs that have been derecognized. Second, the Administrator must notify the IRAPs impacted by this derecognition. These

additional notifications, both on the publicly available list of SRE status and the individualized notification from the Department, provide the impacted IRAP(s) with information that, if it wishes to continue operations as an IRAP, it should seek to be recognized by another SRE recognized under this subpart if it has not already done so. Additionally, the Department intends for the Administrator to work with the derecognized SRE and the impacted IRAPs to notify all apprentices in those impacted programs.

#### Section 29.29 Requests for Administrative Review

Section § 29.29 of this final rule (designated as § 29.30 in the NPRM) describes procedures and requirements for requests for administrative review under this subpart. A prospective SRE may request review of the Administrator's denial of recognition as provided under § 29.21(d). Likewise, an SRE may appeal the Administrator's decisions under § 29.27. The process for requesting administrative review exists to ensure that prospective and recognized SREs have an adequate opportunity to express their positions and to ensure that their rights are protected. The provisions are generally modeled after the process outlined in current 29 CFR 29.13(g), which outlines the requirement for OA's denial of SAA recognition under subpart A.

Paragraph (a) of § 29.29 in this final rule provides that, within 30 calendar days of the filing of a request for administrative review, the Administrator should prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge. Paragraph (b) of § 29.29 in this final rule provides that the procedural rules contained in 29 CFR part 18 apply to the disposition of requests for administrative review, with two exceptions. Paragraph (c) of § 29.29 in this final rule provides that the Administrative Law Judge should submit proposed findings, a recommended decision, and a certified record of the proceedings to the Administrative Review Board, SRE, and Administrator within 90 calendar days after the close of the record. The Department added the term "calendar" to Paragraph (d) of § 29.29 in this final rule to clarify that that days are calculated as calendar days for the provisions where, within 20 calendar days of the receipt of the recommended decision, any party may file exceptions to it, and where, any party may file a response to the exceptions filed by another party within 10 calendar days of

receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici curiae. Paragraph (e) of § 29.29 in this final rule provides that after the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Department added the term "calendar" to § 29.29(e) to clarify the relevant timeframe for the requirement for the Administrative Review Board to issue a decision in any case it accepts for review within 180 calendar days of the close of the record. If the Administrative Review Board does not act, the Administrative Law Judge's decision constitutes final agency action. The Department previously established systems of discretionary secretarial review over the decisions of the ARB to ensure that the Secretary has the ability to properly supervise and direct the actions of the Department, and thereby fulfill his duty to take care that the laws be faithfully executed. Under this system, the Secretary would not exercise review over ARB cases until after a decision has been rendered. This final rule reflects these changes by requiring the ARB to "issue a decision" and removes the conclusion that such a decision "constitutes final agency action." Finally, the final rule includes a standard of review in a new paragraph (f) to provide procedural clarity to Administrative Law Judges and the Administrative Review Board when considering appeals. This paragraph states that Administrator's decision under this subpart will be upheld "unless the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." This standard of review is common under the Administrative Procedure Act and other appeals under statutes implemented by ETA.

Two commenters recommended two considerations for proposed § 29.30, Requests for Administrative Review (redesignated as § 29.29, Requests for Administrative Review, in the final rule). First, the commenters asserted that Administrator's decisions to find noncompliance issues and derecognize an SRE should be subject to internal review by the Administrator before the matter is referred to an Administrative Law Judge. Second, the commenters recommended time limits for such appeals should match those of the 29 CFR part 29 subpart A.

The Department notes that the first recommendation—internal review before making a decision to suspend and, if warranted, derecognize an SRE—

appears duplicative of the review procedures in § 29.26, Review of a Standards Recognition Entity, and § 29.27, Suspension and Derecognition of a Standards Recognition Entity, which allow SREs to provide additional information for the Administrator's consideration before suspending or derecognizing an SRE. According to these procedures, the Administrator would weigh available evidence carefully before reaching the determination that an SRE should be suspended or derecognized. The Department therefore determined that no additional internal review is necessary beyond the procedures provided for in §§ 29.26 and 29.27.

Regarding the second recommendation for appeals process timeframes in § 29.29, the Department notes that these subpart B provisions are generally modeled on § 29.13(g), denial of SAA recognition, and include similar time limits.

#### Section 29.30 Scope of Industry-Recognized Apprenticeship Programs Recognition by Standards Recognition Entities

Section 29.30 of this final rule (designated as § 29.31 and titled "Scope and Deconfliction between Apprenticeship Programs under Subpart A of this Part and This Subpart B" in the NPRM) excludes the construction sector from the scope of the final rule. The section provides that the Administrator will not recognize as SREs entities that intend to recognize as IRAPs programs that seek to train apprentices to perform construction activities, consisting of: The erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs. It also provides that SREs that obtain recognition from the Administrator are prohibited from recognizing as IRAPs programs that seek to train apprentices to perform construction activities, consisting of the erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

This description of construction tracks the short description of the sector in the North American Industry Classification System (NAICS) Manual. See Executive Office of the President, Office of Management and Budget, *North American Industry Classification System 16* (2017). As discussed below, many commenters asserted that the NAICS Manual's description of Sector

23—Construction best captures construction activities for the purpose of this regulation. Accordingly, in interpreting and applying § 29.30, the Department will use the NAICS Manual to determine whether an activity falls within the construction sector. In particular, the Department will draw upon the manual's description of Sector 23 as a whole as well as its descriptions of its subsectors. *See id.* at 123–41. However, it will do so only to determine whether the *activities* in which programs train apprentices fall within the definition of construction in § 29.30. DOL will not rely alone on job titles or job classifications referenced in NAICS 23 or be bound strictly by O\*NET codes in determining whether § 29.30 prohibits recognition of an SRE or IRAP; rather, DOL will look holistically at all information in the SRE's application to determine whether an SRE seeks to train in construction activities.

This is a change from the proposed rule, which would have excluded sectors from the scope of the rule through a formula that was intended to capture those sectors that have significant registered apprenticeship opportunities. The Department explained in the NPRM that it expected that the formula would at least initially prohibit the Department from accepting applications from entities seeking to recognize apprenticeship programs in the U.S. military or in construction. The vast majority of the 326,000 comments received by the Department addressed this section of the proposed rule, with many calling for an express exclusion of construction from the final rule. After reviewing and analyzing the comments on this section, the Department has determined that a complete exclusion of construction, but no other sector, is most consistent with the goal of encouraging more apprenticeships in new industry sectors that lack widespread and well-established registered apprenticeship opportunities. The Department's use of the NAICS Manual description of construction activities is also different than the NPRM's suggestion for how to define the construction sector. The Department agrees with commenters that adopting the NAICS Manual's description is more consistent with the Department's economic analysis of the rule and is likely the simplest to apply.

The remainder of this section is a topic-by-topic review and analysis of the comments received on proposed § 29.31 (redesignated as § 29.30 in the final rule).

The Deconfliction Formula Proposed in the NPRM

Commenters—both those opposed to and in support of the exclusion of construction—nearly uniformly opposed the proposed deconfliction formula. The formula was intended to capture—and exclude—those sectors with significant registered apprenticeship opportunities. Under the formula, a sector with significant registered apprenticeship opportunities was one that has had more than 25 percent of all federal registered apprentices per year on average over the prior 5-year period, or that has had more than 100,000 federal registered apprentices per year on average over the prior 5-year period, or both, as reported through the prior fiscal year by the Office of Apprenticeship.

Several commenters argued there were flaws in the NPRM's proposed alternative thresholds for determining well-established opportunities in registered apprenticeship in a sector. Many commenters argued that these figures were too low; many other commenters argued the figures were too high. For example, one commenter recommended that, in the absence of a blanket exclusion of construction, the Department use a threshold of 30,000 apprentices per year on average over the prior 5-year period to identify sectors where registered apprenticeship opportunities are already significant. On the other hand, one commenter argued that the exclusion standard unfairly blocks the “supermajority” of nonunion construction training programs from participating in IRAPs because of significant union involvement in registered apprenticeships. This commenter argued that the Department could not assert that registered apprenticeships had adequately occupied a sector if the number of apprentices in that sector was fewer than 50 percent. Other commenters stated that the formula was illogical and unnecessary, and should be eliminated.

Several commenters stated that it was unclear from the preamble what precise method the Department would use in calculating the number of registered apprentices in a sector. These commenters questioned why the NPRM stated that the Department “expects” the exclusion will apply “at least initially” to construction and military apprenticeships. In evaluating the provision creating the formula, one commenter said the basis of the formula was “questionable” and described the provision as a whole as “nebulous.” Another commenter stated that the NPRM was unclear on how the

Department would apply the exclusion—including at what time of the year and with what notice to the public—and what the scope of the deconfliction provision was. Commenters also criticized the implication that the industry sectors covered by the exclusion could change, potentially annually.

Commenters further argued that the Department's deconfliction formula was untenable because the data used by the Department is incomplete. Commenters contended that because the Department relied on data from only the 25 non-SAA States, this data did not provide a complete or appropriate description of whether certain sectors have adequate opportunities in registered apprenticeship and that the Department's methodology effectively dismissed registered apprenticeship programs in SAA States. Numerous commenters stated that the limited scope of the data available to the Department would result in significant undercounting of apprenticeships in construction in particular. Some of these commenters relied on their own data collections on construction training programs to argue that the Department's data is vague, incomplete, or inaccurate. One commenter independently secured data from the SAAs in 13 States revealing more than 75,000 additional construction industry apprentices in fiscal year (FY) 2018 in those States, and the commenter pointed out inconsistencies between RAPIDS and the Federal data contained in the NPRM.

Commenters also questioned the NPRM's discussion of the United Services Military Apprenticeship Program (USMAP) as support for the application of the formula's criteria. These commenters argued that there is great variance in how the Department and other agencies track participation in military apprenticeships as compared to civilian registered apprenticeships. A commenter maintained that USMAP mainly documents skills that service members acquire based on their ordinary, day-to-day military training and experience, as opposed to civilian registered apprenticeships, which provide trainees with skills that they may not develop otherwise. Some of the commenters also noted that the military is not a sector similar or comparable to construction and argued that USMAP programs do not align with the industry-driven focus of the IRAP model.

One commenter proposed a hybrid approach that would include both a formula and two express exclusions. The commenter suggested that the Department revise its deconfliction

formula to define “a sector with significant registered apprenticeship opportunities” as: (1) Construction; (2) the military; and (3) any other sector that meets a proportional or numerical threshold.

After reviewing these comments, the Department has decided to eliminate the deconfliction formula. The Department agrees that hard numerical thresholds are flawed means to determine the sectors in which registered apprenticeships are significantly established. The use of strict numerical thresholds suggests a level of precision that is currently unattainable with the data available from RAPIDS, which does not cover the entire United States. The Department also agrees that applying a formula would create significant uncertainty regarding whether any given sector would be excluded from year to year. The development of IRAPs could be chilled by that uncertainty alone; SREs and IRAP sponsors need certainty in investing in this new apprenticeship model.

#### Construction Exclusion

The vast majority of the over 326,000 comments that the Department received expressed opposition to the use of IRAPs in construction. These commenters called on the Department to expressly exclude construction from the IRAP rule and to make the construction exclusion permanent.

Numerous commenters asserted that the registered apprenticeship model was most appropriate for construction and expressed concern that new IRAPs would undermine the existing, effective registered apprenticeship model in the construction sector, which was described as being widespread and supported by substantial existing investment. As noted above, commenters in favor of a construction exclusion emphasized that registered apprenticeship programs serving the construction sector are well-established and that the construction sector boasts by far the highest number of apprentices. The registered apprenticeship system in the construction sector was described as the “gold-standard.” Numerous commenters praised the high standards for training, safety, and wage progression associated with the registered apprenticeship programs these commenters support or use, warning that the introduction of IRAPs in construction would reduce these standards and would not serve the interests of apprentices. Commenters also contended that construction IRAPs would force the erosion of the quality of registered programs by introducing a lower-quality alternative.

Generally, these commenters opposed the deconfliction formula in proposed § 29.31 (discussed above) as well as a sunset of an exclusion of construction. Many commenters expressed concern that the deconfliction formula could allow construction IRAPs in the future. Some commenters argued that permanently excluding construction was the surest way for the Department to accomplish its goal of expanding apprenticeships to sectors where it is underused.

In contrast, some commenters opposed the exclusion of construction, arguing that IRAPs would help fill skilled-training needs in the sector. Commenters argued that excluding construction contradicted the “expansive purpose” of the proposal to increase the number and use of apprenticeships. Commenters stated that the recognition of alternative IRAPs in the construction industry would expand the training pool without weakening or detracting from registered apprenticeship programs, and that, conversely, exclusion of construction would prolong the skills shortage in the construction industry. Commenters argued that apprenticeship is underused in the construction sector, stating that there are 144,000 apprentices in registered construction programs but several million people working in the sector. Another commenter argued that the data indicates that registered apprenticeships supply only 4 percent of the needed construction workers, demonstrating that registered apprenticeship programs alone cannot fill the industry’s labor needs and skills gap. Others argued that the exclusion, and the Department’s broad definition of construction, showed the Department’s lack of understanding of the construction industry and its skilled-training needs. It was suggested that existing registered programs feed workers predominantly to employers on the commercial construction side of the sector, but not employers on the residential construction side. Other commenters urged the Department to be impartial in considering which sectors or industries should be included or excluded from the IRAP rule. These commenters stated that IRAPs were a new workforce development tool that employers from all industries would be eager to use.

Additionally, many commenters opposed to the exclusion noted, in their view, the difficulty in recruiting young people into construction trades and argued the construction sector needs an alternative such as IRAPs to improve recruitment and retention. Some commenters argued that the

construction sector needs IRAPs as an alternative in the construction industry because registering a program with the Department or SAA can be difficult and the requirements of registered apprenticeship are too prescriptive and complicated.

Many commenters opposing the exclusion complained about registered apprenticeship programs being sponsored by or involving unions. Several commenters in the construction industry stated that they typically do not use union apprenticeship programs and asserted these programs are ineffective, overly detailed, and overlong, necessitating the need for an alternative such as IRAPs. Commenters also discussed segmentation in the construction labor market between union and nonunion workers, with union workers more likely to work on the commercial side of the sector than the residential, and cited BLS data showing that only a fraction of construction workers belonged to labor unions. Commenters suggested that IRAPs are necessary to prevent monopolization by unions of training in certain construction fields, especially those on the commercial construction side of the sector. Commenters argued that union-dominated registered programs could not address the existing labor shortage, especially in residential construction.

Commenters urged the Department not to exclude the construction sector, or (more specifically) not to exclude the residential construction sector, or (alternatively) to include a sunset provision to eventually allow competition between the registered program and IRAP models. Another commenter said union apprenticeships had “monopolized” the elevator trade in its State and urged the Department to allow IRAPs in elevator construction.

The Department has carefully reviewed these comments and has decided to expressly exclude the construction sector from the IRAP rule.

As explained in the NPRM, the Department’s goal in this rulemaking is to expand apprenticeships to *new* industry sectors and occupations. That approach is consistent with the focus of the President’s Task Force on “sectors where apprenticeship programs are insufficient.” This rulemaking’s purpose is to expand apprenticeship in industries where apprenticeships are emerging or underutilized.

Construction is not a new industry sector when it comes to apprenticeships. Although the data available does not allow the Department to apply strict numerical thresholds, as discussed above, it does clearly

demonstrate that apprenticeships are more established in the construction sector than in any other.<sup>16</sup> According to RAPIDS data from February 2020, a greater proportion of construction workers are currently apprentices in registered programs than in any other sector and the ratio of current construction apprentices to the construction workforce is many times the ratio for the American economy as a whole.<sup>17</sup> Moreover, construction apprenticeship programs are simply more widespread and train more apprentices than in other sectors. Indeed, the construction sector accounts for over half of all current participants in registered apprenticeship programs according to RAPIDS data and accounted for nearly half over the five year period preceding publication of the NPRM. Notably, commenters opposed to excluding the construction sector did not provide persuasive evidence that contradicted the Department's conclusion that registered apprenticeship programs are more widespread in the construction sector than in other sectors.

Many commenters raised significant concerns that allowing IRAPs in the construction sector would have an adverse impact on registered construction programs. Commenters expressed their belief that construction IRAPs' introduction would reduce the quality and safety of construction jobs.

As an initial matter, the Department disagrees with commenters who contended that IRAPs will be inherently unsafe or inequitable, create a lower-skilled lower-paid workforce, or endanger any American by constructing less-safe infrastructure. The Department's requirements for SRE recognition, standards of high-quality IRAPs, and oversight measures, discussed at length above, provide the necessary safeguards, protections, and oversight to allay such concerns. The Department also has increased its oversight and the requirements of these

standards in this final rule to better ensure quality and safe apprenticeship opportunities that properly instruct apprentices on how to carry out skilled work.

However, the Department acknowledges that it is possible that construction IRAPs could compete to some extent with registered construction programs. Some employer funding that currently supports registered programs might be diverted to new IRAPs or participants who otherwise would likely participate in a registered program might instead choose an IRAP, perhaps because the registered program is of longer duration than an IRAP that trains on similar activities. Because the purpose of this rulemaking is to expand the apprenticeship model into *new* frontiers, the Department has concluded that taking the risk, whatever its magnitude, of disrupting or displacing registered construction programs is not warranted at this time. The Department believes it is prudent to exclude the construction sector in light of the concerns raised by so many commenters about allowing IRAPs in that specific sector and because the construction sector in fact plainly stands out as the industry sector with the greatest existing utilization of registered apprenticeship programs.

The Department appreciates the arguments against excluding the construction sector, but ultimately disagrees with those commenters' conclusions. To begin, that union registered programs might predominate over non-union registered programs is not itself a compelling reason for or against the exclusion. Employers and employer associations can sponsor registered programs, and unions can sponsor IRAPs or become SREs. And even assuming it is true that registered programs tend to feed workers to commercial builders rather than residential builders, the Department believes that the best rule is to exclude the entire sector rather than to require the Administrator and SREs to attempt to distinguish between commercial and residential programs. Although the NAICS Manual includes residential-specific subsectors, it is far from clear that the Administrator and SREs would be able to identify programs as training in activities and skills that are applicable to only residential construction and not other construction subsectors, given the overlap in skills necessary for activities in both residential and other types of construction, much less make the distinction as consistently and fairly as required by § 29.22(d). Some commenters further complained that

union-backed programs can take too long and are overly detailed. These comments are beside the point of whether there should be construction IRAPs—registered apprenticeships can be union or non-union supported and their program design can be long or short, detailed or less-detailed. The Department is adopting the construction exclusion because it sees no reason to take the risk, whatever the magnitude, of disrupting the registered programs in light of the Department's stated purpose to create an alternative pathway for developing apprenticeship programs in new industry sectors and occupations.

The Department agrees with commenters opposed to the exclusion that the market for apprentices in the construction sector is not saturated and even that demand might be much greater than supply. But, as discussed above, the Department disagrees that excluding the construction sector from the scope of the IRAP rule is inconsistent with the purpose of this rulemaking. The Department's goal is to expand apprenticeships broadly to *new* industry sectors and occupations. The Department may, and has chosen to, proceed incrementally. The Department's focus is on increasing apprenticeship opportunities in sectors of the economy which have not seen nearly the same level of apprenticeship programs and opportunities as the construction sector.

The Department also has determined that the exclusion of the construction sector from IRAP eligibility should not "sunset," *i.e.*, expire after a certain date. The Department agrees that it conceivably could be appropriate in the future to reconsider its decision not to allow IRAPs in the construction sector. Among other things, that reconsideration could be based on new and compelling evidence showing, for example, that IRAPs have worked so well in other sectors that repealing the exclusion is worth risking disruption or displacement of established registered construction programs, or that registered construction programs have materially faltered either in terms of prevalence or quality. But no compelling argument was made for automatically repealing the exclusion after a particular period of time. Accordingly, no such time limitation has been added to § 29.30 of this final rule.

#### Describing the Construction Sector

Several commenters requested that the Department clarify its definition of "the construction industry."

In particular, it was suggested that the Department's definition—"to provide labor whereby materials and constituent

<sup>16</sup> Although the Department does not have data from all SAA states, no persuasive reason has been given to doubt that the data is not broadly representative of the state of registered apprenticeship programs across the nation as a whole.

<sup>17</sup> According to RAPIDS data, only the utilities sector and the educational services sector come at all close to the construction sector in terms of the proportion of workers that are currently apprentices. However, the utilities and educational services sectors combined have less than half the number of apprentices than the construction sector. Separately, the NPRM suggested that the U.S. military had a large fraction of registered apprentices. As discussed elsewhere, commenters pointed out that the military is not a sector similar or comparable to construction or other industry sectors.



parts may be combined on a building site to form, make, or build a structure,” 84 FR 29981 & n.22—was too narrow. To ensure that the proposed construction exclusion fulfills the Department’s goal of preserving well-established registered apprenticeship programs in construction, a commenter urged the Department to use the definition of construction sector (NAICS Code 23) activities that is included in the 2017 version of the NAICS Manual at page 16: “Activities of this sector are erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repair.” This definition, according to the commenter, would more clearly convey the industry’s breadth. As the commenter points out, the Department actually used the NAICS code for construction in estimating the cost impact of the proposed rule (see 84 FR at 29999, nn.48–49, and exhibit 28 (construction) at 30009), and in determining the significant number of apprenticeship opportunities provided by the construction sector (84 FR at 29980—percentage based on NAICS code). The commenter further argued that the Department did not need to rely on an applicant-supplied NAICS code, as the NPRM explained was a concern. See 84 FR 29981 n.22. The commenter pointed out that the Department (and, presumably, SREs) could look at the occupations that apprentices are actually trained for.

Numerous other commenters endorsed using the definition of construction sector activities that appears in the NAICS Manual. Several commenters said the language from the NAICS Manual was a more comprehensive definition encompassing the “real-world meaning” of the construction industry. A commenter requested that DOL use the NAICS Manual’s definition of construction because it is the standard used by Federal statistical agencies in classifying business establishments.

Multiple commenters discussed various cases, including the National Labor Relations Board’s decision in *Carpet, Linoleum, and Soft Tile Local Union No. 1247 (Indio Paint)*, 156 NLRB 951 (1966), which grappled with broad definitions of the construction industry, and they stated that the NAICS Manual’s language describing the construction industry has been affirmed by industry stakeholders as a comprehensive, workable, and accurate definition. Several commenters cited *Indio Paint* as legal precedent to substantiate the claim that

“construction” should encompass additional activities like repairs or the replacement of parts in an immovable structure. These commenters suggested that the NAICS Manual’s definition was an appropriately broad and comprehensive definition, and they urged DOL to adopt such a definition. Several commenters opined that a broader definition of construction, specifically the NAICS Manual’s definition, was necessary to protect the widespread and effective apprenticeship programs already in place in their industries. Several comments requested that the definition be amended to ensure coverage for specific industries, activities, or occupations. One commenter took issue with the NPRM’s invocation of case law using the NPRM’s proffered definition while interpreting section 8(f) of the National Labor Relations Act (NLRA), arguing that pre-hire agreements had nothing to do with apprenticeship. This commenter said it was inappropriate to resort to NLRA case law to define the scope of the construction industry.

In contrast, multiple commenters defended the definition used in the NPRM preamble, arguing that it is consistent with case law applying statutes that are administered by the Department, such as the Employment Retirement Income Security Act and the Taft-Hartley Act. One commenter requested that the Department retain the NPRM’s definition of construction because it accurately describes the industry. Yet, some of these commenters opined the Department would be better served by adopting the definition of construction in the Department’s regulations implementing the Davis-Bacon Act at 29 CFR 5.2(j). These commenters said that the definition of the term “construction” in the Davis-Bacon Act regulations offers a more comprehensive description of the scope of construction activities, and is a well-established definitional framework that the Department already utilizes.

After considering these comments, the Department has decided to adopt a suggestion offered by numerous commenters, and noted in the NPRM, to use the NAICS Manual to determine activities in the construction sector. The Department agrees that the NAICS Manual description—“[a]ctivities of this sector are erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repair”—is more comprehensive and more suitable than the more limited definition of the sector that appeared in the NPRM (at 84 FR 29981), which stated that an

apprenticeship program would be in construction “if it equips apprentices to provide labor whereby materials and constituent parts may be combined on a building site to form, make, or build a structure.” The text of § 29.30 incorporates the above description from the NAICS Manual. As noted above, in considering whether an SRE application falls within the construction sector, the Department will draw upon the manual’s description of Sector 23 as a whole as well as its descriptions of its subsectors. However, it will do so only to determine whether the *activities* in which programs train apprentices fall within the definition of construction in § 29.30. The focus on activities is intended to prevent artificially circumscribing the outer bounds of what qualifies as a construction program. Similarly, the Department will not rely alone on job titles or job classifications referenced in NAICS 23 or be bound strictly by O\*NET codes in determining whether § 29.30 prohibits recognition of a SRE or IRAP; rather, as discussed above, the Department will consider all information in the application to determine whether an SRE seeks to train in construction activities.

#### Military Exclusion

The NPRM stated that, based on the deconfliction formula, SREs would not be allowed to recognize apprenticeship programs in the U.S. military.

Commenters noted that the military is not analogous to economic sectors, such as construction, manufacturing, or mining, quarrying, and oil and gas extraction, and that USMAP does not correspond to training in any particular industry or occupation. Thus, excluding apprenticeship programs in the U.S. military would not align with the Department’s stated goal of encouraging more apprenticeships in new industry sectors that lack widespread and well-established registered apprenticeship opportunities.

Commenters also contended that USMAP generally documents skills that members of the armed forces learn during their ordinary, day-to-day military training and experience, as opposed to during a distinct occupation-focused training program. The raw number of participants in USMAP thus likely overstates the number of military apprentices whose experiences are comparable to those in civilian programs. Similarly, a commenter discussed how it is challenging to retain military apprentices in the civilian workforce.

The Department agrees with the thrust of these comments and has decided not to exclude military apprenticeships

from the scope of the IRAP rule. However, any military apprenticeships in construction activities, as defined in the NAICS Manual, are prohibited under § 29.30 of the final rule.

#### Distinguishing Between Recognition of SREs and IRAPs

Section 29.31 of the proposed rule provided that the Department would not recognize SREs that seek to recognize programs in certain sectors as IRAPs. Section 29.31 did not expressly prohibit SREs from recognizing as IRAPs programs that seek to train apprentices for those sectors. The Department has revised Section 29.30 of the final rule to clarify that SREs are prohibited from recognizing as IRAPs programs that seek to train apprentices to perform construction activities. If an SRE does recognize a program that trains apprentices to perform construction activities, it would be subject to derecognition.

#### Section 29.31 Severability

The Department has decided to include a severability provision as part of this final rule. To the extent that any provision of subpart B of this final rule is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions of subpart B that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

#### Removal of Proposed Appendix A to Subpart B—IRAP SRE Application Form (ETA Form 9183)

The NPRM included an appendix A to subpart B (Industry-Recognized Apprenticeship Program Standards Recognition Entity Application Form) containing the proposed form that would be utilized by potential SREs in applying for recognition from the Department. In developing this final rule, however, the Department determined that the retention of this form within the body of the rule could make administration of this program challenging. As a practical matter, the Department is concerned that embedding the form in the rule would prevent the Department from making minor modifications in the future without regulatory action. Accordingly, the Department has decided to remove the form from the body of the final regulation and has developed an updated version of the form to collect relevant information from potential SREs seeking recognition from the Department (see Paperwork Reduction Act discussion below for additional details).

### III. Agency Determinations

#### A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* This final rule is an economically significant regulatory action, under sec. 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

#### 1. Public Comments

A commenter stated that the proposed rule would help address the current shortage of skilled workers in craft and trade industries, as well as the costly and lengthy delays in the current apprenticeship approval process. The commenter stated that while 90 percent of apprenticeship program participants

will have a job after their program concludes and a \$300,000 increase in lifetime earnings without the burden of student loan debt, only 0.3 percent of the workforce has taken part in registered apprenticeship programs, partly due to the lack of flexibility under the registered apprenticeship model.

The Department concurs that this new program offers many new benefits, which will harness industry expertise and encourage private industry to determine the skills that workers need to acquire through apprenticeship programs. This industry-led, market-driven approach will provide employers with flexibility to develop customized programs that serve their specialized business requirements.

A commenter expressed concern that the combination of significant and quantifiable costs with broad non-quantified benefits may lead to low participation rates among companies in the IRAP program.

The Department agrees that quantifiable benefits would be ideal to include in the economic analysis. However, this is a new program, so data do not yet exist on its effectiveness. The Department would need to make numerous untested assumptions to attempt to quantify the benefits; therefore, the Department has maintained a qualitative discussion of the benefits in the final rule.

A commenter stated that the advantages of IRAPs discussed in the proposed rule are actually those of registered apprenticeship programs and will not accrue to IRAPs because they avoid many of the requirements of registered apprenticeship programs that give rise to those benefits to society. Another commenter stated that every dollar of public investment in registered apprenticeship programs yields a \$27 return to the economy, while IRAPs are "unproven" and "unnecessary." Multiple commenters cited the substantial return on investment associated with registered apprenticeship and expressed concern that the registered apprenticeship system is under threat from the proposed rule.

The Department agrees that the Mathematica study citation in the proposed rule pertains to the effectiveness of registered apprenticeship: Individuals who successfully complete an apprenticeship program are estimated to amass career-long earnings (including employee benefits) that are greater than the earnings of similarly situated individuals who did not enroll in such

programs.<sup>18</sup> The IRAP system is a new program, so data do not yet exist on its effectiveness. Through the public comment process, the Department did not receive recommendations for relevant data, which likely reflects the fact that this is a new program, so the Department was unable to quantify the benefits in the final rule. In any case, the Department does not expect the expansion of apprenticeships under this rule to come at the expense of existing registered apprenticeship programs. Instead, the Department anticipates that this parallel apprenticeship system will encourage the expansion of apprenticeships in additional industries and occupations. We agree that the registered apprenticeship system works well for its participants—and the Department is working to increase their numbers—but historically the number of those participants has been limited, especially compared to apprenticeship in other countries. This rule is intended to reach new and emerging sectors of the economy where apprenticeship has been underused.

One commenter asserted that the proposed rule is likely to be considered economically significant under E.O. 12866 and, therefore, a “major rule” under the Congressional Review Act because the activities the Department quantified represent only a small fraction of an IRAP’s responsibilities under the rule. The commenter stated that the Department based its estimate of the rule’s overall costs almost entirely on the discrete actions it anticipates the SREs’ and IRAPs’ Training and Development Managers will take, but it declined to quantify numerous costs related to the actual development and operation of IRAPs. Further, the commenter stated that the Department failed to use its experience with registered apprenticeship programs to quantify the development, staffing, and operations costs of IRAPs, and asserted that the costs and impact on the economy would increase if the Department quantified these costs. Specifically, the commenter claimed that if the Department attributed a cost-per-apprentice of only \$5,000 (20 percent of the Department of Commerce’s lower estimate in its 2016 study of 13 businesses and

intermediaries<sup>19</sup>) for 10 apprentices per IRAP, the costs and impact on the economy would increase by more than \$100 million in the first year. Further, the commenter claimed that if the Department assumed each IRAP would hire one full-time employee (based on the Department of Commerce’s 2016 study in which most of the firms dedicated at least one staff member to manage their programs), the cost of the rule to IRAPs alone would increase to over \$190 million per year.

As the Department explained in the proposed rule, the 2016 study published by the Department of Commerce found that apprenticeship programs vary significantly in length and cost. The shortest program in the study lasted 1 year, while the longest lasted more than 4 years. Importantly, the Commerce report was a case study of only 13 programs, so it is not a representative sample. Moreover, the variety of apprenticeship programs is expected to grow dramatically under this rule, with an even greater variety of sizes, durations, occupations, and industries. Furthermore, compensation costs for apprentices were the major cost of the programs in the Commerce report and compensation is typically considered a “transfer” rather than a “cost” in regulatory impact analyses. It is also important to note that many of the costs of an apprenticeship program would still be incurred if the company filled the job through another method, such as hiring an already-trained worker, contracting a temporary worker, or increasing the hours of existing staff. For these reasons, the Department continues to maintain that the estimated cost-per-apprentice of \$25,000 to \$250,000 in the Commerce study is not a reasonable basis for estimating IRAP costs, nor is using a share of that study’s cost-per-apprentice as the commenter did.

Another commenter expressed concern that there were no cost estimates for the training component of IRAPs and remarked that these estimates could prove to be in the hundreds of millions of dollars. The commenter claimed that with the substantial growth of registered apprenticeship, there is a large amount of available data from existing programs about yearly training costs.

The Department does not track cost-per-program data nor cost-per-participant data under the registered apprenticeship program. Although

program sponsors may track such data, cost per participant and cost per program are not required performance measures under the registered apprenticeship system, so the Department has no way to capture or track such data. Moreover, even if such data did exist, it would not be suitable for this analysis because IRAPs are likely to differ substantially from registered apprenticeship programs in size, nature, scope, duration, industry, and occupational area. In the economic analysis, the Department acknowledges the cost of apprenticeship programs; however, due to data limitations, the costs are described qualitatively in section III.A.7 (Nonquantifiable Costs).

A commenter stated that, if the Department does not exclude the construction industry, the rule is likely to have an economic impact on the construction industry of at least \$100 million per year because IRAPs in the construction industry would displace more than 10 percent of the private investment made in registered apprenticeship programs. Several commenters stated that the proposed rule failed to take into account the devaluing effect that IRAPs would have on registered apprenticeship program apprentices’ credentials because of lower standards associated with the new program versus the registered apprenticeship program.

The Department does not expect the expansion of apprenticeships under this rule to come at the expense of existing registered apprenticeship programs. Instead, the Department anticipates that this parallel apprenticeship system will encourage the expansion of apprenticeships beyond those industries where registered apprenticeships already are effective and substantially widespread. With respect to the construction industry in particular, the Administrator will not recognize SREs that recognize IRAPs that seek to train apprentices in construction activities as defined in § 29.30, mooting these concerns as to the construction sector.

A commenter stated that deregulation would not decrease the costs of purchasing facilities and equipment, developing curriculum, hiring instructors and administrators, and other amounts that are required to finance first-class programs. Another commenter stated that without the ability to reasonably estimate a quantitative value for participating in an IRAP, most companies will either use the registered apprenticeship system or proceed with an unregistered apprenticeship program to avoid the costs associated with IRAPs.

<sup>18</sup> Mathematica Policy Research, “An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report,” July 25, 2012, <https://www.mathematica.org/our-publications-and-findings/publications/an-effectiveness-assessment-and-costbenefit-analysis-of-registered-apprenticeship-in-10-states>.

<sup>19</sup> Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, “The Benefits and Costs of Apprenticeship: A Business Perspective,” Nov. 2016, <https://files.eric.ed.gov/fulltext/ED572260.pdf>.

The Department anticipates that a wide variety of entities across numerous industries and occupations will opt to participate in this new program. As such, the Department expects the size, duration, staff levels, overhead costs, capital expenditures, and other elements of IRAPs to vary widely. Consequently, the Department is unable to accurately quantify all of the potential costs IRAPs may incur.

Several commenters stated that the AAI grant program is not the best guidepost for estimating the number of SRE applications because the standards for IRAPs are lower than those for registered apprenticeship programs and AAI grants are limited to H-1B occupations and have more requirements than IRAPs do. Another commenter suggested that the Department should consider that millions of dollars were awarded to each successful AAI grant application and no similar award is forthcoming for designation as an SRE, potentially reducing the number of applicants for SRE designation. Another commenter also expressed concern with the use of historical projections based on the AAI grant program and questioned whether there are significant numbers of potential SREs beyond those that already received Federal grants, and if so, whether there will be a sustainable 5-percent growth rate over 10 years.

The Department acknowledges that estimating the number of SRE applicants using the AAI grant program is subject to data limitations and uncertainties. However, in the absence of an alternative data source suggested during the public comment process, the Department has maintained its methodology and data source for estimating the number of SRE applicants. With respect to the 5-percent growth rate, the Department maintains that it is a reasonable estimate given that as many as 50 occupations are ripe for apprenticeship expansion<sup>20</sup> and that this regulation is intended to expand the apprenticeship model broadly—including to employers and workers that might not previously have considered participating.

A commenter stated that the Department is forecasting tepid initial demand and rapidly declining future demand for the program, reaching only 32 recognized IRAPs per SRE through the first 10 years, and that these estimates, if accurate, are likely to deter

many organizations from pursuing recognition as an SRE.

To address America's skills gap, the Department welcomes all interested entities to submit an application to become a recognized SRE and encourages SREs to recognize as many qualified programs as feasible. The Department agrees with the commenter that it is difficult to accurately forecast future demand for a new program. As such, the numbers of SREs in the economic analysis are the Department's best estimation of future demand.

A commenter stated that the 2-hour time estimate for SRE rule familiarization is low and lacks the executive decision time to undertake this project. Another commenter stated that the 1-hour time estimate for IRAP rule familiarization is unrealistic; similarly, a commenter stated that an IRAP would likely need more time for rule familiarization than an SRE would.

The Department acknowledges that some entities may take longer than 2 hours to read the rule and become familiar with its requirements, and that some IRAPs may take longer than 1 hour to do so. On the other hand, some entities may simply rely on industry-produced fact sheets or information on the Department's website to familiarize themselves with the rule, which could take less time than the estimates. The time burden estimates are assumed to be averages; some entities may take more time, while others may take less. Furthermore, the commenters did not provide data for the Department to use to improve its estimates. Accordingly, the Department has maintained the 2 hours for SRE rule familiarization and 1 hour for IRAP rule familiarization in the final rule.

A commenter stated that the time estimate for SREs to complete the application process assumes that organizations applying for SRE status already possess all of the policies, procedures, and systems required in the application form. Another commenter stated that the 2-hour estimate for completing Section I of the application form would have to assume an existing program with a Federal EIN and a website in place. The same commenter contended that the 2-hour estimate for completing Section II of the application form fails to recognize that some of the tasks would have to be developed for a new program prior to completing this section, and that interaction with other departments such as finance is not accounted for. With respect to Sections III and IV, the same commenter stated that there are at least 20 tasks per section, but the estimates do not account for the time to create many of

the items being reported. The same commenter also contended that 5 minutes is inadequate for completing Sections V and VI.

The final rule's time estimates for completing the SRE application differ from the time estimates in the NPRM because the Department has made changes to the application form in an effort to improve and streamline the process for prospective SREs. The Department anticipates that a wide variety of entities across numerous industries and occupational areas will opt to participate in this new program. As such, the Department expects the nature and experience of applicants to vary widely. For example, many prospective SREs may already have an EIN, have systems and procedures in place, and plan to recognize only one or two small IRAPs; therefore, the Department expects the time burden for such entities to be lower than the estimates in the analysis. The time burden estimates in the economic analysis are assumed to be averages; some entities may take more time to complete the application, while others may take less.

In response to public comments, the Department increased the time burden estimates for completing Sections III and IV of the application to account for an SRE's development of the policies and procedures required under this rule. Specifically, SREs must develop policies and procedures related to the following paragraphs: 29.21(b)(6), which pertains to mitigating conflicts of interest; 29.22(d), which pertains to consistency in assessing prospective IRAPs; 29.22(f)(5), which pertains to the suspension or derecognition of an IRAP; 29.22(i), which pertains to requiring IRAPs to adhere to applicable Federal, State, and local EEO laws; and 29.22(j), which pertains to addressing complaints against IRAPs.

A commenter stated that a 70-percent success rate for initial applicants is too high, that half of rejected applicants reapplying is too low, and that 1 percent requesting administrative review is too low.

The Department did not receive a specific estimate or a data source to substantiate the commenter's statements, so the Department has continued to rely on its experience with other workforce development programs and has maintained its estimates in the final rule.

A commenter stated that the 10-percent estimate for the share of SREs that will be required to supply data or information to the Administrator under § 29.22(a)(3) seems low.

<sup>20</sup> Joseph B. Fuller and Matthew Sigelman, "Room to Grow: Identifying New Frontiers for Apprenticeships," Nov. 2017, 7-8, <https://www.hbs.edu/managing-the-future-of-work/Documents/room-to-grow.pdf>.

The Department acknowledges that the share may be lower or higher than 10 percent, but without receiving a specific estimate or data source during the public comment process, the Department has maintained the 10-percent estimate in the final rule.

A commenter stated that the 80-hour time estimate for SREs' quality control of IRAPs is not only too low, but should be based on the estimated number of IRAPs rather than on the estimated number of SREs. Likewise, the same commenter stated that the 30-hour time estimate for an SRE to make publicly available performance data from each of its IRAPs is not only too low, but should be based on the estimated number of IRAPs rather than on the estimated number of SREs.

The Department took these recommendations under advisement and revised these two calculations by basing them on the estimated number of IRAPs rather than on the estimated number of SREs because the time burden will vary by SRE, depending on the number of IRAPs it recognizes. Moreover, the estimated time burdens have increased due to additional requirements in the final rule: (1) SREs must conduct periodic compliance reviews of IRAPs; (2) SREs must not only publicize performance data, but also provide performance data to DOL; and (3) SREs must provide additional performance data, namely attainment of industry-recognized credentials, average earnings of completers, training cost per apprentice, and demographic information.

A commenter stated that the 5-minute estimate for disclosure of wages to apprentices is inadequate because IRAPs will first need to establish a starting pay structure, and then periodically review and update the wage scale. Similarly, the same commenter stated that disclosure of ancillary costs to apprentices will take longer than 5 minutes because IRAPs will have to determine those costs. Moreover, the commenter stated that both of these disclosure calculations should apply to 100 percent (rather than 10 percent) of IRAPs because this is a new program.

The Department expects the nature and experience of IRAPs to vary widely. For example, some IRAPs may already have a pay structure in place, have predetermined costs for educational materials, or plan to train only one or two apprentices. Accordingly, the Department expects the time burdens to vary widely. The time burden estimates in the economic analysis are assumed to be averages; some IRAPs may take more time, while others may take less. That

being said, the Department took a different approach in the final rule in light of the new requirement at § 29.22(a)(4)(x) for IRAPs to provide a written apprenticeship agreement. Given that the written apprenticeship agreement will likely include the disclosure of wages and costs, the Department combined the three activities into two costs: Develop written apprenticeship agreements (8 hours per new IRAP) and sign the written apprenticeship agreements (10 minutes per apprentice).

Several commenters stated that the 1-hour estimate for Step 1 in the Department's review of applications (*i.e.*, processing by Program Analysts) seems too low. Furthermore, a commenter stated that the time estimates for Step 2 (*i.e.*, panel review) and Step 3 (*i.e.*, panel meeting) do not include additional supervision of the panelists by the Administrator and assume no conflicting opinions or negotiations over applications. Commenters also contended that 15 minutes for Step 4 (*i.e.*, review by the Administrator) is inadequate.

The Department acknowledges that the time for reviewing applications may be higher or lower than the estimates in the economic analysis, depending on the complexity of the responses, qualifications of the prospective SRE, quality of the application, etc. The time burden estimates are assumed to be averages; some applications may take more time to review, while others may take less. Furthermore, the commenters did not provide data for the Department to use to improve its estimates; therefore, the Department maintains that its estimates in the proposed rule were reasonable averages.

A commenter stated that the costs for review by an Administrative Law Judge, and all other legal costs, would increase as the number of appeals increases, and the costs do not include Administrator time needed to facilitate this review.

The Department agrees that the legal costs would increase as the number of appeals increases and accounted for this by multiplying the estimated time burdens by the hourly compensation rates and by the estimated number of applicants that would request administrative review in each year of the 10-year analysis period. The estimates were based on the input of an Administrative Law Judge at the Department. With respect to the Administrator's time to facilitate this review, that cost was captured in the subsection titled "DOL Preparation of Administrative Record When a Denied Entity Requests Review." The estimated

time to prepare an administrative record is 6 hours by a Program Analyst.

A commenter noted that the annualized costs over the 10-year analysis period for three activities (*i.e.*, rule familiarization, completing Section I of the application form, and completing Section II of the application form) were different although the estimated time (2 hours) and the hourly compensation rate (\$113.16) were the same for all three activities.

The reason for the difference is that SREs must undergo the Department's process for continued recognition every 5 years; however, the Department assumes SREs will only need to familiarize themselves with the rule one time. Accordingly, the same number of entities is used for both calculations in Years 1–5 (270 in Year 1, 14 in Year 2, 14 in Year 3, 15 in Year 4, and 16 in Year 5) but the numbers differ in Years 6–10. For rule familiarization, the number of entities is estimated at 44 in Year 6, 19 in Year 7, 20 in Year 8, 21 in Year 9, and 22 in Year 10. For the application form, the number of entities is estimated at 226 in Year 6, 28 in Year 7, 29 in Year 8, 31 in Year 9, and 32 in Year 10.

A commenter questioned whether SREs have Title VII Uniform Guidelines on Employee Selection Procedures responsibility for written test job requirements and, if so, why it is not included the cost analysis.

This rule does not add a burden to employers related to the Uniform Guidelines on Employee Selection Procedures under Title VII.

With respect to the IRAP costs that the Department addressed qualitatively in the proposed rule, a commenter stated that the claim from the 2016 Department of Commerce study<sup>21</sup> that many of the costs of an apprenticeship program would still be incurred if a company filled the job through another method is "incorrect" because the company would carry none of the training, mentorship, or nonproductive paid hours that an apprenticeship must assume.

The Department acknowledges that apprenticeships include training, mentorship, and other costs that hiring an already-trained worker, contracting a temp worker, or increasing the hours of existing staff would not entail; however, the Department also recognizes that already-trained workers, temporary workers, and existing staff are likely to be paid at a higher rate than

<sup>21</sup> Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, "The Benefits and Costs of Apprenticeship: A Business Perspective," Nov. 2016, <https://files.eric.ed.gov/fulltext/ED572260.pdf>.

apprentices, mitigating some of the costs referenced by the commenter. Without data to substantiate the commenter's claims or provide reliable estimates of IRAP costs, the Department has retained a qualitative discussion in the final rule.

A commenter suggested that rather than calling the IRAP model "apprenticeship," the Department should achieve the goal of providing funding to companies for long-term, on-the-job training through various other methods such as expanding WIOA or a separate discretionary funding stream. Another commenter suggested that the Department propose a policy that leads to higher journeyman wage rates in industries where the government wants to encourage apprenticeships. Another commenter remarked that the best way to address "softness" in the construction industry would be a dramatic, 10-year investment in infrastructure. A fourth commenter cited the annual cost of administering the proposed rule, remarked that OA does not have enough professional staff to carry out its mission effectively, and suggested that the Department expand the resources devoted to traditional apprenticeship instead.

The Department is unable to act on these suggestions as they are legislative proposals that fall under the purview of the legislative branch of government (*i.e.*, Congress).

A commenter suggested that, given current U.S. Treasury rates, the Department should use a 3-percent

discount rate rather than a 7-percent discount rate.

As the commenter noted, the Department is constrained in its selection of the discount rates by OMB Circular A-4, which instructs agencies to "present annualized benefits and costs using real discount rates of 3 and 7 percent."<sup>22</sup> Accordingly, the Department estimated the costs of the rule over 10 years at discount rates of both 3 percent and 7 percent. The Department narrowed its analysis to the 7-percent discount rate only in the Regulatory Flexibility Analysis because including two additional columns in each of the 18 industry tables would be cumbersome and have little impact on the results. Specifically, the first year cost per IRAP is estimated at \$17,796 at a discount rate of 7 percent, compared to \$18,487 at a discount rate of 3 percent. The annualized cost per IRAP is estimated at \$9,379 at a discount rate of 7 percent, compared to \$9,049 at a discount rate of 3 percent. Moreover, according to OMB Circular A-4, "[a]s a default position, OMB Circular A-94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis."

## 2. Summary of the Economic Analysis

The Department anticipates that the final rule will result in benefits and costs for SREs, IRAPs, apprentices, and society. The benefits of the final rule are described qualitatively in section III.A.3 (Benefits). The estimated costs are explained in sections III.A.4

(Quantitative Analysis Considerations), III.A.5 (Subject-by-Subject Analysis), and III.A.6 (Summary of Costs). The nonquantifiable costs are described qualitatively in section III.A.7 (Nonquantifiable Costs). The nonquantifiable transfer payments are described qualitatively in section III.A.8 (Nonquantifiable Transfer Payments). Finally, the regulatory alternatives are explained in section III.A.9 (Regulatory Alternatives).

The costs of the final rule for SREs include rule familiarization, completing the application form, and remaining in an ongoing quality-control relationship with IRAPs. The costs of the final rule for IRAPs include rule familiarization and providing performance information to the SRE. The costs of the final rule for the Federal Government are associated with development and maintenance of an online SRE application form, reviewing applications, and development and maintenance of an online list of SREs and IRAPs.

Exhibit 1 shows the total estimated costs of the final rule over 10 years (2020–2029) at discount rates of 3 percent and 7 percent. The final rule is expected to have first year costs of \$42.3 million in 2018 dollars. Over the 10-year analysis period, the annualized costs are estimated at \$46.5 million at a discount rate of 7 percent in 2018 dollars. In total, over the first 10 years, the final rule is estimated to result in costs of \$326.8 million at a discount rate of 7 percent in 2018 dollars.

<b>Exhibit 1: Estimated Costs (2018 dollars)</b>	
	<b>Costs</b>
First Year Total	\$42,261,859
Annualized, 3% discount rate, 10 years	\$47,104,991
Annualized, 7% discount rate, 10 years	\$46,530,920
Total, 3% discount rate, 10 years	\$401,815,127
Total, 7% discount rate, 10 years	\$326,813,710

When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the perpetual annualized cost is

\$38,738,885 at a discount rate of 7 percent in 2016 dollars.<sup>23</sup>

## 3. Benefits

This section provides a qualitative description of the anticipated benefits

<sup>22</sup> OMB, "Circular A-4," Sept. 17, 2003, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

<sup>23</sup> To comply with E.O. 13771 accounting, the Department multiplied the annual cost for Year 10

(\$59,248,016) by the GDP deflator (0.9582) to convert the cost to 2016 dollars (\$56,769,601). The Department used this result for a long-term pattern totaling \$601,417,957 over 20 years with a 7-percent discount rate. The Department then calculated the

present value (\$725,411,079) and perpetual annualized cost (\$50,778,776) in 2016 dollars. Assuming the rule takes effect in 2020, the Department divided \$50,778,776 by 1.07<sup>4</sup>, which equals \$38,738,885.

associated with the final rule. The Department expects this regulation to have a net benefit overall.

Through this regulation, and as explained in the rule's Background section, above, the Administration seeks to address a persistent and serious long-term challenge to American economic leadership in the global marketplace: A significant mismatch between the occupational competencies that businesses require and the job skills that aspiring employees possess. While there were 6.4 million job openings in the United States at the end of 2019,<sup>24</sup> some openings go unfilled because there are not enough workers with needed skills.<sup>25</sup> This pervasive skills gap poses a serious impediment to job growth and productivity throughout the economy.

The promotion and expansion of quality apprenticeships can play a key role in alleviating the skills gap by providing individuals including young people, women, and other populations with relevant workplace skills and a recognized credential. This proven workforce development technique not only helps individuals to move into decent, family-sustaining jobs, but also assists businesses with finding the workers they need to maintain their competitive edge. Individuals who successfully complete an apprenticeship program are estimated to amass career-long earnings (including employee benefits) that are greater than the earnings of similarly situated individuals who did not enroll in such programs.<sup>26</sup>

The final report of the Task Force noted that “[w]hile the Federal Government can establish the framework for a successful apprenticeship program and provide support, substantial change must begin with industry-led partnerships playing the pivotal role” of creating, recognizing, and managing

apprenticeship programs.<sup>27</sup> Underlying this approach is the conviction that private industry—rather than government—is best suited to determine the occupational skills that workers need to acquire through apprenticeship programs. Such an industry-led approach will provide employers the flexibility they need to devise customized programs that serve their specialized business requirements.

Accordingly, the Department is issuing this regulation, which will supplement the current system of registered apprenticeships with a parallel system of IRAPs, thereby enabling the rapid expansion of quality apprenticeships across a wide range of industries and occupational areas. This regulation requires SREs to recognize and maintain recognition of only high-quality IRAPs, which will benefit apprentices and encourage the expansion of the apprenticeship model.

#### 4. Quantitative Analysis Considerations

The Department estimated the costs of the final rule relative to the existing baseline (*i.e.*, no IRAPs). In accordance with the regulatory analysis guidance articulated in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the final rule (*i.e.*, the costs that are expected to accrue to the affected entities). The analysis covers 10 years to ensure it captures the major costs that are likely to accrue over time. The Department expresses the quantifiable impacts in 2018 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4.

##### a. Estimated Number of Applications and SREs

To calculate the annual costs, the Department first needed to estimate the number of applications and SREs over the 10-year analysis period. The Department believes a reliable guidepost for estimating the number of SRE applications is the number of entities that submitted grant applications in FY 2016 under OA's AAI grants program. As noted earlier, commenters did not supply alternative data sources for the Department to estimate SRE participation.

Like IRAPs, the AAI grant program was designed to encourage innovative approaches to the development of apprenticeship programs by a wide cross-section of groups, including private sector employers, labor unions,

educational institutions, and not-for-profit organizations. In the 4 months during which AAI grant applications were accepted, OA received 191 applications for grants from the intended cross-section of program sponsors and innovators. The 191 AAI applicants were diverse in terms of geography, industry sector, and apprenticeship-program design. The Department anticipates that the diversity in AAI applicants will be replicated in the context of this final rule.

Starting with 191 AAI grantee applicants as a reasonably analogous baseline, the Department rounded this figure slightly upwards to 200 to provide for ease of estimation. The Department then reduced this number by 10 percent to 180 to account for how some entities in industries that applied for AAI grants may choose not to seek to participate as IRAPs. The Department then adjusted this figure 50 percent higher to account for its planned efforts to promote IRAPs in the private sector, resulting in an estimate of 270 SRE applications in Year 1 ( $= 180 \times 1.5$ ). The Department further estimates that it will recognize approximately 75 percent of applicants as SREs, either during their initial submission or their resubmission as permitted under paragraph 29.21(d)(1). Accordingly, the Department estimates that there will be 203 SREs ( $= 270 \times 75\%$ ) in Year 1.

To estimate the number of applications and SREs in Years 2–10, the Department began by assuming that the total number of SREs will increase by 5 percent per year based on historic growth in the registered apprenticeship program. For example, in Year 2 the total number of SREs is estimated to be 213 ( $= 203 \text{ SREs in Year 1} \times 1.05$ ). The last column in Exhibit 2 shows the total number of SREs each year based on the Department's 5-percent growth rate assumption.

Next, the Department calculated the number of new SREs. For Years 1–5, the estimated number of new SREs is simply the difference between the total number of SREs each year. For example, in Year 5 the number of new SREs is estimated to be 12 ( $= 247 \text{ total SREs in Year 5} - 235 \text{ total SREs in Year 4}$ ).<sup>28</sup> But in Year 6, the calculation has an additional component because SREs will be recognized for 5 years, so SREs that wish to be recognized for another 5 years will need to undergo the Department's process for continued recognition. For purposes of this analysis, the Department estimates that

<sup>24</sup> BLS, “Job Openings and Labor Turnover—December 2019,” Feb. 11, 2020, [https://www.bls.gov/news.release/archives/jolts\\_02112020.pdf](https://www.bls.gov/news.release/archives/jolts_02112020.pdf).

<sup>25</sup> See, e.g., Task Force on Apprenticeship Expansion, “Final Report to the President of the United States,” May 10, 2018, 16 (citing 2018 report from National Federation of Independent Business); Business Roundtable, “Closing the Skills Gap,” <https://www.businessroundtable.org/policy-perspectives/education-workforce/closing-the-skills-gap> (last visited Dec. 7, 2019).

<sup>26</sup> See, e.g., Mathematica Policy Research, “An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report,” July 25, 2012, <https://www.mathematica.org/our-publications-and-findings/publications/an-effectiveness-assessment-and-costbenefit-analysis-of-registered-apprenticeship-in-10-states>.

<sup>27</sup> Task Force on Apprenticeship Expansion, “Final Report to the President of the United States,” May 10, 2018, 19.

<sup>28</sup> Note:  $12 + 235 = 5$  percent, which is the estimated growth rate for total SREs.

90 percent of SREs will undergo the Department's process for continued recognition. Thus, 183 SREs (= 203 new SREs in Year 1  $\times$  90%) will submit applications for continued recognition in Year 6. The Department estimates that there will be 33 new SREs in Year 6, which reflects the 5-percent growth between Year 5 and Year 6 (259 - 247 = 12),<sup>29</sup> plus new SREs that will supplant the 10 percent of Year 1 SREs that do not submit applications for continued recognition in Year 6 (203 - 183 = 20).<sup>30</sup> This same calculation was used for Years 7-10.

Then, the Department estimated the number of new applications in Years 2-10 by dividing the number of new SREs each year by 75 percent since 75 percent

of applicants are assumed to become recognized as SREs. For example, in Year 6, the number of new applications is estimated to be 44 (= 33 new SREs + 75%).

The number of applications for continued recognition was calculated by multiplying the number of new SREs 5 years prior by 90 percent since the Department assumes that 90 percent of SREs will undergo the Department's process for continued recognition. For example, the Department estimates that 183 SREs (= 203 new SREs in Year 1  $\times$  90%) will submit applications for continued recognition in Year 6, and that 9 SREs (= 10 new SREs in Year 2  $\times$  90%) will submit applications for continued recognition in Year 7.

Finally, the number of total applications each year was estimated by summing the estimated number of new applications and the estimated number of applications for continued recognition each year. For example, in Year 1 the total number of applications is estimated to be 270 (= 270 new applications + 0 applications for continued recognition), while in Year 6 the total number of applications is estimated to be 226 (= 44 new applications + 183 applications for continued recognition).<sup>31</sup>

Exhibit 2 presents the projected number of applications and SREs for each year of the analysis period.

**Exhibit 2: Projected Number of Applications and Standards Recognition Entities**

Year	New Applications	Applications for Continued Recognition <sup>1</sup>	Total Applications	New Standards Recognition Entities <sup>2</sup>	Total Standards Recognition Entities <sup>3</sup>
1	270	--	270	203	203
2	14	--	14	10	213
3	14	--	14	11	224
4	15	--	15	11	235
5	16	--	16	12	247
6	44	183	226	33	259
7	19	9	28	14	272
8	20	10	29	15	286
9	21	10	31	15	300
10	22	11	32	16	315

<sup>1</sup> Assumes 90% of New SREs will seek to continue recognition.

<sup>2</sup> Assumes 75% of New Applications and 100% of Applications for Continued Recognition will be recognized as SREs.

<sup>3</sup> Assumes a 5% growth rate in Total SREs.

#### b. Estimated Number of IRAPs

To estimate the number of IRAPs, the Department looked at the number of programs in the registered apprenticeship system in relevant contexts and, based on those data and related considerations, estimated that each SRE will recognize approximately 32 IRAPs. The recognition of all 32 IRAPs is not likely to occur immediately after an SRE is recognized by the Department; rather, an SRE will probably recognize additional programs each year so that by the end of its tenth year, the SRE will have recognized 32 programs. For purposes of this analysis, the Department estimates that an SRE will recognize 10 new IRAPs in its 1st year as an SRE, 8 new IRAPs in its 2nd

year, 5 new IRAPs in its 3rd year, 3 new IRAPs in its 4th year, and 1 new IRAP per year in its 5th through 10th years.

Based on these assumptions, the number of new IRAPs in Year 1 is estimated to be 2,030 (= 203 new SREs in Year 1  $\times$  10 new IRAPs per SRE). The number of new IRAPs in Year 2 is estimated to be 1,724 [= (203 new SREs in Year 1  $\times$  8 new IRAPs per SRE) + (10 new SREs in Year 2  $\times$  10 new IRAPs per SRE)]. As explained above, the Department assumes that 90 percent of SREs will undergo the Department's process for continued recognition, so in Year 6 the estimated number of new Year 1 SREs will shrink to 183 (= 203 new SREs in Year 1  $\times$  90%). Accordingly, the number of new IRAPs

in Year 6 is estimated to be 707 [= (183 Year 1 SREs with continued recognition  $\times$  1 new IRAPs per SRE) + (10 new SREs in Year 2  $\times$  1 new IRAPs per SRE) + (11 new SREs in Year 3  $\times$  3 new IRAPs per SRE) + (11 new SREs in Year 4  $\times$  5 new IRAPs per SRE) + (12 new SREs in Year 5  $\times$  8 new IRAPs per SRE) + (33 new SREs in Year 6  $\times$  10 new IRAPs per SRE)].

The total number of IRAPs per SRE equals the cumulative total of new IRAPs per SRE. So, a new SRE in Year 1 is estimated to have recognized a total of 18 IRAPs in Year 2 (= 10 new IRAPs in Year 1 + 8 new IRAPs in Year 2). Therefore, the total number of IRAPs in Year 2 is estimated to be 3,754 [= (203 new SREs in Year 1  $\times$  18 total IRAPs per

<sup>29</sup> Note: 12 + 247 = 5 percent, which is the estimated growth rate for total SREs.

<sup>30</sup> The numbers do not sum to the total due to rounding. After calculating the estimated numbers

of applications and SREs, the Department rounded the numbers to integers to use in the remaining calculations in this analysis.

<sup>31</sup> The numbers do not sum to the total due to rounding.



SRE) + (10 new SREs in Year 2 × 10 total IRAPs per SRE)]. As explained above, the estimated number of new Year 1 SREs is expected to shrink to 183 in Year 6. Accordingly, the total number of IRAPs in Year 6 is estimated to be 6,479

[= (183 Year 1 SREs with continued recognition × 28 total IRAPs per SRE) + (10 new SREs in Year 2 × 27 total IRAPs per SRE) + (11 new SREs in Year 3 × 26 total IRAPs per SRE) + (11 new SREs in Year 4 × 23 total IRAPs per SRE) + (12

new SREs in Year 5 × 18 total IRAPs per SRE) + (33 new SREs in Year 6 × 10 total IRAPs per SRE)].

Exhibit 3 presents the projected number of IRAPs over the 10-year analysis period.

Year	New IRAPs per SRE	Total New IRAPs	Total IRAPs per SRE	Total IRAPs
1	10	2,030	10	2,030
2	8	1,724	18	3,754
3	5	1,205	23	4,959
4	3	857	26	5,816
5	1	496	27	6,312
6	1	707	28	6,479
7	1	700	29	7,152
8	1	676	30	7,801
9	1	663	31	8,437
10	1	653	32	9,063

c. Estimated Number of Apprentices

To estimate the number of apprentices, the Department looked at the number of apprentices in the registered apprenticeship system and,

based on those data and related considerations, estimated that each IRAP will have an average of 35 apprentices. Also, given that the duration of programs may vary widely (from weeks to years), the Department

used an average duration of 1 year in its calculations.

Exhibit 4 presents the projected number of apprentices over the 10-year analysis period.

Year	Total Number of IRAPs	Average Number of Apprentices per IRAP	Total Number of Apprentices*	Cumulative Total Number of Apprentices
1	2,030	35	71,050	71,050
2	3,754	35	131,390	202,440
3	4,959	35	173,565	376,005
4	5,816	35	203,560	579,565
5	6,312	35	220,920	800,485
6	6,479	35	226,765	1,027,250
7	7,152	35	250,320	1,277,570
8	7,801	35	273,035	1,550,605
9	8,437	35	295,295	1,845,900
10	9,063	35	317,205	2,163,105

\* Assumes the average duration of programs is one year.

d. Compensation Rates

The Department anticipates that the bulk of the workload for private sector workers will be performed by employees in occupations similar to those associated with the following SOC codes: SOC 11–3131 (Training and Development Managers) and SOC 43–0000 (Office and Administrative Support Occupations).

According to BLS, the mean hourly wage rate for Training and Development

Managers in May 2018 was \$58.53.<sup>32</sup> For this analysis, the Department used a fringe benefits rate of 46 percent<sup>33</sup> and

<sup>32</sup> BLS, “Occupational Employment and Wages, May 2018,” <https://www.bls.gov/oes/current/oes113131.htm>.

<sup>33</sup> BLS, “Employer Costs for Employee Compensation,” <https://www.bls.gov/ncs/data.htm> (last visited Dec. 7, 2019). Wages and salaries averaged \$24.86 per hour worked in 2018, while benefit costs averaged \$11.52, which is a benefits rate of 46 percent.

an overhead rate of 54 percent,<sup>34</sup>

<sup>34</sup> U.S. Department of Health and Human Services (HHS), “Guidelines for Regulatory Impact Analysis,” 2016, [https://aspe.hhs.gov/system/files/pdf/242926/HHS\\_RIAGuidance.pdf](https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf). In its guidelines, HHS states, as “an interim default, while HHS conducts more research, analysts should assume overhead costs (including benefits) are equal to 100 percent of pre-tax wages.” HHS explains that 100 percent is roughly the midpoint between 46 and 150 percent, with 46 percent based on ECEC data that suggest benefits average 46 percent of wages and salaries, and 150 percent based on the private sector “rule of thumb” that

resulting in a fully loaded hourly compensation rate for Training and Development Managers of \$117.06 [= \$58.53 + (\$58.53 × 46%) + (\$58.53 × 54%)].

According to BLS, the mean hourly wage rate for Office and Administrative Support Occupations in May 2018 was \$18.75.<sup>35</sup> The Department used a fringe benefits rate of 46 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Office and Administrative Support Occupations of \$37.50 [= \$18.75 + (\$18.75 × 46%) + (\$18.75 × 54%)].

The compensation rate for the Administrator of OA is based on the salary of a Federal employee at Level IV of the Senior Executive Service, which is \$166,500 per annum;<sup>36</sup> the corresponding hourly base pay for an SES at this level is \$80.05 (= \$166,500 ÷ 2,080 hours). The Department used a fringe benefits rate of 69 percent<sup>37</sup> and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for the Administrator of \$178.51 [= \$80.05 + (\$80.05 × 69%) + (\$80.05 × 54%)].

The compensation rate for a Program Analyst in OA was estimated using the midpoint (Step 5) for Grade 13 of the General Schedule, which is \$53.85 in

the Washington, DC, locality area.<sup>38</sup> The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Program Analysts of \$120.09 [= \$53.85 + (\$53.85 × 69%) + (\$53.85 × 54%)].

The compensation rate for an Administrative Law Judge is based on the salary of a Federal Administrative Law Judge at AL-3 Rate F, which is \$176,900 per annum;<sup>39</sup> the corresponding hourly base pay for an Administrative Law Judge at this level is \$85.05 (= \$174,500 ÷ 2,080 hours). The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for an Administrative Law Judge of \$189.66 [= \$85.05 + (\$85.05 × 69%) + (\$85.05 × 54%)].

The compensation rate for a Staff Attorney in the Department's Office of Administrative Law Judges was estimated using the highest level (Step 10) for Grade 15 of the General Schedule, which is \$79.78 in the Washington, DC, locality area.<sup>40</sup> The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Staff

Attorneys of \$177.91 [= \$79.78 + (\$79.78 × 69%) + (\$79.78 × 54%)].

The compensation rates for a Legal Assistant and Law Clerk in the Department's Office of Administrative Law Judges were estimated using the midpoint (Step 5) for Grade 11 of the General Schedule, which is \$37.79 in the Washington, DC, locality area.<sup>41</sup> The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Legal Assistants and Law Clerks of \$84.27 [= \$37.79 + (\$37.79 × 69%) + (\$37.79 × 54%)].

The compensation rate for a Paralegal in the Department's Office of Administrative Law Judges was estimated using the midpoint (Step 5) for Grade 7 of the General Schedule, which is \$25.53 in the Washington, DC, locality area.<sup>42</sup> The Department used a fringe benefits rate of 69 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Paralegals of \$56.93 [= \$25.53 + (\$25.53 × 69%) + (\$25.53 × 54%)].

The Department used the hourly compensation rates presented in Exhibit 5 throughout this analysis to estimate the labor costs for each provision.

**Exhibit 5: Compensation Rates**

Occupation	Grade Level	Base Hourly Wage Rate	Fringe Benefits Rate	Overhead Rate	Hourly Compensation Rate
<b>Private Sector Employees</b>					
Training and Development Managers	N/A	\$58.53	46%	54%	\$117.06
Office and Administrative Support Occupations	N/A	\$18.75	46%	54%	\$37.50
<b>Federal Government Employees</b>					
Office of Apprenticeship Administrator	SES, Level 4	\$80.05	69%	54%	\$178.51
Program Analyst	GS-13, Step 5	\$53.85	69%	54%	\$120.09
Administrative Law Judge	AL-3, Rate F	\$85.05	69%	54%	\$189.66
Staff Attorney	GS-15, Step 10	\$79.78	69%	54%	\$177.91
Legal Assistant	GS-11, Step 5	\$37.79	69%	54%	\$84.27
Law Clerk	GS-11, Step 5	\$37.79	69%	54%	\$84.27
Paralegal	GS-7, Step 5	\$25.53	69%	54%	\$56.93

fringe benefits plus overhead equal 150 percent of wages. To isolate the overhead costs from HHS's 100-percent assumption, the Department subtracted the 46-percent benefits rate that HHS references, resulting in an overhead rate of approximately 54 percent.

<sup>35</sup> BLS, "Occupational Employment and Wages, May 2018," <https://www.bls.gov/oes/current/oes430000.htm>.

<sup>36</sup> Office of Personnel Management, "Rates of Basic Pay for the Executive Schedule," <https://www.opm.gov/policy-data-oversight/pay-leave/>

[salaries-wages/salary-tables/pdf/2019/EX.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/EX.pdf) (last visited Dec. 7, 2019).

<sup>37</sup> Congressional Budget Office, "Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015," Apr. 25, 2017, <https://www.cbo.gov/publication/52637>. The wages of Federal workers averaged \$38.30 per hour over the study period, while the benefits averaged \$26.50 per hour, which is a benefits rate of 69 percent.

<sup>38</sup> Office of Personnel Management, "General Schedule (GS) Locality Pay Tables," [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf) (last visited Dec. 7, 2019).

<sup>39</sup> Office of Personnel Management, "Administrative Law Judges Locality Rates of Pay," [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/ALJ\\_LOC.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/ALJ_LOC.pdf) (last visited Dec. 7, 2019).

<sup>40</sup> Office of Personnel Management, "General Schedule (GS) Locality Pay Tables," [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf) (last visited Dec. 7, 2019).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

## 5. Subject-by-Subject Analysis

The Department's subject-by-subject analysis covers the estimated costs of the final rule. The hourly time burdens and other estimates used to quantify the costs are largely based on the Department's experience with the registered apprenticeship program.

### a. Costs

#### (1) Rule Familiarization

When the final rule takes effect, prospective SREs will need to familiarize themselves with the new regulation, thereby incurring a one-time cost. To estimate the cost of rule familiarization for the 10-year period of this analysis, the Department multiplied the projected number of new SRE applications in each year by the estimated time to review the rule (2 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$63,212 (= 270 new SRE applications × 2 hours × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$11,413 at a discount rate of 3 percent and \$12,475 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$97,353 at a discount rate of 3 percent and \$87,617 at a discount rate of 7 percent.

In addition, prospective IRAPs will need to familiarize themselves with elements of the new rule. To estimate the cost of rule familiarization for IRAPs, the Department multiplied the projected number of new IRAPs in each year by the estimated time to review the rule (1 hour) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$237,632 (= 2,030 new IRAPs × 1 hour × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$117,700 at a discount rate of 3 percent and \$123,119 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$1,004,009 at a discount rate of 3 percent and \$864,738 at a discount rate of 7 percent.

#### (2) SRE Applications

To become a recognized SRE, an entity will need to submit an application to the Department, and then the Administrator will determine whether the entity is qualified to be an SRE. The application titled "Industry-

Recognized Apprenticeship Program Standards Recognition Entity Application" contains five sections. The estimated costs for completing each section are detailed below.

#### (i) Section I—Standards Recognition Entity Identifying Information

The estimated average response time for a prospective SRE to provide the identifying information requested in Section I is approximately 2 hours, which includes the time to gather and attach the documentation for this section. To estimate the costs for completing Section I over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by the estimated time to complete Section I (2 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$63,212 (= 270 SRE applications × 2 hours × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$16,407 at a discount rate of 3 percent and \$17,229 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$139,951 at a discount rate of 3 percent and \$121,012 at a discount rate of 7 percent.

#### (ii) Section II—Capabilities and Experience of the Standards Recognition Entity

The estimated average response time for a prospective SRE to describe its operations, capabilities, experience, and qualifications to be an SRE is approximately 5 hours, including the time to gather the necessary documentation. To estimate the costs for completing Section II over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by the estimated time to complete Section II (5 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$158,031 (= 270 SRE applications × 5 hours × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$41,016 at a discount rate of 3 percent and \$43,074 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$349,877 at a discount rate of 3 percent and \$302,531 at a discount rate of 7 percent.

#### (iii) Section III—Evaluating and Monitoring Elements of a High-Quality Apprenticeship Program

The estimated average response time for a new SRE applicant to provide information regarding the elements of the IRAPs it will recognize is 60 hours, including the time to develop the pertinent policies and procedures. Because an SRE applying for continued recognition will already have policies and procedures in place, the estimated average response time for an SRE applying for continued recognition in Years 6–10 is 6 hours. To estimate the costs for completing Section III over the 10-year analysis period, the Department multiplied the projected number of new SRE applications in each year by the estimated time to complete Section III (60 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). Then, the Department added the product of the projected number of SRE applications for continued recognition in each year and the estimated time to complete Section III (6 hours) and the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new SRE applications in Year 6 is 44 and the projected number of SRE applications for continued recognition is 183, so the estimated Year 6 cost is \$437,570 [= (44 new SRE applications × 60 hours × \$117.06 per hour) + (183 SRE applications for continued recognition × 6 hours × \$117.06 per hour)]. The annualized cost over the 10-year analysis period is estimated at \$357,558 at a discount rate of 3 percent and \$388,682 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$3,050,043 at a discount rate of 3 percent and \$2,729,943 at a discount rate of 7 percent.

#### (iv) Section IV—Policies and Procedures

The estimated average response time for a new SRE applicant to provide information concerning its proposed policies and procedures for recognizing and quality control of IRAPs is 40 hours, including the time to develop the pertinent policies and procedures. Because an SRE applying for continued recognition will already have policies and procedures in place, the estimated average response time for an SRE applying for continued recognition in Years 6–10 is 4 hours. To estimate the costs for completing Section IV over the 10-year analysis period, the Department multiplied the projected number of new SRE applications in each year by the estimated time to complete Section IV

(40 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). Then, the Department added the product of the projected number of SRE applications for continued recognition in each year and the estimated time to complete Section IV (4 hours) and the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new SRE applications in Year 6 is 44 and the projected number of SRE applications for continued recognition is 183, so the estimated Year 6 cost is \$291,714 [(= 44 new SRE applications × 40 hours × \$117.06 per hour) + (183 SRE applications for continued recognition × 4 hours × \$117.06 per hour)]. The annualized cost over the 10-year analysis period is estimated at \$238,372 at a discount rate of 3 percent and \$259,122 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$2,033,362 at a discount rate of 3 percent and \$1,819,962 at a discount rate of 7 percent.

(v) Section V—Attestation

The Department estimates that it will take 10 minutes for each prospective SRE to review the application for completeness and to sign it. To estimate the costs for completing Section V over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by the estimated time to complete Section V (10 minutes) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$5,373 (= 270 SRE applications × 10 minutes × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$1,395 at a discount rate of 3 percent and \$1,465 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$11,896 at a discount rate of 3 percent and \$10,286 at a discount rate of 7 percent.

(3) Resubmitting an Application

If a prospective SRE is denied recognition, it may resubmit its application after remedying any deficiencies. For purposes of this analysis, the Department estimates that approximately 30 percent of applications will be denied on the first attempt, and that 50 percent of the denied applications will be resubmitted after the deficiencies have been addressed, which means 15 percent of all applications will be resubmitted. The

Department estimates that remedying the deficiencies and resubmitting the application will take approximately 16 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 15 percent, and then multiplied that product by the estimated time to resubmit the application (16 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$75,855 (= 270 SRE applications × 15% × 16 hours × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$19,688 at a discount rate of 3 percent and \$20,675 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$167,941 at a discount rate of 3 percent and \$145,215 at a discount rate of 7 percent.

(4) Request for Administrative Review of Denial

If a prospective SRE is denied recognition, it may request administrative review by the Department's Office of Administrative Law Judges. For purposes of this analysis, the Department estimates that approximately 1 percent of all applications will request administrative review and that filing a request for administrative review will take approximately 60 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time to file a request for administrative review (60 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$18,964 (= 270 SRE applications × 1% × 60 hours × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$3,717 at a discount rate of 3 percent and \$4,029 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$31,705 at a discount rate of 3 percent and \$28,300 at a discount rate of 7 percent.

(5) Notification of Right To File Complaint Against IRAP

Pursuant to § 29.22(k), an SRE must notify the public about the right of an apprentice, a prospective apprentice, the apprentice's authorized representative, a personnel certification

body, or an employer, to file a complaint with the SRE against an IRAP and the requirements for filing a complaint. For example, the SRE could provide the information online, on a poster, or in a handbook. The Department estimates that it will take 1 hour for a Training and Development Manager to comply with this provision. To estimate the costs over the 10-year analysis period, the Department multiplied the projected number of new SREs in each year by the estimated time to notify the public (1 hour) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new SREs in Year 1 is 203, so the estimated Year 1 cost is \$23,763 (= 203 new SREs × 1 hour × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$4,267 at a discount rate of 3 percent and \$4,669 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$36,402 at a discount rate of 3 percent and \$32,790 at a discount rate of 7 percent.

(6) Notification of Right To File Complaint Against SRE

Pursuant to § 29.22(l), an SRE must notify the public about the right to file a complaint against it with the Administrator. For example, the SRE could provide the information online, on a poster, or in a handbook. The Department estimates that it will take 1 hour for a Training and Development Manager to comply with this provision. To estimate the costs over the 10-year analysis period, the Department multiplied the projected number of new SREs in each year by the estimated time to notify the public (1 hour) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new SREs in Year 1 is 203, so the estimated Year 1 cost is \$23,763 (= 203 new SREs × 1 hour × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$4,267 at a discount rate of 3 percent and \$4,669 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$36,402 at a discount rate of 3 percent and \$32,790 at a discount rate of 7 percent.

(7) Notification of Substantive Changes by SRE

In accordance with § 29.21(c)(2), an SRE will need to notify the Administrator and provide all related material if it makes a substantive change to its processes or seeks to recognize IRAPs in additional industries, occupational areas, or geographical

areas. The Department estimates that approximately 50 percent of SREs will make a substantive change each year and that complying with this provision will take approximately 10 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by 50 percent, and then multiplied that product by the estimated time to comply with this provision (10 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is \$118,816 (= 203 SREs  $\times$  50%  $\times$  10 hours  $\times$  \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$147,719 at a discount rate of 3 percent and \$145,478 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$1,260,072 at a discount rate of 3 percent and \$1,021,779 at a discount rate of 7 percent.

#### (8) Recognition or Rejection of Apprenticeship Programs Seeking Recognition

In accordance with paragraph 29.22(a)(1), an SRE will need to recognize or reject a prospective IRAP in a timely manner. Moreover, in accordance with § 29.22(b), an SRE will need to validate its IRAPs' compliance with the requirements listed in § 29.22(a)(4) when the SRE provides the Administrator with notice of recognition of an IRAP. The Department estimates that complying with these two provisions will take approximately 12 hours per program seeking recognition per year. The Department used the estimated number of new IRAPs as a proxy for this calculation, anticipating that the vast majority of programs seeking recognition will be recognized. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of new IRAPs in each year by the estimated time to comply with this provision (12 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$2,851,582 (= 2,030 IRAPs  $\times$  12 hours  $\times$  \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$1,412,406 at a discount rate of 3 percent and \$1,477,430 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$12,048,109 at a discount rate of 3

percent and \$10,376,853 at a discount rate of 7 percent.

#### (9) Inform Administrator of IRAP Recognition, Suspension, or Derecognition

In accordance with § 29.22(a)(2), an SRE will need to inform the Administrator when it has recognized, suspended, or derecognized an IRAP. The Department estimates that complying with this provision will take approximately 30 minutes per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by the estimated time to comply with this provision (30 minutes) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is \$11,882 (= 203 SREs  $\times$  30 minutes  $\times$  \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$14,772 at a discount rate of 3 percent and \$14,548 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$126,007 at a discount rate of 3 percent and \$102,178 at a discount rate of 7 percent.

#### (10) Provision of Data or Information to the Administrator

In accordance with § 29.22(a)(3), an SRE will need to provide to the Administrator any data or information the Administrator is expressly authorized to collect. The Department estimates that approximately 10 percent of SREs will need to provide additional data or information each year and that complying with this provision will take approximately 2 hours per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by 10 percent, and then multiplied that product by the estimated time to comply with this provision (2 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is \$4,753 (= 203 SREs  $\times$  10%  $\times$  2 hours  $\times$  \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$5,909 at a discount rate of 3 percent and \$5,819 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$50,403 at a discount rate of 3 percent and \$40,871 at a discount rate of 7 percent.

#### (11) Provision of Written Attestation to the Administrator

In accordance with § 29.22(b), an SRE must provide the Administrator an annual written attestation that its IRAPs meet the requirements of § 29.22(a)(4) and any other requirements of the SRE. The Department estimates that complying with this provision will take SREs approximately 10 minutes per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by 10 minutes and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$40,397 (= 2,030 IRAPs  $\times$  10 minutes  $\times$  \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$119,607 at a discount rate of 3 percent and \$115,230 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$1,020,268 at a discount rate of 3 percent and \$809,325 at a discount rate of 7 percent.

#### (12) SREs' Disclosure of Credentials That Apprentices Will Earn

In accordance with § 29.22(c), an SRE will need to disclose the credential(s) that apprentices will earn during their successful participation in or upon completion of an IRAP. An SRE could disclose these credentials on its website, for example. The Department estimates that complying with this provision will take approximately 30 minutes per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by the estimated time to comply with this provision (30 minutes) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is \$11,882 (= 203 SREs  $\times$  30 minutes  $\times$  \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$14,772 at a discount rate of 3 percent and \$14,548 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$126,007 at a discount rate of 3 percent and \$102,178 at a discount rate of 7 percent.

#### (13) SREs' Quality Control of IRAPs

In accordance with § 29.22(f), an SRE will need to remain in an ongoing quality-control relationship with the IRAPs it has recognized, including periodic compliance reviews of its

IRAPs. The Department estimates that complying with this provision will take an SRE approximately 4 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (4 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$950,527 ( $= 2,030 \text{ IRAPs} \times 4 \text{ hours} \times \$117.06 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$2,814,272 at a discount rate of 3 percent and \$2,711,287 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$24,006,312 at a discount rate of 3 percent and \$19,042,948 at a discount rate of 7 percent.

#### (14) Performance Data Reporting

In accordance with § 29.22(h), an SRE must report to the Administrator performance data for each IRAP it recognizes. Assuming the SRE will submit the information via the online portal that will be developed by OA, the Department estimates that complying with this provision will take an SRE approximately 4 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (4 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$950,527 ( $= 2,030 \text{ IRAPs} \times 4 \text{ hours} \times \$117.06 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$2,814,272 at a discount rate of 3 percent and \$2,711,287 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$24,006,312 at a discount rate of 3 percent and \$19,042,948 at a discount rate of 7 percent.

In accordance with § 29.22(h), an SRE must also make publicly available performance data for each IRAP it recognizes. The Department estimates that complying with this provision will take an SRE approximately 2 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (2 hours) and by the hourly compensation rate for Training and Development

Managers (\$117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$475,264 ( $= 2,030 \text{ IRAPs} \times 2 \text{ hours} \times \$117.06 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$1,407,136 at a discount rate of 3 percent and \$1,355,644 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$12,003,156 at a discount rate of 3 percent and \$9,521,474 at a discount rate of 7 percent.

In order for an SRE to comply with these provisions, the IRAPs it recognizes will need to provide the pertinent performance data. The Department estimates that it will take IRAPs approximately 25 hours per year to collect and provide the relevant data. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by 25 hours and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$5,940,795 ( $= 2,030 \text{ IRAPs} \times 25 \text{ hours} \times \$117.06 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$17,589,201 at a discount rate of 3 percent and \$16,945,546 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$150,039,452 at a discount rate of 3 percent and \$119,018,422 at a discount rate of 7 percent.

#### (15) SREs' Public Notification of Fees

Pursuant to § 29.22(n), an SRE must publicly disclose any fees it charges to IRAPs. An SRE could disclose its fees on its website, for example. The Department estimates that complying with this provision will take approximately 1 hour per year. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by the estimated time to comply with this provision (1 hour) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is \$23,763 ( $= 203 \text{ SREs} \times 1 \text{ hour} \times \$117.06 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$29,544 at a discount rate of 3 percent and \$29,096 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$252,014 at a discount rate of 3 percent and \$204,356 at a discount rate of 7 percent.

#### (16) SREs' Recordkeeping

Pursuant to § 29.22(o), an SRE must ensure that its records regarding each IRAP that the SRE recognized are maintained for a minimum of 5 years. The Department estimates that complying with this provision will take an SRE approximately 20 hours per IRAP. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of IRAPs in each year by the estimated time to comply with this provision (20 hours) and by the hourly compensation rate for Office and Administrative Support Occupations (\$37.50 per hour). For example, the projected number of IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$1,522,500 ( $= 2,030 \text{ IRAPs} \times 20 \text{ hours} \times \$37.50 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$4,507,740 at a discount rate of 3 percent and \$4,342,785 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$38,451,935 at a discount rate of 3 percent and \$30,501,902 at a discount rate of 7 percent.

#### (17) IRAPs' Development of Written Training Plan

In accordance with § 29.22(a)(4)(ii), an IRAP must have a written training plan that details the structured work experiences and appropriate related instruction, is designed so that apprentices demonstrate competency and earn credential(s), and provides apprentices progressively advancing industry-essential skills. The Department estimates that it will take IRAPs approximately 80 hours per year to comply with this provision. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of new IRAPs in each year by the estimated time to comply with these provisions (80 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$19,010,544 ( $= 2,030 \text{ new IRAPs} \times 80 \text{ hours} \times \$117.06 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$9,416,040 at a discount rate of 3 percent and \$9,849,537 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$80,320,727 at a discount rate of 3 percent and \$69,179,023 at a discount rate of 7 percent.

**(18) IRAPs' Development of Written Apprenticeship Agreement**

In accordance with § 29.22(a)(4)(x), an IRAP must include a written apprenticeship agreement outlining the terms and conditions of the employment and training with each apprentice. For purposes of this analysis, the Department assumes the written apprenticeship agreement will disclose the wages apprentices will receive and under what circumstances apprentices' wages will increase pursuant to § 29.22(a)(4)(vii), as well as any costs or expenses that will be charged to apprentices pursuant to § 29.22(a)(4)(ix). The Department estimates that it will take IRAPs approximately 8 hours per year to comply with these three provisions. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of new IRAPs in each year by the estimated time to comply with these provisions (8 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of new IRAPs in Year 1 is 2,030, so the estimated Year 1 cost is \$1,901,054 (= 2,030 new IRAPs × 8 hours × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at \$941,604 at a discount rate of 3 percent and \$984,954 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$8,032,073 at a discount rate of 3 percent and \$6,917,902 at a discount rate of 7 percent.

**(19) IRAPs' Preparation and Signing of Written Apprenticeship Agreement**

In addition to developing a written apprenticeship agreement, which may be applicable to multiple apprentices, an IRAP must prepare and sign an apprenticeship agreement with each individual apprentice. The Department estimates that it will take IRAPs approximately 10 minutes per apprentice to prepare and sign a written apprenticeship agreement. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of apprentices in each year by the estimated time to comply with these provisions (10 minutes) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour). For example, the projected number of apprentices in Year 1 is 71,050, so the estimated Year 1 cost is \$1,413,909 (= 71,050 apprentices × 10 minutes × \$117.06 per hour). The annualized cost over the 10-year analysis period is estimated at

\$4,186,230 at a discount rate of 3 percent and \$4,033,040 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$35,709,390 at a discount rate of 3 percent and \$28,326,384 at a discount rate of 7 percent.

**(20) DOL Development of Online Application Form and Internal Review System**

Before an entity could submit an application to become a recognized SRE, the Department will first need to develop an online application form and a system for managing the internal review process. In addition to the first-year software and labor costs, the Department will also incur annual maintenance costs.

The Department estimates that the first-year software and labor costs to develop the online system will total \$546,462. Contractor labor for developing the program and the application form will account for 20 percent of the total cost, contractor labor for developing a public website that will accept the applications and a private system for managing the internal review of the applications will account for 77 percent of the total cost, and material costs for software hosting and licensing will account for 3 percent of the total cost. The annualized cost over the 10-year analysis period is estimated at \$62,196 at a discount rate of 3 percent and \$72,714 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$530,546 at a discount rate of 3 percent and \$510,712 at a discount rate of 7 percent.

With respect to annual maintenance, the Department estimates that the total for software and labor will be \$125,000. Contractor labor to support maintenance of the online application form and case management system will account for 68 percent of the total cost, while material costs for software hosting and licensing fees will account for 32 percent of the total cost. The total cost over the 10-year analysis period is estimated at \$1,066,275 at a discount rate of 3 percent and \$877,948 at a discount rate of 7 percent.

**(21) DOL Development of Online Resource for Performance Measures**

Another online tool that will need to be developed by the Department will be an online resource for receiving performance data from SREs. In addition to the first-year software and labor costs, the Department will also incur annual maintenance costs.

The Department estimates that the first-year software and labor costs to develop the online system will total

\$1,163,085. Contractor labor for developing the online system will account for 20 percent of the total cost, contractor labor for developing a public website that will accept the performance data and a private system for managing the internal review of the performance data will account for 77 percent of the total cost, and material costs for software hosting and licensing will account for 3 percent of the total cost. The annualized cost over the 10-year analysis period is estimated at \$132,378 at a discount rate of 3 percent and \$154,764 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$1,129,209 at a discount rate of 3 percent and \$1,086,995 at a discount rate of 7 percent.

With respect to annual maintenance, the Department estimates that the total for software and labor will be \$245,909. Contractor labor to support maintenance of the online performance system will account for 68 percent of the total cost, while material costs for software hosting and licensing fees will account for 32 percent of the total cost. The total cost over the 10-year analysis period is estimated at \$2,097,654 at a discount rate of 3 percent and \$1,727,162 at a discount rate of 7 percent.

**(22) DOL Development of Online Resource for List of SREs and IRAPs**

Another online tool that will need to be developed by the Department will be an online resource for the list of SREs and IRAPs. In addition to the first-year software and labor costs, the Department will also incur annual maintenance costs.

The Department estimates that the first-year software and labor costs to develop the online system will total \$92,000. Contractor labor for developing the online resource will account for 98 percent of the total cost, while material costs for software hosting and licensing will account for 2 percent of the total cost. The annualized cost over the 10-year analysis period is estimated at \$10,471 at a discount rate of 3 percent and \$12,242 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$89,320 at a discount rate of 3 percent and \$85,981 at a discount rate of 7 percent.

With respect to annual maintenance, the Department estimates that the total for software and labor will be \$18,000. Contractor labor to support maintenance of the online list of SREs and IRAPs will account for 68 percent of the total cost, while material costs for software hosting and licensing fees will account for 32 percent of the total cost. The total cost over the 10-year analysis period is

estimated at \$153,544 at a discount rate of 3 percent and \$126,424 at a discount rate of 7 percent.

### (23) DOL Review of SRE Applications

The following steps summarize the estimated costs that will be borne by OA in connection with processing and reviewing the application information provided by prospective SREs.

#### (i) Step 1: Processing by Program Analysts

The Department anticipates that the initial intake, review, and analysis of the information in the application form will be conducted by a Program Analyst in OA. The Department estimates that a Program Analyst will take an average of 1 hour to review and analyze the information. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by the estimated time to process each application (1 hour) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$32,424 ( $= 270 \text{ SRE applications} \times 1 \text{ hour} \times \$120.09 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$8,416 at a discount rate of 3 percent and \$8,838 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$71,787 at a discount rate of 3 percent and \$62,072 at a discount rate of 7 percent.

#### (ii) Step 2: Panel Review

Applications that pass the initial review process by a Program Analyst will then be forwarded to a review panel. For purposes of this analysis, the Department estimated the labor costs for a panel consisting of one Program Analyst and two Federal contractors who are Training and Development Managers. The three panelists will review each application and make a recommendation for recognition or denial to the Administrator. For purposes of this analysis, the Department estimates that 90 percent of applications will pass the initial review process by a Program Analyst and will be forwarded to the review panel.

The Department estimates that the Program Analyst on the review panel will take 8 hours to conduct a complete review of each application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time to review each

application (8 hours) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$233,455 ( $= 270 \text{ SRE applications} \times 90\% \times 8 \text{ hours} \times \$120.09 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$60,592 at a discount rate of 3 percent and \$63,631 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$516,864 at a discount rate of 3 percent and \$446,921 at a discount rate of 7 percent.

The Department estimates that the Training and Development Managers on the review panel will take 8 hours each to conduct a complete review of each application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour) and by 2 to account for both Training and Development Managers on the review panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$455,129 ( $= 270 \text{ SRE applications} \times 90\% \times 8 \text{ hours} \times \$117.06 \text{ per hour} \times 2 \text{ Training and Development Managers}$ ). The annualized cost over the 10-year analysis period is estimated at \$118,127 at a discount rate of 3 percent and \$124,052 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$1,007,646 at a discount rate of 3 percent and \$871,289 at a discount rate of 7 percent.

#### (iii) Step 3: Panel Meeting

The Department expects that the panel members will meet on a consistent basis to discuss their review findings for each application. The Department estimates that the Program Analyst on the review panel will spend 1 hour per application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$29,182 ( $= 270 \text{ SRE applications} \times 90\% \times 1 \text{ hour} \times \$120.09 \text{ per hour}$ ). The annualized cost

over the 10-year analysis period is estimated at \$7,574 at a discount rate of 3 percent and \$7,954 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$64,608 at a discount rate of 3 percent and \$55,865 at a discount rate of 7 percent.

The Department estimates that the two Training and Development Managers on the review panel will each spend 1 hour per application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 90 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour) and by 2 to account for both Training and Development Managers on the panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$56,891 ( $= 270 \text{ SRE applications} \times 90\% \times 1 \text{ hour} \times \$117.06 \text{ per hour} \times 2 \text{ Training and Development Managers}$ ). The annualized cost over the 10-year analysis period is estimated at \$14,766 at a discount rate of 3 percent and \$15,506 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$125,956 at a discount rate of 3 percent and \$108,911 at a discount rate of 7 percent.

#### (iv) Step 4: Review by the Administrator

After the three panelists review the applications, the satisfactory applications will be forwarded to the Administrator for final review and approval. The Administrator will reach a final determination as to whether the entities should be recognized as SREs. The Department estimates that 70 percent of applications will be forwarded to the Administrator and that the Administrator will spend 15 minutes per application making a final decision. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 70 percent, and then multiplied this product by the estimated time for review by the Administrator (15 minutes) and by the hourly compensation rate for the Administrator (\$178.51 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$8,435 ( $= 270 \text{ SRE applications} \times 70\% \times 15 \text{ minutes} \times \$178.51 \text{ per hour}$ ). The annualized cost over the 10-year analysis period is estimated at \$2,189 at a discount rate of



3 percent and \$2,299 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$18,674 at a discount rate of 3 percent and \$16,147 at a discount rate of 7 percent.

(v) Notification of Recognition or Denial of Recognition

Finally, OA will notify each applicant of the results of the review process. Each applicant will either be recognized as an SRE or be denied recognition. The Department estimates that a Program Analyst will spend an average of 1 hour notifying each applicant. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by the estimated time for notification (1 hour) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$32,424 (= 270 SRE applications  $\times$  1 hour  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$8,416 at a discount rate of 3 percent and \$8,838 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$71,787 at a discount rate of 3 percent and \$62,072 at a discount rate of 7 percent.

(24) DOL Review of Resubmitted SRE Applications

For purposes of this analysis, the Department estimates that approximately 30 percent of applications will be denied on the first attempt, and that 50 percent of the denied applications will be resubmitted after the deficiencies have been addressed, which means 15 percent of all applications will be resubmitted. The Department will then follow the same five steps for reviewing the resubmitted applications.

(i) Resubmission Step 1: Processing by Program Analysts

The Department estimates that a Program Analyst will take 1 hour to process the information in a resubmitted application. To estimate the costs over the 10-year analysis period for Step 1 of the resubmission review process, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time to process each application (1 hour) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$4,864

(= 270 SRE applications  $\times$  15%  $\times$  1 hour  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$1,262 at a discount rate of 3 percent and \$1,326 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$10,768 at a discount rate of 3 percent and \$9,311 at a discount rate of 7 percent.

(ii) Resubmission Step 2: Panel Review

The Department estimates that the Program Analyst on the review panel will take 8 hours to conduct a complete review of each resubmitted application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$38,909 (= 270 SRE applications  $\times$  15%  $\times$  8 hours  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$10,099 at a discount rate of 3 percent and \$10,605 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$86,144 at a discount rate of 3 percent and \$74,487 at a discount rate of 7 percent.

The Department estimates that the two Training and Development Managers on the review panel will take 8 hours each to conduct a complete review of each resubmitted application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time to review each application (8 hours) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour) and by 2 to account for both Training and Development Managers on the panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$75,855 (= 270 SRE applications  $\times$  15%  $\times$  8 hours  $\times$  \$117.06 per hour  $\times$  2 Training and Development Managers). The annualized cost over the 10-year analysis period is estimated at \$19,688 at a discount rate of 3 percent and \$20,675 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$167,941 at a discount rate of 3 percent and \$145,215 at a discount rate of 7 percent.

(iii) Resubmission Step 3: Panel Meeting

The Department estimates that the Program Analyst on the review panel will spend 1 hour per resubmitted application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$4,864 (= 270 SRE applications  $\times$  15%  $\times$  1 hour  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$1,262 at a discount rate of 3 percent and \$1,326 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$10,768 at a discount rate of 3 percent and \$9,311 at a discount rate of 7 percent.

The Department estimates that the two Training and Development Managers on the review panel will each spend 1 hour per resubmitted application in meetings with the other panelists. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time for meetings (1 hour) and by the hourly compensation rate for Training and Development Managers (\$117.06 per hour) and by 2 to account for both Training and Development Managers on the panel. For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$9,482 (= 270 SRE applications  $\times$  15%  $\times$  1 hour  $\times$  \$117.06 per hour  $\times$  2 Training and Development Managers). The annualized cost over the 10-year analysis period is estimated at \$2,461 at a discount rate of 3 percent and \$2,584 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$20,993 at a discount rate of 3 percent and \$18,152 at a discount rate of 7 percent.

(iv) Resubmission Step 4: Review by the Administrator

For purposes of this analysis, the Department estimates that one-third of resubmitted applications will be forwarded to the Administrator, which equates to 5 percent of the total number of applications (= 15% of all applications  $\times$   $\frac{1}{3}$  forwarded to the Administrator). The Department further

estimates that the Administrator will spend 15 minutes per resubmitted application making a final decision. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 5 percent, and then multiplied this product by the estimated time for review by the Administrator (15 minutes) and by the hourly compensation rate for the Administrator (\$178.51 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$602 (= 270 SRE applications  $\times$  5%  $\times$  15 minutes  $\times$  \$178.51 per hour). The annualized cost over the 10-year analysis period is estimated at \$156 at a discount rate of 3 percent and \$164 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$1,334 at a discount rate of 3 percent and \$1,153 at a discount rate of 7 percent.

(v) Notification of Recognition or Denial of Recognition for Resubmitted Applications

The Department estimates that a Program Analyst will spend an average of 1 hour notifying each entity that resubmitted an application. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of total SRE applications each year by 15 percent, and then multiplied this product by the estimated time for notification (1 hour) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of total SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$4,864 (= 270 SRE applications  $\times$  15%  $\times$  1 hour  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$1,262 at a discount rate of 3 percent and \$1,326 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$10,768 at a discount rate of 3 percent and \$9,311 at a discount rate of 7 percent.

(25) DOL Preparation of Administrative Record When a Denied Entity Requests Review

As explained earlier in this section, the Department estimates that approximately 1 percent of all applications will request administrative review of a denial. Within 30 calendar days of the filing of the request for administrative review, the Administrator will have to prepare an administrative record for submission to the Office of Administrative Law Judges. Based on its program experience, the

Department estimates that preparing an administrative record will take a Program Analyst approximately 6 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time to prepare an administrative record (6 hours) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$1,945 (= 270 SRE applications  $\times$  1%  $\times$  6 hours  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$381 at a discount rate of 3 percent and \$413 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$3,253 at a discount rate of 3 percent and \$2,903 at a discount rate of 7 percent.

(26) Review of Administrator's Denial by Office of Administrative Law Judges

In accordance with § 29.29, a prospective SRE that is denied recognition may file a request for administrative review by an Administrative Law Judge. The Department estimates that it will take 8 hours for an Administrative Law Judge to review the administrative record submitted by OA and conduct a hearing. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for an Administrative Law Judge to conduct a review (8 hours) and by the hourly compensation rate for Administrative Law Judges (\$189.66 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$4,097 (= 270 SRE applications  $\times$  1%  $\times$  8 hours  $\times$  \$189.66 per hour). The annualized cost over the 10-year analysis period is estimated at \$803 at a discount rate of 3 percent and \$870 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$6,849 at a discount rate of 3 percent and \$6,114 at a discount rate of 7 percent.

Next, a Law Clerk in the Office of Administrative Law Judges will draft the proposed findings and the recommended decision based on the hearing. The Department estimates that this step of the process will take approximately 2 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in

each year by 1 percent, and then multiplied that product by the estimated time for a Law Clerk to draft the proposed findings and the recommended decision (2 hours) and by the hourly compensation rate for Law Clerks (\$84.27 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$455 (= 270 SRE applications  $\times$  1%  $\times$  2 hours  $\times$  \$84.27 per hour). The annualized cost over the 10-year analysis period is estimated at \$89 at a discount rate of 3 percent and \$97 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$761 at a discount rate of 3 percent and \$679 at a discount rate of 7 percent.

In addition, a Paralegal in the Office of Administrative Law Judges will handle the tasks related to placing the matter on the docket of cases. The Department estimates that this step of the process will take approximately 2 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for a Paralegal to place the matter on the docket (2 hours) and by the hourly compensation rate for Paralegals (\$56.93 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$307 (= 270 SRE applications  $\times$  1%  $\times$  2 hours  $\times$  \$56.93 per hour). The annualized cost over the 10-year analysis period is estimated at \$60 at a discount rate of 3 percent and \$65 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$514 at a discount rate of 3 percent and \$459 at a discount rate of 7 percent.

(27) Review of Administrator's Denial by Administrative Review Board

In accordance with § 29.29, any party may file exceptions to the Administrative Law Judge's recommended decision in the prior step. If the Administrative Review Board accepts a case for review, the three-judge panel of Administrative Law Judges will review the proposed findings and the recommended decision provided by the Administrative Law Judge in the prior step, and then render a decision on the record. The Department estimates that the review and decision will take approximately 2 hours per Administrative Law Judge. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the

estimated time for each Administrative Law Judge to conduct the review (2 hours) and by the hourly compensation rate for Administrative Law Judges (\$189.66 per hour) and by 3 Administrative Law Judges. For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$3,073 (= 270 SRE applications  $\times$  1%  $\times$  2 hours  $\times$  \$189.66 per hour  $\times$  3 Administrative Law Judges). The annualized cost over the 10-year analysis period is estimated at \$602 at a discount rate of 3 percent and \$653 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$5,137 at a discount rate of 3 percent and \$4,585 at a discount rate of 7 percent.

Next, a Staff Attorney for the Administrative Review Board will draft a decision for the Board. The Department estimates that this step of the process will take approximately 6 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE applications in each year by 1 percent, and then multiplied that product by the estimated time for a Staff Attorney to draft a decision (6 hours) and by the hourly compensation rate for Staff Attorneys (\$177.91 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$2,882 (= 270 SRE applications  $\times$  1%  $\times$  6 hours  $\times$  \$177.91 per hour). The annualized cost over the 10-year analysis period is estimated at \$565 at a discount rate of 3 percent and \$612 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$4,819 at a discount rate of 3 percent and \$4,301 at a discount rate of 7 percent.

In addition, a Legal Assistant will perform docket filing and other administrative tasks associated with the issuance of the Administrative Review Board's decision. The Department estimates that this step of the process will take approximately 2 hours. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SRE

applications in each year by 1 percent, and then multiplied that product by the estimated time for a Legal Assistant to perform administrative duties (2 hours) and by the hourly compensation rate for Legal Assistant (\$84.27 per hour). For example, the projected number of SRE applications in Year 1 is 270, so the estimated Year 1 cost is \$455 (= 270 SRE applications  $\times$  1%  $\times$  2 hours  $\times$  \$84.27 per hour). The annualized cost over the 10-year analysis period is estimated at \$89 at a discount rate of 3 percent and \$97 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$761 at a discount rate of 3 percent and \$679 at a discount rate of 7 percent.

#### (28) Administrator's Compliance Assistance Reviews

Pursuant to § 29.23(a), the Administrator may conduct periodic compliance assistance reviews of SREs to assist with their conformity to the requirements of this rule. For purposes of this analysis, the Department estimates that OA will perform a compliance assistance review of 5 percent of SREs per year, and that such a review will take approximately 10 hours per SRE. To estimate these costs over the 10-year analysis period, the Department multiplied the projected number of SREs in each year by 5 percent, and then multiplied this product by the estimated time to comply with this provision (10 hours) and by the hourly compensation rate for Program Analysts (\$120.09 per hour). For example, the projected number of SREs in Year 1 is 203, so the estimated Year 1 cost is \$12,189 (= 203 SREs  $\times$  5%  $\times$  10 hours  $\times$  \$120.09 per hour). The annualized cost over the 10-year analysis period is estimated at \$15,154 at a discount rate of 3 percent and \$14,924 at a discount rate of 7 percent. The total cost over the 10-year analysis period is estimated at \$129,269 at a discount rate of 3 percent and \$104,823 at a discount rate of 7 percent.

#### b. Payments From IRAPs to SREs

The Department anticipates that SREs may charge a fee to the IRAPs that they recognize, though such a fee is neither

required nor prohibited under this final rule. Such a fee will help SREs offset the costs described earlier in this section.

SREs' fees will likely vary widely, so the Department explored different ways to estimate those fees. The Department began by looking at the application and annual fees charged by entities that focus primarily on setting standards, thinking it would make sense to base its estimate on the fees currently charged by such entities. However, after further reflection, the Department decided that such entities are not representative of the full range of potential SREs, which may include but are not limited to trade, industry, and employer groups or associations; educational institutions; State and local government agencies or entities; non-profit organizations; unions; joint labor-management organizations; and partnerships of multiple entities. Entities that focus primarily or exclusively on standards-setting are not representative of the variety of entities likely to apply to become recognized SREs, so the fees charged by such entities would not be representative of the fees that may (or may not) be charged by other types of entities.

Therefore, the Department decided that a better approach to estimating SRE fees would be to develop an estimate based on the quantified costs in this analysis. To approximate a break-even point between SRE costs and SRE fees under this final rule, the Department estimates an average initial application fee of \$3,000 and an average annual fee of \$2,000. The remaining difference between SRE costs and SRE fees reflects the unquantified costs under this final rule.

Since the payment of SRE fees by IRAPs will help SREs recoup their costs under this final rule, and since those costs have already been quantified in the economic analysis above, the potential payments from IRAPs to SREs are not included in Exhibits 1 or 6.

#### 6. Summary of Costs

Exhibit 6 presents a summary of the quantifiable costs associated with this final rule.

<b>Exhibit 6: Estimated Costs (2018 dollars)</b>	
<b>Year</b>	<b>Costs</b>
1	\$42,261,859
2	\$42,085,967
3	\$42,663,991
4	\$43,344,141
5	\$41,863,302
6	\$46,881,519
7	\$49,075,275
8	\$52,433,000
9	\$55,851,825
10	\$59,248,016
Annualized, 3% discount rate, 10 years	\$47,104,991
Annualized, 7% discount rate, 10 years	\$46,530,920
Total, 3% discount rate, 10 years	\$401,815,127
Total, 7% discount rate, 10 years	\$326,813,710

## 7. Nonquantifiable Costs

This section addresses the nonquantifiable costs of the final rule.

### a. SRE Costs

Under § 29.22(j), an SRE must make publicly available the aggregated number of complaints pertaining to each IRAP. This is a new program, and in the absence of useful comparable data or other readily applicable information, the Department does not have a reasonable way to estimate the number of complaints that will be filed against each IRAP. Consequently, there is insufficient information to quantify the potential costs of this provision.

Further, under § 29.26, the Administrator may initiate a review of an SRE after receiving a complaint about the SRE or information indicating that the SRE is no longer capable of continuing in its role. If a review is initiated, the SRE will have an opportunity to provide information to the Department. Since this is a new program, the Department does not have a reasonable way to estimate the number of complaints it may receive or reviews it may initiate. Consequently, there is insufficient information to quantify the potential costs of this provision.

Additionally, § 29.27 explains the process through which the Administrator may suspend or derecognize an SRE. A suspended SRE will have an opportunity to implement remedial action or request

administrative review. If an SRE does not implement remedial action or request administrative review and is derecognized by the Administrator, the SRE must inform its IRAPs and the public of its derecognition in accordance with § 29.22(m). Since this is a new program, the Department does not have a reasonable way to estimate the number of SREs that will be suspended, nor the percentage of suspended SREs that will implement remedial action or make a request for administrative review, nor the share that will be derecognized. For these reasons, the Department is unable to quantify the potential costs of these provisions.

### b. IRAP Costs

A 2016 study published by the Department of Commerce found that apprenticeship programs vary significantly in length and cost. The shortest program in the study lasted 1 year, while the longest lasted more than 4 years. The costs of the programs in the study ranged from \$25,000 to \$250,000 per apprentice. Importantly, compensation costs for apprentices were the major cost of the programs. Other costs included program start-up, educational materials, mentors' time, and overhead. The authors noted that the ultimate goal of an apprenticeship program is for companies to fill skilled jobs, and apprenticeships are only one way to do so. Many of the costs of an apprenticeship program would still be

incurred if the company filled the job through another method, such as hiring an already-trained worker, contracting a temporary worker, or increasing the hours of existing staff.<sup>43</sup> In analyzing the costs of an apprenticeship program, it is essential to consider how an employer would fill the position in the absence of apprentices. The costs of an apprenticeship program should be assessed within the context of the employer's alternative hiring options. The Department notes that such options may be limited given the skills gap that this regulation seeks to help address. Yet, data are not available for the Department to conduct such an analysis. Consequently, the Department was unable to quantify the potential costs of apprenticeship programs that will be established under this final rule.

### c. Government Costs

In addition to the SRE and IRAP costs that cannot be quantified, the final rule is also expected to incur costs to the Department. To begin with, § 29.26 requires the Administrator to follow specific steps if the Administrator decides to initiate a review of an SRE after receiving a complaint or information indicating that the SRE is no longer capable of continuing in its

<sup>43</sup> Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, "The Benefits and Costs of Apprenticeship: A Business Perspective," Nov. 2016, <https://files.eric.ed.gov/fulltext/ED572260.pdf>.

role. Those steps include notifying the SRE of the review, conducting the review, and notifying the SRE of the decision to either take no action against the SRE or suspend the SRE. Since this is a new program, the Department does not have a reasonable way to estimate the number of complaints it may receive or reviews it may initiate. Hence, there is insufficient information to quantify the potential costs of this section.

Similarly, § 29.27 requires the Administrator to take certain actions if the Administrator decides to suspend an SRE. For example, the Administrator must publish the SRE's suspension on the Department's publicly available list of SREs and IRAPs. If the SRE commits itself to remedial actions, the Administrator must determine whether the SRE has remedied the identified areas of nonconformity. If the SRE makes a request for administrative review, the Administrator must prepare an administrative record for submission to the Office of Administrative Law Judges. Finally, if the SRE does not commit itself to remedial action or request administrative review, the Administrator will derecognize the SRE. Since this is a new program, the Department does not have a reasonable way to estimate the proportion of SREs that will be suspended by the Administrator. Consequently, there is insufficient information to quantify the potential costs of this provision.

Under § 29.29(a), the Administrator must prepare an administrative record for submission to the Administrative Law Judge after receiving a suspended SRE's request for administrative review. Without a reasonable way to estimate the number of suspended SREs or the share of suspended SREs that will request administrative review, the Department is unable to quantify this cost.

In addition to the costs borne by OA, costs will also be borne by the Office of Administrative Law Judges and the Administrative Review Board. The Chief Administrative Law Judge must designate an Administrative Law Judge

to review a suspended SRE's request for administrative review. Within 20 calendar days of the receipt of the Administrative Law Judge's recommended decision, any party may file exceptions with the Administrative Review Board, which must issue a decision in any case it accepts within 180 calendar days of the close of the record. The Department does not have a reasonable way to estimate the number of suspended SREs nor the share that will request administrative review; therefore, the Department is unable to quantify this cost.

#### 8. Nonquantifiable Transfer Payments

As mentioned above, a major cost of apprenticeship programs is the compensation costs of apprentices.<sup>44</sup> For the purposes of a Regulatory Impact Analysis, an increase in wages is not considered a cost; rather, an increase in wages is considered a "transfer payment." According to OMB Circular A-4, transfers occur when wealth or income is redistributed without any direct change in aggregate social welfare.<sup>45</sup> Therefore, an increase in wages is categorized as a transfer payment from the employer to the worker rather than a cost to the employer or a benefit to the worker.

Data are not available for the Department to quantify the transfer payment from employers to apprentices. Some jobs filled by apprentices would likely be filled by non-apprentices in the absence of an IRAP. The transfer payment may be more than \$100 million per year; therefore, this rule has been designated as an economically significant regulatory action under section 3(f) of E.O. 12866.

#### 9. Regulatory Alternatives

OMB Circular A-4, which outlines best practices in regulatory analysis,

<sup>44</sup> Susan Helper, Ryan Noonan, Jessica R. Nicholson, and David Langdon, "The Benefits and Costs of Apprenticeship: A Business Perspective," Nov. 2016, <https://files.eric.ed.gov/fulltext/ED572260.pdf>.

<sup>45</sup> OMB, "Circular A-4," Sept. 17, 2003.

directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. Accordingly, the Department considered two regulatory alternatives related to paragraph 29.22(h). Under the first alternative, SREs would be required to make performance data publicly available every 5 years rather than annually. Under the second alternative, SREs would be required to make performance data publicly available every quarter rather than annually. Both alternatives are discussed in more detail below.

For the first alternative, the Department considered requiring SREs to report to the Administrator and make publicly available the performance data for each IRAP it recognizes on a 5-year reporting cycle rather than on an annual reporting cycle as proposed in paragraph 29.22(h). To estimate the reduction in costs under this alternative, the Department adjusted three of the calculations described in the Subject-by-Subject Analysis. First, the Department decreased from 4 hours to 48 minutes (= 4 hours ÷ 5 years) the time burden for an SRE to report to the Administrator the performance information for each IRAP it recognizes. Second, the Department decreased from 2 hours to 24 minutes (= 2 hours ÷ 5 years) the time burden for an SRE to make publicly available the performance information for each IRAP it recognizes. Third, the Department decreased from 25 hours to 5 hours (= 25 hours ÷ 5 years) the time burden for an IRAP to provide performance information to its SRE since the information would only need to be provided once every 5 years under this alternative. Exhibit 7 shows the estimated costs of the proposed rule under this alternative. Over the 10-year analysis period, the annualized costs are estimated at \$29.7 million at a discount rate of 7 percent. In total, this alternative is estimated to result in costs of \$208.7 million at a discount rate of 7 percent.

<b>Exhibit 7: Alternative 1 Estimated Costs (2018 dollars)</b>	
	<b>Costs</b>
First Year Total	\$36,368,591
Annualized, 3% discount rate, 10 years	\$29,656,503
Annualized, 7% discount rate, 10 years	\$29,720,939
Total, 3% discount rate, 10 years	\$252,975,990
Total, 7% discount rate, 10 years	\$208,747,435

The Department decided not to pursue this alternative because a longer reporting cycle would be inconsistent with the annual reporting cycles for other workforce investment programs, such as those authorized by WIOA. Furthermore, a longer reporting cycle would be less transparent and provide less accountability to the public.

The second alternative considered by the Department would require SREs to report to the Administrator and make performance data publicly available on a quarterly reporting cycle rather than

on an annual reporting cycle. To estimate the growth in costs under this alternative, the Department adjusted three of the calculations described in the Subject-by-Subject Analysis. First, the Department increased from 4 hours to 16 hours (= 4 hours × 4 quarters) the time burden for an SRE to report to the Administrator the performance information for each IRAP it recognizes. Second, the Department increased from 2 hours to 8 hours (= 2 hours × 4 quarters) the time burden for an SRE to make publicly available the

performance information for each IRAP it recognizes. Third, the Department increased from 25 hours to 100 hours (= 25 hours × 4 quarters) the time burden for an IRAP to provide performance information to its SRE. Exhibit 8 shows the estimated costs of the proposed rule under this alternative. Over the 10-year analysis period, the annualized costs are estimated at \$109.6 million at a discount rate of 7 percent. In total, this alternative is estimated to result in costs of \$769.6 million at a discount rate of 7 percent.

<b>Exhibit 8: Alternative 2 Estimated Costs (2018 dollars)</b>	
	<b>Costs</b>
First Year Total	\$64,361,617
Annualized, 3% discount rate, 10 years	\$112,536,818
Annualized, 7% discount rate, 10 years	\$109,568,350
Total, 3% discount rate, 10 years	\$959,961,888
Total, 7% discount rate, 10 years	\$769,562,240

The Department decided not to pursue this alternative because it would be unduly burdensome for SREs and IRAPs. Moreover, the additional data that would be collected would not justify the onerousness of the quarterly reporting requirement.

The Department considered these two regulatory alternatives in accordance with the provisions of E.O. 12866 and chose to balance flexibility and opportunity for innovation by SREs and IRAPs, while providing for reasonable reporting cycles that demonstrate transparency and accountability.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) imposes certain requirements on Federal agency rules that are subject to the notice-and-comment requirements of APA, 5 U.S.C. 553(b),<sup>46</sup> and that are likely to have a significant economic impact on a substantial number of small entities.

<sup>46</sup> The RFA, as amended, governs “any rule for which [a Federal] agency publishes a general [NPRM] pursuant to section 553(b) of [APA], or any other law.” 5 U.S.C. 601(2) (defining “rule” for purposes of RFA).

The RFA requires agencies promulgating final rules to prepare a Final Regulatory Flexibility Analysis, and to develop alternatives whenever possible, when drafting regulations that will have a significant economic impact on a substantial number of small entities. The RFA requires the consideration of the impact of a final regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

The Department believes that this final rule will have a significant economic impact on a substantial number of small entities and is therefore publishing this Final Regulatory

Flexibility Analysis as required. It should be noted, however, that this initiative is voluntary; therefore, only small entities that choose to participate will experience an economic impact—significant or otherwise. The Department anticipates that small businesses will participate only if they believe it is cost effective to do so.

### 1. Statement of the Need for and Objectives of the Final Rule

The Department is issuing this final rule to establish IRAPs, a new form of apprenticeships intended to harness industry expertise and leadership in order to address the national shortage of skilled workers. The objective of this final rule is to facilitate the establishment of SREs and IRAPs in order to address the ongoing skills gap that faces our nation.

Congress enacted NAA, 29 U.S.C. 50, in 1937, authorizing the Secretary of Labor “to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices,” as well as “to bring together employers and labor for the formulation of programs of apprenticeship.” In June 2017, President Trump issued E.O. 13801, “Expanding Apprenticeships in America,” directing the Secretary of Labor, in consultation with the Secretaries of Education and Commerce, to consider regulations to promote the establishment of apprenticeships developed by trade and industry groups, companies, non-profit organizations, unions, and joint labor-management organizations, and to provide the framework under which these entities could recognize high-quality apprenticeship programs.

Consistent with NAA and E.O. 13801, the Department considers it imperative to move forward with implementing regulations that will assist and complement the rapid scaling of high-quality apprenticeships in the United States. Also, this final rule will facilitate the efficient and effective operation of SREs and IRAPs. Such regulations will provide stakeholders with information necessary to evaluate the outcomes of this new initiative.

### 2. Public Comments

A commenter stated that the significant costs incurred by joint programs required to establish, administer, and sponsor open-shop program training can prove to be especially difficult for smaller employers. Several commenters expressed concern that including the

construction industry in the proposed rule would threaten small businesses.

This is a voluntary program. The Department anticipates that small businesses will participate only if they think it is cost effective to do so. With respect to the construction industry in particular, the Administrator will not recognize SREs that seek to train apprentices in construction activities as defined in § 29.30.

Several commenters stated that, in their view, IRAP costs were understated in the proposed rule because SREs will require a higher annual fee to adequately monitor and enforce quality, performance, and compliance of IRAPs.

A wide variety of entities may become recognized SREs and they will incur a wide variation in costs, which will affect any fees they may charge. The Department’s estimates for the application fee and annual fee are intended to approximate a break-even point between SRE costs and SRE fees. Some SREs will incur higher costs, while others will incur lower costs, and any fees they charge may reflect these differences. The commenters did not specify how much higher the Department’s estimates should be nor did they provide data for the Department to use to improve its estimates. In the final rule, the Department maintained its approach of estimating SRE fees by approximating a break-even point between SRE costs and SRE fees.

### 3. Comments From the Chief Counsel for the U.S. Small Business Administration

The Department did not receive comments from the U.S. Small Business Administration during the public comment period.

### 4. Description and Estimate of the Small Entities Affected by the Final Rule

This final rule will primarily affect two types of entities: SREs and IRAPs. SREs may include industry associations, employer groups, labor-management organizations, educational organizations, and consortia of these or other organizations. IRAPs may be developed by entities such as trade and industry groups, companies, non-profit organizations, unions, and joint labor-management organizations.

As explained in the “Payments from IRAPs to SREs” subsection above, the Department anticipates that SREs may charge an application fee, an annual fee, or both to the IRAPs they recognize. Such a fee would help SREs recoup

their expenses. Therefore, the Department did not include SREs in this Final Regulatory Flexibility Analysis.

Instead, this analysis focuses on the small entities that choose to develop IRAPs. As explained in the E.O. 12866 analysis above, the Department anticipates that each SRE will recognize approximately 32 IRAPs, beginning with 10 new IRAPs in its 1st year as an SRE, and then 8 new IRAPs in its 2nd year, 5 new IRAPs in its 3rd year, 3 new IRAPs in its 4th year, and 1 in its 5th through 10th years. Based on this assumption, the number of new IRAPs in Year 1 is estimated to be 2,030 (= 203 new SREs in Year 1 × 10 new IRAPs per SRE). The number of new IRAPs in Year 2 is estimated to be 1,724 [= (203 new SREs in Year 1 × 8 new IRAPs per SRE) + (10 new SREs in Year 2 × 10 new IRAPs per SRE)]. As explained in the E.O. 12866 analysis above, the Department estimates that 90 percent of SREs will undergo the Department’s process for continued recognition, so in Year 6 the estimated number of new Year 1 SREs will shrink to 183 (= 203 new SREs in Year 1 × 90%). Accordingly, the number of new IRAPs in Year 6 is estimated to be 707 [= (183 Year 1 SREs with continued recognition × 1 new IRAPs per SRE) + (10 new SREs in Year 2 × 1 new IRAPs per SRE) + (11 new SREs in Year 3 × 3 new IRAPs per SRE) + (11 new SREs in Year 4 × 5 new IRAPs per SRE) + (12 new SREs in Year 5 × 8 new IRAPs per SRE) + (33 new SREs in Year 6 × 10 new IRAPs per SRE)].

To estimate the total number of IRAPs in each year of the analysis period, the Department first calculated the cumulative total of new IRAPs per SRE. For example, a new SRE in Year 1 is estimated to have recognized a total of 18 IRAPs in Year 2 (= 10 new IRAPs in Year 1 + 8 new IRAPs in Year 2). So, the total number of IRAPs in Year 2 is estimated to be 3,754 [= (203 new SREs in Year 1 × 18 total IRAPs per SRE) + (10 new SREs in Year 2 × 10 total IRAPs per SRE)]. As explained above, the estimated number of new Year 1 SREs is expected to shrink to 183 in Year 6. Accordingly, the total number of IRAPs in Year 6 is estimated to be 6,479 [= (183 Year 1 SREs with continued recognition × 28 total IRAPs per SRE) + (10 new SREs in Year 2 × 27 total IRAPs per SRE) + (11 new SREs in Year 3 × 26 total IRAPs per SRE) + (11 new SREs in Year 4 × 23 total IRAPs per SRE) + (12 new SREs in Year 5 × 18 total IRAPs per SRE) + (33 new SREs in Year 6 × 10 total IRAPs per SRE)].

<sup>47</sup> These numbers are identical to the numbers in Exhibit 3.

Exhibit 9 presents the projected number of new and total IRAPs over the 10-year analysis period.<sup>47</sup>

**Exhibit 9: Projected Number of IRAPs**

Year	Total New IRAPs	Total IRAPs
1	2,030	2,030
2	1,724	3,754
3	1,205	4,959
4	857	5,816
5	496	6,312
6	707	6,479
7	700	7,152
8	676	7,801
9	663	8,437
10	653	9,063

Given that this is a new initiative, the Department has no way of knowing what size these IRAPs will be. Therefore, the Department assumes that the IRAPs will have the same size distribution as the firms in each of the 18 major industry sectors.<sup>48</sup> This assumption allows the Department to conduct a robust analysis using data from the Census Bureau's Statistics of U.S. Businesses,<sup>49</sup> which include the number of firms, number of employees, and annual revenue by industry and firm size. Using these data allows the Department to estimate the per-program costs of the final rule as a percent of revenue by industry and firm size.

##### 5. Compliance Requirements of the Final Rule

The E.O. 12866 analysis above quantifies several types of labor costs that will be borne by IRAPs: (1) Rule familiarization, (2) submission of performance data to the SRE, (3) development of written training plan; and (4) development and signing of written apprenticeship agreement. Additional costs that may be incurred but could not be quantified due to a lack of data include program start-up expenses, educational materials, and mentors' time. In addition, the final rule will result in transfer payments from IRAPs to apprentices in the form of compensation, but the Department does

not expect a measurable transfer payment on aggregate because, in the absence of an IRAP, the jobs filled by apprentices will likely be filled by non-apprentices paid a similar rate or will be addressed by other means.

The final rule may also result in payments from IRAPs to SREs in the form of an application fee, an annual fee, or both charged by SREs. Such fees, which are neither required nor prohibited under this final rule, will help SREs offset their costs. For the Regulatory Flexibility Analysis, these types of fees are considered costs to IRAPs because the analysis estimates the impact on small entities, not on society at large. Accordingly, the SRE's fees are categorized as costs in this analysis.

The Department anticipates that the bulk of the workload for the labor costs in this analysis will be performed by employees in occupations similar to the occupation titled "Training and Development Managers" in the SOC system. As with the E.O. 12866 analysis, the Department used a fully loaded hourly compensation rate for Training and Development Managers of \$117.06.<sup>50</sup>

In addition to the number of IRAPs and the hourly compensation rate of Training and Development Managers, the following estimates were used to calculate the quantified costs:

- *Rule familiarization (one-time cost):* 1 hour.
- *Provision of performance data to the SRE (annual cost):* 25 hours.
- *Development of Written Training Plan (one-time cost):* 80 hours.
- *Development of Written Apprenticeship Agreement (one-time cost):* 8 hours.
- *Preparation and Signing of Written Apprenticeship Agreement (annual cost):* 10 minutes.
- *SRE's application fee (one-time cost):* \$3,000.
- *SRE's annual fee (annual cost):* \$2,000.

Exhibit 10 shows the estimated cost per IRAP for each year of the analysis period. The first year cost per IRAP is estimated at \$17,796 at a discount rate of 7 percent. The annualized cost per IRAP is estimated at \$9,379 at a discount rate of 7 percent. The estimated cost per IRAP is highest in the first year because all IRAPs will be new, so the Department's first-year estimate includes both a \$3,000 application fee and \$2,000 annual fee for all IRAPs; in later years, ongoing IRAPs will only be charged a \$2,000 annual fee under this analysis. These estimates are *average* costs, meaning that some IRAPs will have higher costs while other IRAPs will have lower costs, regardless of firm size.

<sup>47</sup> These numbers are identical to the numbers in Exhibit 3.

<sup>48</sup> Construction is the 19th major industry sector; it is not included in this analysis pursuant to § 29.30.

<sup>49</sup> See U.S. Census Bureau, "Statistics of U.S. Businesses," <http://www.census.gov/programs-surveys/susb/data.html> (last visited Dec. 7, 2019).

<sup>50</sup> The mean hourly wage rate for Training and Development Managers in May 2018 was \$58.53. (See BLS, "Occupational Employment and Wages, May 2018," <https://www.bls.gov/oes/current/oes113131.htm>.) For this analysis, the Department used a fringe benefits rate of 46 percent and an overhead rate of 54 percent, resulting in a fully loaded hourly compensation rate for Training and Development Managers of \$117.06 (= \$58.53 + (\$58.53 × 46%) + (\$58.53 × 54%)).



Exhibit 10: Estimated Cost per IRAP								
Year	Rule Familiarization	Performance Data Collection	Written Training Plan	Written Apprenticeship Agreement	SRE's Fees	Total Cost	Number of IRAPs	Cost per IRAP
1	\$237,632	\$5,940,795	\$19,010,544	\$3,314,964	\$10,150,000	\$38,653,934	2,030	\$19,041
2	\$201,811	\$10,986,081	\$16,144,915	\$4,229,179	\$12,680,000	\$44,241,986	3,754	\$11,785
3	\$141,057	\$14,512,514	\$11,284,584	\$4,582,437	\$13,533,000	\$44,053,591	4,959	\$8,884
4	\$100,320	\$17,020,524	\$8,025,634	\$4,853,448	\$14,203,000	\$44,202,926	5,816	\$7,600
5	\$58,062	\$18,472,068	\$4,644,941	\$4,860,846	\$14,112,000	\$42,147,917	6,312	\$6,677
6	\$82,761	\$18,960,794	\$6,620,914	\$5,174,760	\$15,079,000	\$45,918,229	6,479	\$7,087
7	\$81,942	\$20,930,328	\$6,555,360	\$5,636,954	\$16,404,000	\$49,608,584	7,152	\$6,936
8	\$79,133	\$22,829,627	\$6,330,605	\$6,066,512	\$17,630,000	\$52,935,875	7,801	\$6,786
9	\$77,611	\$24,690,881	\$6,208,862	\$6,497,316	\$18,863,000	\$56,337,669	8,437	\$6,677
10	\$76,440	\$26,522,870	\$6,115,214	\$6,923,964	\$20,085,000	\$59,723,488	9,063	\$6,590
<b>First year cost, 7% discount rate</b>								<b>\$17,796</b>
<b>Annualized cost, 7% discount rate, 10 years</b>								<b>\$9,379</b>

#### 6. Estimated Impact of the Final Rule on Small Entities

The Department used the following steps to estimate the cost of the final rule per IRAP as a percentage of annual receipts. First, the Department used the Small Business Administration's Table of Small Business Size Standards to determine the size thresholds for small entities within each major industry.<sup>51</sup> Next, the Department obtained data on the number of firms, number of employees, and annual revenue by industry and firm size category from the Census Bureau's Statistics of U.S. Businesses.<sup>52</sup> Then, the Department divided the estimated first year cost and the annualized cost per IRAP (discounted at a 7-percent rate) by the average annual receipts per firm to determine whether the final rule will

have a significant economic impact on IRAPs in each size category.<sup>53</sup> Finally, the Department divided the number of firms in each size category by the total number of small firms in the industry to determine whether the final rule will have a significant economic impact on a substantial number of small entities.<sup>54</sup> The results are presented in the following 18 tables. In short, the first year cost or annualized cost per IRAP could have a significant economic impact on a substantial number of small entities in 15 out of 18 industries. It should be noted, however, that this initiative is voluntary; therefore, only small entities that choose to participate will experience an economic impact—significant or otherwise.

As shown in Exhibit 11, the first year and annualized costs for IRAPs in the

agriculture, forestry, fishing, and hunting industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small entities in the agriculture, forestry, fishing, and hunting industry (58.1 percent). The first year costs are estimated to be 35.4 percent of the average receipts per firm and the annualized costs are estimated to be 18.6 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are estimated to be 7.1 percent of the average receipts per firm and the annualized costs are estimated to be 3.7 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

<sup>51</sup> U.S. Small Business Administration, "Table of Small Business Size Standards," Aug. 19, 2019, <http://www.sba.gov/content/small-business-size-standards>. The size standards, which are expressed either in average annual receipts or number of employees, indicate the maximum allowed for a business in each subsector to be considered small.

<sup>52</sup> U.S. Census Bureau, "Statistics of U.S. Businesses," <http://www.census.gov/programs-surveys/susb/data.html> (last visited Dec. 7, 2019).

<sup>53</sup> For purposes of this analysis, the Department used a 3-percent threshold for "significant economic impact." The Department has used a 3-percent threshold in prior rulemakings. *See, e.g.*, 79

FR 60633 (Oct. 7, 2014) (Establishing a Minimum Wage for Contractors).

<sup>54</sup> For purposes of this analysis, the Department used a 15-percent threshold for "substantial number of small entities." The Department has used a 15-percent threshold in prior rulemakings. *See, e.g.* 79 FR 60633 (Oct. 7, 2014) (Establishing a Minimum Wage for Contractors).

## Exhibit 11: Agriculture, Forestry, Fishing, and Hunting Industry

Small Business Size Standard: \$1.0 million – \$30.0 million

	Number of Firms <sup>1</sup>	Number of Firms as Percent of Small Firms in Industry <sup>2</sup>	Total Number of Employees <sup>3</sup>	Annual Receipts <sup>4</sup>	Average Receipts per Firm <sup>5</sup>	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts <sup>6</sup>	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts <sup>7</sup>
Firms with receipts below \$100,000	4,288	20.3%	N/A	\$215,803,000	\$50,327	\$17,796	35.4%	\$9,379	18.6%
Firms with receipts of \$100,000 to \$499,999	7,985	37.8%	17,528	\$2,005,870,000	\$251,205	\$17,796	7.1%	\$9,379	3.7%
Firms with receipts of \$500,000 to \$999,999	3,399	16.1%	15,047	\$2,437,918,000	\$717,246	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	3,335	15.8%	27,068	\$5,192,149,000	\$1,556,866	\$17,796	1.1%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	1,213	5.7%	19,223	\$4,210,314,000	\$3,470,993	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	351	1.7%	9,393	\$2,067,573,000	\$5,890,521	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	210	1.0%	7,143	\$1,736,374,000	\$8,268,448	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	191	0.9%	10,526	\$2,198,845,000	\$11,512,277	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	79	0.4%	5,883	\$1,226,159,000	\$15,521,000	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	29	0.1%	2,399	\$617,304,000	\$21,286,345	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	29	0.1%	2,108	\$627,438,000	\$21,635,793	\$17,796	0.1%	\$9,379	0.0%

N/A = not available, not disclosed

<sup>1</sup> Source: U.S. Census Bureau, Statistics of U.S. Businesses.<sup>2</sup> Number of firms ÷ Small firms in industry<sup>3</sup> Source: U.S. Census Bureau, Statistics of U.S. Businesses.<sup>4</sup> Source: U.S. Census Bureau, Statistics of U.S. Businesses.<sup>5</sup> Annual receipts ÷ Number of firms<sup>6</sup> First year cost per firm with 7% discounting ÷ Average receipts per firm<sup>7</sup> Annualized cost per firm with 7% discounting ÷ Average receipts per firm

As shown in Exhibit 12, the first year and annualized costs for IRAPs in the mining industry are not expected to have a significant economic impact (3 percent or more) on small entities of any size.

## Exhibit 12: Mining Industry

Small Business Size Standard: 250 – 1,500 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	12,686	57.3%	20,347	\$9,811,191,000	\$773,387	\$17,796	2.3%	\$9,379	1.2%
Firms with 5-9 employees	3,256	14.7%	21,571	\$7,696,826,000	\$2,363,890	\$17,796	0.8%	\$9,379	0.4%
Firms with 10-19 employees	2,426	11.0%	32,884	\$12,472,042,000	\$5,140,990	\$17,796	0.3%	\$9,379	0.2%
Firms with 20-99 employees	2,677	12.1%	102,569	\$39,167,488,000	\$14,631,112	\$17,796	0.1%	\$9,379	0.1%
Firms with 100-499 employees	735	3.3%	116,980	\$57,968,047,000	\$78,868,091	\$17,796	0.0%	\$9,379	0.0%
Firms with 500+ employees <sup>1</sup>	369	1.7%	433,275	\$428,416,777,000	\$1,161,021,076	\$17,796	0.0%	\$9,379	0.0%

<sup>1</sup> The small business size standard for several subsectors within the mining industry is 750, 1,000, 1,250, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.

As shown in Exhibit 13, the first year and annualized costs for IRAPs in the utilities industry are not expected to have a significant economic impact (3 percent or more) on small entities of any size.

## Exhibit 13: Utilities Industry

Small Business Size Standard: 250 – 1,000 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	3,072	51.4%	5,939	\$4,148,617,000	\$1,350,461	\$17,796	1.3%	\$9,379	0.7%
Firms with 5-9 employees	984	16.5%	6,330	\$2,094,449,000	\$2,128,505	\$17,796	0.8%	\$9,379	0.4%
Firms with 10-19 employees	500	8.4%	6,670	\$4,464,945,000	\$8,929,890	\$17,796	0.2%	\$9,379	0.1%
Firms with 20-99 employees	904	15.1%	40,677	\$37,395,431,000	\$41,366,627	\$17,796	0.0%	\$9,379	0.0%
Firms with 100-499 employees	314	5.3%	52,009	\$50,719,290,000	\$161,526,401	\$17,796	0.0%	\$9,379	0.0%
Firms with 500+ employees <sup>1</sup>	199	3.3%	529,438	\$432,375,983,000	\$2,172,743,633	\$17,796	0.0%	\$9,379	0.0%

<sup>1</sup> The small business size standard for several subsectors within the utilities industry is 750 or 1,000 employees; however, data are not disaggregated for firms with more than 500 employees.

As shown in Exhibit 14, the first year costs for IRAPs in the manufacturing industry are expected to have a significant economic impact (3 percent

or more) on small entities with 4 or fewer employees, and those firms constitute a substantial number of small entities in the manufacturing industry

(41.7 percent). The first year costs are estimated to be 4.1 percent of the average receipts per firm with 0–4 employees.

## Exhibit 14: Manufacturing Industry

Small Business Size Standard: 500 – 1,500 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	106,932	41.7%	199,847	\$46,408,019,000	\$433,996	\$17,796	4.1%	\$9,379	2.2%
Firms with 5-9 employees	47,612	18.6%	317,445	\$52,345,651,000	\$1,099,421	\$17,796	1.6%	\$9,379	0.9%
Firms with 10-19 employees	38,564	15.0%	526,660	\$94,946,327,000	\$2,462,046	\$17,796	0.7%	\$9,379	0.4%
Firms with 20-99 employees	47,443	18.5%	1,939,710	\$454,441,177,000	\$9,578,677	\$17,796	0.2%	\$9,379	0.1%
Firms with 100-499 employees	12,186	4.8%	2,103,243	\$683,068,069,000	\$56,053,510	\$17,796	0.0%	\$9,379	0.0%
Firms with 500+ employees <sup>1</sup>	3,626	1.4%	6,105,138	\$4,399,024,641,000	\$1,213,189,366	\$17,796	0.0%	\$9,379	0.0%

<sup>1</sup> The small business size standard for many subsectors within the manufacturing industry is 750, 1,000, 1,250, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.

As shown in Exhibit 15, the first year and annualized costs for IRAPs in the

wholesale trade industry are not expected to have a significant economic

impact (3 percent or more) on small entities of any size.

## Exhibit 15: Wholesale Trade Industry

Small Business Size Standard: 100 – 250 employees

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with 0-4 employees	180,049	57.7%	305,056	\$319,323,324,000	\$1,773,536	\$17,796	1.0%	\$9,379	0.5%
Firms with 5-9 employees	53,703	17.2%	353,848	\$263,541,607,000	\$4,907,391	\$17,796	0.4%	\$9,379	0.2%
Firms with 10-19 employees	36,049	11.6%	481,671	\$359,184,882,000	\$9,963,796	\$17,796	0.2%	\$9,379	0.1%
Firms with 20-99 employees	34,536	11.1%	1,276,022	\$1,024,608,963,000	\$29,667,853	\$17,796	0.1%	\$9,379	0.0%
Firms with 100-499 employees	7,737	2.5%	1,023,919	\$1,085,384,946,000	\$140,284,987	\$17,796	0.0%	\$9,379	0.0%

As shown in Exhibit 16, the first year and annualized costs for IRAPs in the retail trade industry are estimated to have a significant economic impact (3

percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small entities in the retail trade industry

(47.7 percent). The first year costs are estimated to be 34.1 percent of the average receipts per firm and the annualized costs are estimated to be

18.0 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are

estimated to be 6.6 percent of the average receipts per firm and the annualized costs are estimated to be 3.5

percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

### Exhibit 16: Retail Trade Industry

Small Business Size Standard: \$8.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	79,415	12.4%	N/A	\$4,142,505,000	\$52,163	\$17,796	34.1%	\$9,379	18.0%
Firms with receipts of \$100,000 to \$499,999	226,195	35.2%	597,967	\$61,192,802,000	\$270,531	\$17,796	6.6%	\$9,379	3.5%
Firms with receipts of \$500,000 to \$999,999	115,616	18.0%	539,126	\$82,552,882,000	\$714,026	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	115,103	17.9%	885,466	\$181,435,583,000	\$1,576,289	\$17,796	1.1%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	53,905	8.4%	673,056	\$187,480,866,000	\$3,477,987	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	19,139	3.0%	359,417	\$114,151,432,000	\$5,964,336	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	9,110	1.4%	234,666	\$76,658,889,000	\$8,414,807	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	9,236	1.4%	317,056	\$107,103,037,000	\$11,596,258	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	4,647	0.7%	204,846	\$75,536,677,000	\$16,254,934	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	3,079	0.5%	162,942	\$63,579,375,000	\$20,649,359	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	2,115	0.3%	126,196	\$53,042,313,000	\$25,079,108	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	1,709	0.3%	122,481	\$50,891,275,000	\$29,778,394	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	1,333	0.2%	104,722	\$45,330,650,000	\$34,006,489	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	2,055	0.3%	178,778	\$82,977,969,000	\$40,378,574	\$17,796	0.0%	\$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 17, the first year and annualized costs for IRAPs in the transportation and warehousing industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small

entities in the transportation and warehousing industry (61.2 percent). The first year costs are estimated to be 36.7 percent of the average receipts per firm and the annualized costs are estimated to be 19.4 percent of the average receipts per firm for firms with revenue below \$100,000. The first year

costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

Exhibit 17: Transportation and Warehousing Industry

Small Business Size Standard: \$8.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	34,560	21.0%	N/A	\$1,675,127,000	\$48,470	\$17,796	36.7%	\$9,379	19.4%
Firms with receipts of \$100,000 to \$499,999	66,204	40.2%	164,298	\$16,175,517,000	\$244,328	\$17,796	7.3%	\$9,379	3.8%
Firms with receipts of \$500,000 to \$999,999	23,100	14.0%	142,743	\$16,279,203,000	\$704,727	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	20,675	12.5%	243,088	\$32,036,433,000	\$1,549,525	\$17,796	1.1%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	9,236	5.6%	207,533	\$31,579,320,000	\$3,419,155	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	3,715	2.3%	128,002	\$21,532,906,000	\$5,796,206	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	1,991	1.2%	93,148	\$15,968,571,000	\$8,020,377	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	2,038	1.2%	122,894	\$21,945,352,000	\$10,768,082	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	1,089	0.7%	88,025	\$15,508,043,000	\$14,240,627	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	706	0.4%	67,974	\$12,389,543,000	\$17,548,928	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$25,000,000 to \$29,999,999	485	0.3%	56,730	\$10,263,306,000	\$21,161,456	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	348	0.2%	42,232	\$8,074,953,000	\$23,203,888	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	273	0.2%	39,751	\$6,355,335,000	\$23,279,615	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	364	0.2%	57,503	\$9,963,222,000	\$27,371,489	\$17,796	0.1%	\$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 18, the first year and annualized costs for IRAPs in the information industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of

small entities in the information industry (57.7 percent). The first year costs are estimated to be 36.7 percent of the average receipts per firm and the annualized costs are estimated to be 19.4 percent of the average receipts per firm for firms with revenue below

\$100,000. The first year costs are estimated to be 7.2 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue below from \$100,000 to \$499,999.

Exhibit 18: Information Industry

Small Business Size Standard: \$8.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	14,555	21.0%	N/A	\$705,483,000	\$48,470	\$17,796	36.7%	\$9,379	19.4%
Firms with receipts of \$100,000 to \$499,999	25,429	36.7%	67,711	\$6,301,564,000	\$247,810	\$17,796	7.2%	\$9,379	3.8%
Firms with receipts of \$500,000 to \$999,999	9,467	13.7%	58,475	\$6,705,729,000	\$708,327	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	9,098	13.1%	104,348	\$14,255,220,000	\$1,566,852	\$17,796	1.1%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	4,509	6.5%	93,553	\$15,503,654,000	\$3,438,380	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	1,839	2.7%	58,853	\$10,822,491,000	\$5,884,987	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	1,063	1.5%	45,849	\$8,760,095,000	\$8,240,917	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	1,195	1.7%	67,920	\$13,486,797,000	\$11,286,023	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	657	0.9%	48,544	\$10,520,902,000	\$16,013,549	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	464	0.7%	42,553	\$9,176,577,000	\$19,777,106	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	282	0.4%	31,492	\$6,741,177,000	\$23,904,883	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	269	0.4%	32,228	\$7,476,148,000	\$27,792,372	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	167	0.2%	21,764	\$5,365,464,000	\$32,128,527	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	259	0.4%	43,635	\$9,767,739,000	\$37,713,278	\$17,796	0.0%	\$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 19, the first year and annualized costs for IRAPs in the finance and insurance industry are

estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000,

and those firms constitute a substantial number of small entities in the finance and insurance industry (68.5 percent).

The first year costs are estimated to be 36.1 percent of the average receipts per firm and the annualized costs are estimated to be 19.0 percent of the

average receipts per firm for firms with revenue below \$100,000. The first year costs are estimated to be 7.1 percent of the average receipts per firm and the

annualized costs are estimated to be 3.7 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

#### Exhibit 19: Finance and Insurance Industry

Small Business Size Standard: \$8.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	50,093	21.7%	N/A	\$2,466,932,000	\$49,247	\$17,796	36.1%	\$9,379	19.0%
Firms with receipts of \$100,000 to \$499,999	108,248	46.8%	259,664	\$27,228,139,000	\$251,535	\$17,796	7.1%	\$9,379	3.7%
Firms with receipts of \$500,000 to \$999,999	30,194	13.1%	145,543	\$20,834,656,000	\$690,026	\$17,796	2.6%	\$9,379	1.4%
Firms with receipts of \$1,000,000 to \$2,499,999	20,617	8.9%	181,810	\$31,648,935,000	\$1,535,089	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	8,743	3.8%	158,845	\$30,321,167,000	\$3,468,051	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	3,900	1.7%	108,367	\$23,230,029,000	\$5,956,418	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	2,292	1.0%	88,271	\$19,151,469,000	\$8,355,789	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	2,594	1.1%	134,488	\$30,393,812,000	\$11,716,967	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	1,437	0.6%	95,832	\$23,632,362,000	\$16,445,624	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	925	0.4%	76,347	\$19,240,191,000	\$20,800,206	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	632	0.3%	68,829	\$16,235,520,000	\$25,689,114	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	532	0.2%	60,193	\$15,593,649,000	\$29,311,370	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	387	0.2%	48,800	\$13,302,624,000	\$34,373,705	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	578	0.3%	85,301	\$23,112,313,000	\$39,986,701	\$17,796	0.0%	\$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 20, the first year and annualized costs for IRAPs in the real estate and rental and leasing industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small

entities in the real estate and rental and leasing industry (69.2 percent). The first year costs are estimated to be 35.3 percent of the average receipts per firm and the annualized costs are estimated to be 18.6 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are

estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

## Exhibit 20: Real Estate and Rental and Leasing Industry

Small Business Size Standard: \$8.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	69,381	25.9%	N/A	\$3,496,398,000	\$50,394	\$17,796	35.3%	\$9,379	18.6%
Firms with receipts of \$100,000 to \$499,999	115,993	43.3%	251,175	\$28,401,383,000	\$244,854	\$17,796	7.3%	\$9,379	3.8%
Firms with receipts of \$500,000 to \$999,999	37,145	13.9%	169,892	\$26,133,483,000	\$703,553	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	27,705	10.3%	239,062	\$42,364,031,000	\$1,529,111	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	9,488	3.5%	165,022	\$31,946,434,000	\$3,367,036	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	3,047	1.1%	86,769	\$17,503,088,000	\$5,744,368	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	1,528	0.6%	58,727	\$11,926,523,000	\$7,805,316	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	1,476	0.6%	69,231	\$15,748,767,000	\$10,669,896	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	789	0.3%	49,475	\$11,156,616,000	\$14,140,198	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	485	0.2%	33,800	\$8,191,383,000	\$16,889,449	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$25,000,000 to \$29,999,999	347	0.1%	27,443	\$7,110,513,000	\$20,491,392	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	260	0.1%	25,368	\$6,117,119,000	\$23,527,381	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	183	0.1%	17,798	\$4,704,982,000	\$25,710,284	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	272	0.1%	25,445	\$7,707,263,000	\$28,335,526	\$17,796	0.1%	\$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 21, the first year and annualized costs for IRAPs in the professional, scientific, and technical services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small

entities in the professional, scientific, and technical services industry (69.5 percent). The first year costs are estimated to be 36.0 percent of the average receipts per firm and the annualized costs are estimated to be 19.0 percent of the average receipts per firm for firms with revenue below

\$100,000. The first year costs are estimated to be 7.4 percent of the average receipts per firm and the annualized costs are estimated to be 3.9 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

## Exhibit 21: Professional, Scientific and Technical Services Industry

Small Business Size Standard: \$8.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	193,388	25.2%	N/A	\$9,558,991,000	\$49,429	\$17,796	36.0%	\$9,379	19.0%
Firms with receipts of \$100,000 to \$499,999	339,688	44.3%	750,314	\$82,115,768,000	\$241,739	\$17,796	7.4%	\$9,379	3.9%
Firms with receipts of \$500,000 to \$999,999	99,575	13.0%	524,326	\$70,218,001,000	\$705,177	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	77,769	10.1%	785,957	\$119,889,375,000	\$1,541,609	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	29,032	3.8%	578,392	\$99,939,437,000	\$3,442,389	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	10,314	1.3%	339,687	\$61,531,502,000	\$5,965,823	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	5,300	0.7%	240,552	\$44,308,266,000	\$8,360,050	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	5,195	0.7%	304,723	\$59,665,120,000	\$11,485,105	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	2,608	0.3%	211,885	\$41,368,442,000	\$15,862,133	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	1,605	0.2%	159,832	\$32,088,646,000	\$19,992,926	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	1,046	0.1%	122,102	\$25,225,025,000	\$24,115,703	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	752	0.1%	94,344	\$20,975,584,000	\$27,893,064	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	522	0.1%	81,816	\$16,142,861,000	\$30,925,021	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	786	0.1%	138,535	\$28,016,841,000	\$35,644,836	\$17,796	0.0%	\$9,379	0.0%

N/A = not available, not disclosed

As shown in Exhibit 22, the first year and annualized costs for IRAPs in the

management of companies and enterprises industry are estimated to

have a significant economic impact (3 percent or more) on small entities with

receipts under \$2.5 million, and those firms constitute a substantial number of small entities in the management of companies and enterprises industry (33.5 percent). The first year costs are estimated to be 58.2 percent of the average receipts per firm and the annualized costs are estimated to be

30.7 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are estimated to be 8.6 percent of the average receipts per firm and the annualized costs are estimated to be 4.5 percent of the average receipts per firm for firms with revenue from \$100,000 to

\$499,999. The first year costs are estimated to be 4.6 percent of the average receipts per firm for firms with revenue from \$500,000 to \$999,999. The first year costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from \$1,000,000 to \$2,499,999.

Exhibit 22: Management of Companies and Enterprises Industry

Small Business Size Standard: \$22 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	1,107	7.8%	7,938	\$33,849,000	\$30,577	\$17,796	58.2%	\$9,379	30.7%
Firms with receipts of \$100,000 to \$499,999	1,216	8.6%	4,631	\$251,252,000	\$206,622	\$17,796	8.6%	\$9,379	4.5%
Firms with receipts of \$500,000 to \$999,999	743	5.3%	5,764	\$285,686,000	\$384,503	\$17,796	4.6%	\$9,379	2.4%
Firms with receipts of \$1,000,000 to \$2,499,999	1,668	11.8%	17,384	\$783,830,000	\$469,922	\$17,796	3.8%	\$9,379	2.0%
Firms with receipts of \$2,500,000 to \$4,999,999	2,016	14.3%	26,218	\$1,395,007,000	\$691,968	\$17,796	2.6%	\$9,379	1.4%
Firms with receipts of \$5,000,000 to \$7,499,999	1,602	11.3%	26,210	\$1,567,547,000	\$978,494	\$17,796	1.8%	\$9,379	1.0%
Firms with receipts of \$7,500,000 to \$9,999,999	1,229	8.7%	22,064	\$1,528,733,000	\$1,243,884	\$17,796	1.4%	\$9,379	0.8%
Firms with receipts of \$10,000,000 to \$14,999,999	1,969	13.9%	42,504	\$2,727,035,000	\$1,384,985	\$17,796	1.3%	\$9,379	0.7%
Firms with receipts of \$15,000,000 to \$19,999,999	1,454	10.3%	36,455	\$2,687,284,000	\$1,848,201	\$17,796	1.0%	\$9,379	0.5%
Firms with receipts of \$20,000,000 to \$24,999,999	1,114	7.9%	27,887	\$2,617,195,000	\$2,349,367	\$17,796	0.8%	\$9,379	0.4%

As shown in Exhibit 23, the first year and annualized costs for IRAPs in the administrative and support, waste management and remediation services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small

entities in the administrative and support, waste management and remediation services industry (69.8 percent). The first year costs are estimated to be 37.9 percent of the average receipts per firm and the annualized costs are estimated to be 20.0 percent of the average receipts per firm for firms with revenue below

\$100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.9 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

Exhibit 23: Administrative and Support, Waste Management and Remediation Services Industry

Small Business Size Standard: \$6.0 million – \$41.5 million

	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	93,960	29.0%	126,543	\$4,409,293,000	\$46,927	\$17,796	37.9%	\$9,379	20.0%
Firms with receipts of \$100,000 to \$499,999	132,326	40.8%	477,646	\$32,162,760,000	\$243,057	\$17,796	7.3%	\$9,379	3.9%
Firms with receipts of \$500,000 to \$999,999	40,136	12.4%	379,760	\$28,185,706,000	\$702,255	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	31,696	9.8%	672,031	\$48,905,893,000	\$1,542,967	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	12,452	3.8%	584,765	\$42,271,882,000	\$3,394,787	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	4,523	1.4%	373,053	\$26,193,931,000	\$5,791,274	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	2,373	0.7%	271,117	\$19,082,571,000	\$8,041,539	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	2,522	0.8%	387,341	\$27,561,427,000	\$10,928,401	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	1,313	0.4%	270,010	\$18,902,442,000	\$14,396,376	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	892	0.3%	216,790	\$15,644,955,000	\$17,539,187	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$25,000,000 to \$29,999,999	601	0.2%	196,440	\$12,764,154,000	\$21,238,193	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	456	0.1%	164,713	\$10,696,102,000	\$23,456,364	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	311	0.1%	139,531	\$8,205,878,000	\$26,385,460	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	466	0.1%	197,634	\$13,234,230,000	\$28,399,635	\$17,796	0.1%	\$9,379	0.0%



As shown in Exhibit 24, the first year and annualized costs for IRAPs in the educational services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small entities in the

educational services industry (65.3 percent). The first year costs are estimated to be 37.9 percent of the average receipts per firm and the annualized costs are estimated to be 20.0 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are

estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

Exhibit 24: Educational Services Industry									
Small Business Size Standard: \$8.0 million – \$41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	22,232	26.7%	45,228	\$1,042,922,000	\$46,911	\$17,796	37.9%	\$9,379	20.0%
Firms with receipts of \$100,000 to \$499,999	32,128	38.6%	175,610	\$7,838,923,000	\$243,990	\$17,796	7.3%	\$9,379	3.8%
Firms with receipts of \$500,000 to \$999,999	9,530	11.4%	123,920	\$6,717,924,000	\$704,924	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	8,735	10.5%	216,317	\$13,846,119,000	\$1,585,131	\$17,796	1.1%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	4,716	5.7%	216,842	\$16,353,734,000	\$3,467,713	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	1,966	2.4%	142,665	\$11,510,807,000	\$5,854,937	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	1,028	1.2%	96,347	\$8,493,535,000	\$8,262,194	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	1,113	1.3%	138,383	\$12,679,800,000	\$11,392,453	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	542	0.7%	87,214	\$8,194,214,000	\$15,118,476	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	388	0.5%	70,422	\$7,566,005,000	\$19,500,013	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	255	0.3%	61,634	\$6,166,517,000	\$24,182,420	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	202	0.2%	57,698	\$5,824,708,000	\$28,835,188	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	191	0.2%	61,907	\$6,200,412,000	\$32,462,890	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	251	0.3%	97,656	\$9,903,360,000	\$39,455,618	\$17,796	0.0%	\$9,379	0.0%

As shown in Exhibit 25, the first year and annualized costs for IRAPs in the health care and social assistance industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small

entities in the health care and social assistance industry (56.4 percent). The first year costs are estimated to be 37.3 percent of the average receipts per firm and the annualized costs are estimated to be 19.7 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are

estimated to be 6.6 percent of the average receipts per firm and the annualized costs are estimated to be 3.5 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

Exhibit 25: Health Care and Social Assistance Industry									
Small Business Size Standard: \$8.0 million – \$41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	110,259	17.3%	162,885	\$5,260,895,000	\$47,714	\$17,796	37.3%	\$9,379	19.7%
Firms with receipts of \$100,000 to \$499,999	249,219	39.1%	1,010,642	\$67,642,299,000	\$271,417	\$17,796	6.6%	\$9,379	3.5%
Firms with receipts of \$500,000 to \$999,999	128,577	20.2%	1,073,376	\$90,967,720,000	\$707,496	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	91,324	14.3%	1,576,609	\$138,206,644,000	\$1,513,366	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	28,520	4.5%	1,156,550	\$98,200,090,000	\$3,443,201	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	10,167	1.6%	729,810	\$60,941,395,000	\$5,994,039	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	5,380	0.8%	556,088	\$45,627,101,000	\$8,480,874	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	5,700	0.9%	785,047	\$67,302,238,000	\$11,807,410	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	2,953	0.5%	556,945	\$48,758,779,000	\$16,511,608	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	1,642	0.3%	384,059	\$34,859,152,000	\$21,229,691	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	1,139	0.2%	318,772	\$29,550,252,000	\$25,944,032	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	731	0.1%	244,490	\$22,423,595,000	\$30,675,233	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	579	0.1%	213,048	\$20,384,881,000	\$35,207,048	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	799	0.1%	329,241	\$32,924,982,000	\$41,207,737	\$17,796	0.0%	\$9,379	0.0%

As shown in Exhibit 26, the first year and annualized costs for IRAPs in the arts, entertainment, and recreation industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small

entities in the arts, entertainment, and recreation industry (66.6 percent). The first year costs are estimated to be 37.0 percent of the average receipts per firm and the annualized costs are estimated to be 19.5 percent of the average receipts per firm for firms with revenue below \$100,000. The first year costs are

estimated to be 7.2 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

Exhibit 26: Arts, Entertainment, and Recreation Industry									
Small Business Size Standard: \$8.0 million – \$41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	29,796	26.1%	43,003	\$1,434,271,000	\$48,136	\$17,796	37.0%	\$9,379	19.5%
Firms with receipts of \$100,000 to \$499,999	46,205	40.5%	177,421	\$11,476,438,000	\$248,381	\$17,796	7.2%	\$9,379	3.8%
Firms with receipts of \$500,000 to \$999,999	16,220	14.2%	161,111	\$11,394,483,000	\$702,496	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	12,675	11.1%	260,098	\$19,329,326,000	\$1,524,996	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	4,776	4.2%	205,728	\$16,246,680,000	\$3,401,734	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	1,800	1.6%	126,508	\$10,478,303,000	\$5,821,279	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	854	0.7%	78,319	\$6,855,951,000	\$8,028,046	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	746	0.7%	94,755	\$8,148,731,000	\$10,923,232	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	373	0.3%	58,407	\$5,452,457,000	\$14,617,847	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	239	0.2%	46,528	\$4,493,765,000	\$18,802,364	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	169	0.1%	36,443	\$3,701,048,000	\$21,899,692	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	126	0.1%	34,942	\$3,075,728,000	\$24,410,540	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	83	0.1%	22,145	\$2,382,282,000	\$28,702,193	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	125	0.1%	45,444	\$4,451,994,000	\$35,615,952	\$17,796	0.0%	\$9,379	0.0%

As shown in Exhibit 27, the first year and annualized costs for IRAPs in the accommodation and food services industry are estimated to have a significant economic impact (3 percent

or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of small entities in the accommodation and food services industry (61.3 percent). The

first year costs are estimated to be 35.6 percent of the average receipts per firm and the annualized costs are estimated to be 18.8 percent of the average receipts per firm for firms with revenue below

\$100,000. The first year costs are estimated to be 6.8 percent of the average receipts per firm and the

annualized costs are estimated to be 3.6 percent of the average receipts per firm

for firms with revenue from \$100,000 to \$499,999.

Exhibit 27: Accommodation and Food Services Industry									
Small Business Size Standard: \$8.0 million – \$41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	82,318	16.7%	148,453	\$4,113,239,000	\$49,968	\$17,796	35.6%	\$9,379	18.8%
Firms with receipts of \$100,000 to \$499,999	220,222	44.6%	1,215,171	\$57,675,374,000	\$261,897	\$17,796	6.8%	\$9,379	3.6%
Firms with receipts of \$500,000 to \$999,999	94,121	19.1%	1,317,249	\$66,152,275,000	\$702,843	\$17,796	2.5%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	68,299	13.8%	1,935,085	\$102,096,727,000	\$1,494,850	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	18,078	3.7%	1,031,712	\$59,715,760,000	\$3,303,228	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	4,340	0.9%	417,047	\$24,803,758,000	\$5,715,152	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	1,946	0.4%	261,642	\$15,733,566,000	\$8,085,080	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	1,924	0.4%	369,182	\$21,512,132,000	\$11,180,942	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	916	0.2%	239,396	\$14,017,239,000	\$15,302,663	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	573	0.1%	198,703	\$11,025,439,000	\$19,241,604	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$25,000,000 to \$29,999,999	419	0.1%	168,878	\$9,690,933,000	\$23,128,718	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	306	0.1%	150,087	\$8,385,452,000	\$27,403,438	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	216	0.0%	114,752	\$6,677,701,000	\$30,915,282	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	304	0.1%	188,758	\$10,889,103,000	\$35,819,418	\$17,796	0.0%	\$9,379	0.0%

As shown in Exhibit 28, the first year and annualized costs for IRAPs in the other services industry are estimated to have a significant economic impact (3 percent or more) on small entities with receipts under \$500,000, and those firms constitute a substantial number of

small entities in the other services industry (73.5 percent). The first year costs are estimated to be 35.8 percent of the average receipts per firm and the annualized costs are estimated to be 18.9 percent of the average receipts per firm for firms with revenue below

\$100,000. The first year costs are estimated to be 7.3 percent of the average receipts per firm and the annualized costs are estimated to be 3.8 percent of the average receipts per firm for firms with revenue from \$100,000 to \$499,999.

Exhibit 28: Other Services Industry									
Small Business Size Standard: \$6.0 million – \$41.5 million									
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with receipts below \$100,000	185,026	27.8%	299,249	\$9,186,611,000	\$49,650	\$17,796	35.8%	\$9,379	18.9%
Firms with receipts of \$100,000 to \$499,999	304,158	45.7%	1,134,354	\$74,567,484,000	\$245,160	\$17,796	7.3%	\$9,379	3.8%
Firms with receipts of \$500,000 to \$999,999	89,577	13.5%	725,898	\$62,488,143,000	\$697,591	\$17,796	2.6%	\$9,379	1.3%
Firms with receipts of \$1,000,000 to \$2,499,999	56,956	8.6%	889,426	\$86,073,957,000	\$1,511,236	\$17,796	1.2%	\$9,379	0.6%
Firms with receipts of \$2,500,000 to \$4,999,999	16,652	2.5%	514,285	\$56,387,710,000	\$3,386,242	\$17,796	0.5%	\$9,379	0.3%
Firms with receipts of \$5,000,000 to \$7,499,999	5,126	0.8%	244,934	\$29,769,491,000	\$5,807,548	\$17,796	0.3%	\$9,379	0.2%
Firms with receipts of \$7,500,000 to \$9,999,999	2,355	0.4%	148,893	\$19,090,059,000	\$8,106,182	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$10,000,000 to \$14,999,999	2,177	0.3%	167,628	\$23,959,626,000	\$11,005,800	\$17,796	0.2%	\$9,379	0.1%
Firms with receipts of \$15,000,000 to \$19,999,999	1,033	0.2%	104,192	\$15,023,752,000	\$14,543,806	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$20,000,000 to \$24,999,999	612	0.1%	68,557	\$11,139,647,000	\$18,202,038	\$17,796	0.1%	\$9,379	0.1%
Firms with receipts of \$25,000,000 to \$29,999,999	407	0.1%	53,640	\$8,404,852,000	\$20,650,742	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$30,000,000 to \$34,999,999	290	0.0%	40,754	\$7,311,600,000	\$25,212,414	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$35,000,000 to \$39,999,999	210	0.0%	33,009	\$5,511,004,000	\$26,242,876	\$17,796	0.1%	\$9,379	0.0%
Firms with receipts of \$40,000,000 to \$49,999,999	358	0.1%	62,861	\$10,986,360,000	\$30,688,156	\$17,796	0.1%	\$9,379	0.0%

7. Alternatives to the Final Rule

The RFA directs agencies to assess the impacts that various regulatory alternatives would have on small entities and to consider ways to minimize those impacts. Accordingly, the Department considered a regulatory alternative related to the second cost

component: Provision of performance data to the SRE. Under this alternative, IRAPs would need to provide performance data once every 5 years rather than annually. To estimate the reduction in costs under this alternative, the Department decreased from 25 hours to 5 hours (= 25 hours ÷ 5 years) the

time burden for IRAPs to provide performance information to their SREs. Exhibit 29 shows the estimated cost per IRAP for each year of the analysis period. The first year cost per IRAP is estimated at \$15,608 at a discount rate of 7 percent. The annualized cost per IRAP is estimated at \$7,038 at a discount rate of 7 percent.

Year	Rule Familiarization	Performance Data Collection	Written Training Plan	Written Apprenticeship Agreement	SRE's Fees	Total Cost	Number of Industry Programs	Cost per Industry Program
1	\$237,632	\$1,188,159	\$19,010,544	\$3,314,964	\$10,150,000	\$33,901,298	2,030	\$16,700
2	\$201,811	\$2,197,216	\$16,144,915	\$4,229,179	\$12,680,000	\$35,453,122	3,754	\$9,444
3	\$141,057	\$2,902,503	\$11,284,584	\$4,582,437	\$13,533,000	\$32,443,581	4,959	\$6,542
4	\$100,320	\$3,404,105	\$8,025,634	\$4,853,448	\$14,203,000	\$30,586,507	5,816	\$5,259
5	\$58,062	\$3,694,414	\$4,644,941	\$4,860,846	\$14,112,000	\$27,370,262	6,312	\$4,336
6	\$82,761	\$3,792,159	\$6,620,914	\$5,174,760	\$15,079,000	\$30,749,594	6,479	\$4,746
7	\$81,942	\$4,186,066	\$6,555,360	\$5,636,954	\$16,404,000	\$32,864,322	7,152	\$4,595
8	\$79,133	\$4,565,925	\$6,330,605	\$6,066,512	\$17,630,000	\$34,672,174	7,801	\$4,445
9	\$77,611	\$4,938,176	\$6,208,862	\$6,497,316	\$18,863,000	\$36,584,965	8,437	\$4,336
10	\$76,440	\$5,304,574	\$6,115,214	\$6,923,964	\$20,085,000	\$38,505,193	9,063	\$4,249
<b>First year cost, 7% discount rate</b>								<b>\$15,608</b>
<b>Annualized cost, 7% discount rate, 10 years</b>								<b>\$7,038</b>

The Department decided not to pursue this alternative because a longer reporting cycle would be inconsistent with the annual reporting cycles for other workforce investment programs, and would provide less useful information to the public. Transparency is vital to the success of IRAPs. An annual reporting cycle will provide stakeholders with the uniform information necessary to evaluate the outcomes of this new initiative. Moreover, an annual reporting cycle will provide IRAPs and SREs with valuable information that will enable them to assess the effectiveness of their programs and make improvements.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with PRA. See 44 U.S.C. 3506(c)(2)(A). This

activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

In accordance with the requirements of PRA the proposed regulation solicited comments on the information collections included therein. The Department also submitted an ICR to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review. OMB issued a notice of action asking the Departments to resubmit the ICR after considering public comments, at the final rule stage.

Although no public comments were received that specifically addressed the paperwork burden analysis of the information collections, the comments that were submitted, and which are described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. As discussed throughout this final rule, the Department took into account such public comments in connection with making changes to the final rule, especially when analyzing the economic impact of the rule and developing the revised paperwork burden analysis summarized below.

Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application

As discussed above, E.O. 13801 directed the Department to determine how qualified entities may provide recognition to "industry-recognized apprenticeship programs," and to "establish guidelines or requirements that qualified third parties should or must follow to ensure that the apprenticeship programs they recognize meet quality standards."

To obtain the information necessary for the Department to determine whether a prospective SRE has satisfied the criteria outlined in the final rule, the Department proposed the information collection titled "Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application."

Agency: DOL-ETA.  
 Title of Collection: Industry-Recognized Apprenticeship Program Standards Recognition Entity Regulation and Application.

OMB Control Number: 1205-0536.

Affected Public: State and Local Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 3,794.

Total Estimated Number of Responses: 141,819.

Total Estimated Annual Time Burden: 285,310 hours.

Total Estimated Annual Other Costs Burden: \$0.

*Regulations Sections:* 29 CFR 29.21(a), 29.21(b)(6), 29.21(c)(2), 29.22(a)(1), 29.22(a)(2), 29.22(a)(4)(ii), 29.22(a)(4)(vii), 29.22(a)(4)(ix), 29.22(a)(4)(x), 29.22(b), 29.22(c), 29.22(d), 29.22(f)(5), 29.22(h), 29.22(i), 29.22(j), 29.22(k), 29.22(l), 29.22(m), 29.22(n), and 29.22(o).

The PRA provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5 and 1320.6(a).

Section 29.22(h) provides that SREs must annually report to the Administrator and make publicly available certain information the Department considers important for providing employers and prospective apprentices the details necessary to make informed decisions about IRAPs. Affected parties do not have to comply with the information collection requirements in § 29.22(h) until the Department publishes in the **Federal Register** the control numbers assigned by the OMB to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under PRA. The Department will publish a **Federal Register** notice requesting public comment on the collections required by § 29.22(h) and submit an ICR to the OMB for review and approval in accordance with PRA prior to requiring or accepting any data collections. A copy of that ICR, with applicable supporting documentation—including a description of the likely respondents, proposed format and frequency of responses, and estimated total burden—will be available on the *RegInfo.gov* website.

Interested parties may obtain a copy free of charge of the current and future ICRs submitted to the OMB on the *reginfo.gov* website at <http://www.reginfo.gov/public/do/PRAMain>. From the Information Collection Review tab, select Information Collection Review. Then select Department of Labor from the Currently Under Review dropdown menu and look up the Control Number. You may also request a free copy of an ICR by contacting the person named in the **ADDRESSES** section of this preamble.

#### *D. Executive Order 13132: Federalism*

As with the NPRM, the Department reviewed the final rule in accordance with E.O. 13132, Federalism, and has determined that it has does not have federalism implications because it has does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Two commenters questioned the Department's conclusion in the NPRM that the rule does not have federalism implications. One commenter cited a lack of clarity for how State prevailing wage laws would apply to apprentices in IRAPs as grounds for questioning the Department's conclusion on federalism. As discussed above in the section-by-section analysis for § 29.22(a)(4)(vii), the Department acknowledges the concerns raised by commenters and is confident, however, that the text of the Federal prevailing wage regulations at issue, 29 CFR 5.5(a)(4)(i), is sufficiently clear. These Federal prevailing wage regulations only apply to registered apprenticeship programs that are either registered by OA or an SAA. Additionally, the Department declines to opine on the applicability of State prevailing wage laws to IRAP apprentices because whether an IRAP apprentice would qualify as an apprentice under a State prevailing wage law depends on the specific State law at issue and the extent to which such laws track the Federal Davis-Bacon Act varies.

The other commenter asserted concerns about the Department's adherence to "due process" under NAA, interpreting the statute's requirement for the Secretary of Labor to "cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship" as requiring specific consultation with State Agencies to during the development of the NPRM. As discussed above in the Legal Authority section, NAA does not dictate the terms of how the Department consults with States, and it does not require that DOL consult or operate its apprenticeship initiatives through States. Therefore, Department maintains its conclusion that the rulemaking has no federalism implications, and no further agency action or analysis are required under E.O. 13132.

#### *E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (*see* 2 U.S.C. 1532), requires each Federal

agency to prepare a written statement assessing the effects of any Federal mandate in a proposed agency rule that may result in \$100 million or more in expenditures (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector.

This final rule does not exceed the \$100 million expenditure in any 1 year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of title II of UMRA, therefore, do not apply, and the Department has not prepared a statement under UMRA.

#### *F. Executive Order 13175 (Indian Tribal Governments)*

The Department has reviewed this final rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. The final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **List of Subjects in 29 CFR Part 29**

Apprenticeship programs, Apprentice agreements and complaints, Apprenticeability criteria, Program standards, Registration and deregistration, Sponsor eligibility, State apprenticeship agency recognition and derecognition.

For the reasons stated in the preamble, the Department amends 29 CFR part 29 as follows:

#### **PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS; STANDARDS RECOGNITION ENTITIES OF INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS**

- 1. The authority citation for part 29 continues to read as follows:

**Authority:** Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

#### **§ 29.1 through 29.14 [Designated as Subpart A]**

- 2. Designate §§ 29.1 through 29.14 as Subpart A and add a subpart heading to read as follows:

#### **Subpart A—Registered Apprenticeship Programs**

- 3. Amend § 29.1 by revising the section heading and paragraph (b) to read as follows:

**§ 29.1 Purpose and scope for the Registered Apprenticeship Program.**

\* \* \* \* \*

(b) The purpose of this subpart is to set forth labor standards to safeguard the welfare of apprentices, promote apprenticeship opportunity, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. These labor standards, policies and procedures cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as an authorized agency for registering apprenticeship programs for certain Federal purposes; and matters relating thereto.

■ 4. Amend § 29.2 by adding introductory text and revising the definitions of “Apprenticeship program,” “Registration agency,” and “Technical assistance” to read as follows:

**§ 29.2 Definitions.**

For the purpose of this subpart:

\* \* \* \* \*

*Apprenticeship program* means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR part 29 subpart A, and part 30, including such matters as the requirement for a written apprenticeship agreement.

\* \* \* \* \*

*Registration agency* means the Office of Apprenticeship or a recognized State Apprenticeship Agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR part 29 subpart A, and part 30; and quality assurance assessments.

\* \* \* \* \*

*Technical assistance* means guidance provided by Registration Agency staff in the development, revision, amendment, or processing of a potential or current program sponsor’s Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with this subpart or guidance from the Office of Apprenticeship to a State Apprenticeship Agency on how to

remedy nonconformity with this subpart.

\* \* \* \* \*

■ 5. Amend § 29.3 by revising paragraph (b)(1), paragraph (g) introductory text, and paragraph (h) to read as follows:

**§ 29.3 Eligibility and procedure for registration of an apprenticeship program.**

\* \* \* \* \*

(b) \* \* \*

(1) It is in conformity with the requirements of this subpart and the training is in an apprenticeable occupation having the characteristics set forth in § 29.4; and

\* \* \* \* \*

(g) Applications for new programs that the Registration Agency determines meet the required standards for program registration must be given provisional approval for a period of 1 year. The Registration Agency must review all new programs for quality and for conformity with the requirements of this subpart at the end of the first year after registration. At that time:

\* \* \* \* \*

(h) The Registration Agency must review all programs for quality and for conformity with the requirements of this subpart at the end of the first full training cycle. A satisfactory review of a provisionally approved program will result in conversion of provisional approval to permanent registration. Subsequent reviews must be conducted no less frequently than every 5 years. Programs not in operation or not conforming to the regulations must be recommended for deregistration procedures.

\* \* \* \* \*

■ 6. Amend § 29.6 by revising paragraph (b)(2) to read as follows:

**§ 29.6 Program performance standards.**

\* \* \* \* \*

(b) \* \* \*

(2) Any additional tools and factors used by the Registration Agency in evaluating program performance must adhere to the goals and policies of the Department articulated in this subpart and in guidance issued by the Office of Apprenticeship.

\* \* \* \* \*

■ 7. Amend § 29.10 by revising paragraph (a)(2) to read as follows:

**§ 29.10 Hearings for deregistration.**

(a) \* \* \*

(2) A statement of the provisions of this subpart pursuant to which the hearing is to be held; and

\* \* \* \* \*

■ 8. Amend § 29.11 by revising the introductory text to read as follows:

**§ 29.11 Limitations.**

Nothing in this subpart or in any apprenticeship agreement will operate to invalidate:

\* \* \* \* \*

■ 9. Amend § 29.13 by revising paragraphs (a)(1), (b)(1), (c), (e) introductory text, and (e)(4) to read as follows:

**§ 29.13 Recognition of State Apprenticeship Agencies.**

(a) \* \* \*

(1) The State Apprenticeship Agency must submit a State apprenticeship law, whether instituted through statute, Executive Order, regulation, or other means, that conforms to the requirements of 29 CFR part 29 subpart A, and part 30;

\* \* \* \* \*

(b) \* \* \*

(1) Establish and maintain an administrative entity (the State Apprenticeship Agency) that is capable of performing the functions of a Registration Agency under 29 CFR part 29 subpart A;

\* \* \* \* \*

(c) *Application for recognition.* A State Apprenticeship Agency desiring new or continued recognition as a Registration Agency must submit to the Administrator of the Office of Apprenticeship the documentation specified in paragraph (a) of this section. A currently recognized State desiring continued recognition by the Office of Apprenticeship must submit to the Administrator of the Office of Apprenticeship the documentation specified in paragraph (a) of this section within 2 years of the effective date of the final rule. The recognition of a currently recognized State shall continue for up to 2 years from the effective date of this regulation and during any extension period granted by the Administrator. An extension of time within which to comply with the requirements of this subpart may be granted by the Administrator for good cause upon written request by the State, but the Administrator shall not extend the time for submission of the documentation required by paragraph (a) of this section. Upon approval of the State Apprenticeship Agency’s application for recognition and any subsequent modifications to this application as required under paragraph (b)(9) of this section, the Administrator shall so notify the State Apprenticeship Agency in writing.

\* \* \* \* \*

(e) *Compliance.* The Office of Apprenticeship will monitor a State Registration Agency for compliance

with the recognition requirements of this subpart through:

\* \* \* \* \*

(4) Determination whether, based on the review performed under paragraphs (e)(1), (2), and (3) of this section, the State Registration Agency is in compliance with part 29 subpart A. Notice to the State Registration Agency of the determination will be given within 45 days of receipt of proposed modifications to legislation, regulations, policies, and/or operational procedures required to be submitted under paragraphs (a)(1), (a)(5) and (b)(9) of this section.

\* \* \* \* \*

■ 10. Amend § 29.14 by revising the introductory text and paragraphs (e)(1) and (i) to read as follows:

**§ 29.14 Derecognition of State Apprenticeship Agencies.**

The recognition for Federal purposes of a State Apprenticeship Agency may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of part 29 subpart A, and part 30. Derecognition proceedings for reasonable cause will be instituted in accordance with the following:

\* \* \* \* \*

(e) \* \* \*

(1) The Office of Apprenticeship may grant the request for registration on an interim basis. Continued recognition will be contingent upon its finding that the State apprenticeship program is operating in accordance with the requirements of this subpart and of 29 CFR part 30.

\* \* \* \* \*

(i) A State Apprenticeship Agency whose recognition has been withdrawn under this subpart may have its recognition reinstated upon presentation of adequate evidence that it has fulfilled the requirements established in §§ 29.13(i) and 29.14(g) and (h) and is operating in conformity with the requirements of this subpart.

■ 11. Add Subpart B, Standards Recognition Entities of Industry-Recognized Apprenticeship Programs, to read as follows:

**Subpart B—Standards Recognition Entities of Industry-Recognized Apprenticeship Programs**

Sec.

29.20 Standards Recognition Entities, Industry-Recognized Apprenticeship Programs, Administrator, and Apprentices.

29.21 Becoming a Standards Recognition Entity.

29.22 Responsibilities and requirements of Standard Recognition Entities.

29.23 Quality assurance.

29.24 Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs.

29.25 Complaints against Standards Recognition Entities.

29.26 Review of a Standards Recognition Entity.

29.27 Suspension and derecognition of a Standards Recognition Entity.

29.28 Derecognition's effect on Industry-Recognized Apprenticeship Programs.

29.29 Requests for administrative review.

29.30 Scope of Industry-Recognized Apprenticeship Programs Recognition by Standards Recognition Entities.

29.31 Severability.

**§ 29.20 Standards Recognition Entities, Industry-Recognized Apprenticeship Programs, Administrator, and Apprentices.**

For the purpose of this subpart, which establishes a new apprenticeship pathway distinct from the registered apprenticeship programs described in subpart A:

(a) A *Standards Recognition Entity (SRE)* of Industry-Recognized Apprenticeship Programs (IRAPs) is an entity that is qualified to recognize apprenticeship programs as IRAPs under § 29.21 and that has been recognized by the Department of Labor. The types of entities that can become SREs include:

(1) Trade, industry, and employer groups or associations;

(2) Corporations and other organized entities;

(3) Educational institutions, such as universities or community colleges;

(4) State and local government agencies or entities;

(5) Non-profit organizations;

(6) Unions;

(7) Joint labor-management organizations;

(8) Certification and accreditation bodies or entities for a profession or industry; or

(9) A consortium or partnership of entities such as those above.

(b) *IRAPs* are high-quality apprenticeship programs, wherein an individual obtains workplace-relevant knowledge and progressively advancing skills, that include a paid-work component and an educational or instructional component, and that result in an industry-recognized credential. An IRAP is developed or delivered by entities such as trade and industry groups, corporations, non-profit organizations, educational institutions, unions, and joint labor-management organizations. An IRAP is an apprenticeship program that has been recognized as a high-quality program by an SRE pursuant to § 29.22(a)(4)(i) through (x).

(c) The *Administrator* is the Administrator of the Department of

Labor's Office of Apprenticeship, or any person specifically designated by the Administrator.

(d) An *apprentice* is an individual training in an IRAP under an apprenticeship agreement.

**§ 29.21 Becoming a Standards Recognition Entity.**

(a) To apply to be recognized as an SRE, an entity (or consortium or partnership of entities) must complete and submit an application to the Administrator for recognition as an IRAP SRE. Such application must be in a form prescribed by the Administrator, which will require the applicant's written attestation that the information and documentation provided is true and correct. This application must include all policies and procedures required by this subpart or addressing requirements in this subpart, which will be reviewed by the Administrator when making a recognition determination.

(b) An entity is qualified to be recognized as an SRE if it demonstrates:

(1) It has the expertise to set competency-based standards, through a consensus-based process involving industry experts, for the requisite training, structure, and curricula for apprenticeship programs in the industry(ies) or occupational area(s) in which it seeks to be an SRE.

(i) The requirements in paragraph (b)(1) of this section may be met through an SRE's past or current standard-setting activities and need only engender new activity if necessary to comply with this rule.

(ii) [Reserved]

(2) It has the capacity and quality assurance processes and procedures sufficient to comply with § 29.22(a)(4), given the scope of the IRAPs to be recognized.

(3) It has the resources to operate as an SRE for a 5-year period. As part of its application, an entity must report any bankruptcies from the past 5 years.

(4) Its disclosure of any confirmed or potential partner who will be engaged in the recognition activities and describes their roles, including relationships with subsidiaries or other related entities that could reasonably impact its impartiality.

(5) It is not suspended or debarred from conducting business with the U.S. Federal Government.

(6) It mitigates—via any specific policies, processes, procedures, or structures—any actual or potential conflicts of interest, including, but not limited to, conflicts that may arise from the entity recognizing its own apprenticeship program(s) and conflicts relating to the entity's provision of services to actual or prospective IRAPs.

(7) It has the appropriate knowledge and resources to recognize IRAPs in the industry(ies) or occupational areas in the intended geographical area, that may be nationwide or limited to a region, State, or local area.

(8) It meets any other applicable requirements of this subpart.

(c) The Administrator will recognize an entity as an SRE if it is qualified under paragraph (b) of this section.

(1) An SRE will be recognized for 5 years, and must reapply at least 6 months before the date that its current recognition is set to expire if it seeks re-recognition.

(i) To reapply to continue serving as an SRE, an entity must complete and submit an updated application to the Administrator for re-recognition as an IRAP SRE that is in a form prescribed by the Administrator.

(ii) To determine whether re-recognition should be granted, the Administrator will evaluate the information provided by the SRE in the updated application and the data provided pursuant to § 29.22(h), to verify that the SRE's quality assurance processes and procedures were and continue to be sufficient to effect compliance with § 29.22(a)(4).

(2) An SRE must notify the Administrator and must provide all related material information if:

(i) It makes any major change that could affect the operations of the program, such as involvement in lawsuits that materially affect the SRE, changes in legal status, or any other change that materially affects the SRE's ability to function in its recognition capacity; or

(ii) It seeks to recognize apprenticeship programs in additional industries, occupational areas, or geographical areas.

(3) An SRE must submit changes as described in paragraph (c)(2)(ii) of this section to the Administrator for evaluation prior to the SRE implementing the changes. In light of the information received, the Administrator will evaluate whether the SRE remains qualified for recognition under paragraph (b) of this section, including its qualification to recognize programs in the new industries, occupational areas, or geographical areas identified under paragraph (c)(2)(ii) of this section.

(d) The requirements for denials of recognition are as follows:

(1) A denial of recognition must be in writing and must state the reason(s) for denial. The notice must tell the applicant what it needs to do differently before resubmitting its application.

(2) The notice must state that a request for administrative review may be made within 30 calendar days of receipt of the notice.

(3) The notice must explain that a request for administrative review must comply with the service requirements contained in 29 CFR part 18. The Administrator will refer any requests for administrative review to the Office of Administrative Law Judges to be addressed in accordance with § 29.29.

#### **§ 29.22 Responsibilities and requirements of Standards Recognition Entities.**

(a) An SRE must:

(1) Recognize or reject an apprenticeship program seeking recognition as an IRAP in a timely manner;

(2) Inform the Administrator within 30 calendar days when it has recognized, suspended, or derecognized an IRAP, and include the name and contact information of the program;

(3) Provide the Administrator any data or information the Administrator is expressly authorized to collect under this subpart; and

(4) Only recognize as IRAPs and maintain such recognition of apprenticeship programs that meet the following requirements:

(i) The program must train apprentices for employment in jobs that require specialized knowledge and experience and involve the performance of complex tasks.

(ii) The program has a written training plan, consistent with its SRE's requirements and standards as developed pursuant to the process set forth in § 29.21(b)(1). The written training plan, which must be provided to an apprentice prior to beginning an IRAP, must detail the program's structured work experiences and appropriate related instruction, be designed so that apprentices demonstrate competency and earn credential(s), and provide apprentices progressively advancing industry-essential skills.

(iii) The program ensures that, where appropriate, apprentices receive credit for prior knowledge and experience relevant to the instruction of the program.

(iv) The program provides apprentices industry-recognized credential(s) during participation in or upon completion of the program.

(v) The program provides a working environment for apprentices that adheres to all applicable Federal, State, and local safety laws and regulations and complies with any additional safety requirements of its SRE.

(vi) The program provides apprentices structured mentorship opportunities

throughout the duration of the apprenticeship that involve ongoing, focused supervision and training by experienced instructors and employees, to ensure apprentices have additional guidance on the progress of their training and their employability.

(vii) The program ensures apprentices are paid at least the applicable Federal, State, or local minimum wage. The program must provide a written notice to apprentices of what wages apprentices will receive and under what circumstances apprentices' wages will increase. The program's charging of costs or expenses to apprentices must comply with all applicable Federal, State, or local wage laws and regulations, including but not limited to the Fair Labor Standards Act and its regulations. This rule does not purport to alter or supersede an employer's obligations under any such laws and regulations.

(viii) The program affirms its adherence to all applicable Federal, State, and local laws pertaining to Equal Employment Opportunity (EEO).

(ix) The program discloses to apprentices, before they agree to participate in the program, any costs or expenses that will be charged to them (such as costs related to tools or educational materials).

(x) The program maintains a written apprenticeship agreement for each apprentice that outlines the terms and conditions of the apprentice's employment and training. The apprenticeship agreement must be consistent with its SRE's requirements.

(b) An SRE must validate its IRAPs' compliance with paragraph (a)(4) of this section when it provides the Administrator with notice of recognition under paragraph (a)(2) of this section, and on an annual basis thereafter, and must at that time provide the Administrator a written attestation that its IRAPs meet the requirements of paragraph (a)(4) of this section and any other requirements of the SRE.

(c) An SRE must publicly disclose the credential(s) that apprentices will earn during their participation in or upon completion of an IRAP.

(d) An SRE must establish policies and procedures for recognizing, and validating compliance of, programs that ensure that SRE decisions are impartial, consistent, and based on objective and merit-based criteria; ensure that SRE decisions are confidential except as required or permitted by this subpart, or otherwise required by law; and are written in sufficient detail to reasonably achieve the foregoing criteria. An SRE must submit these policies and



procedures to the Administrator with its application.

(e) An SRE's recognition of an IRAP may last no longer than 5 years. An SRE may not re-recognize an IRAP without the IRAP seeking re-recognition.

(f) An SRE must remain in an ongoing quality-control relationship with the IRAPs it has recognized. The specific means and nature of the relationship between the IRAP and SRE will be defined by the SRE, provided the relationship:

(1) Does in fact result in reasonable and effective quality control that includes, as appropriate, consideration of apprentices' credential attainment, program completion, retention rates, and earnings;

(2) Does not prevent the IRAP from receiving recognition from another SRE;

(3) Does not conflict with this subpart or violate any applicable Federal, State, or local law;

(4) Involves periodic compliance reviews by the SRE of its IRAP to ensure compliance with the requirements of paragraph (a)(4) of this section and the SRE's requirements; and

(5) Includes policies and procedures for the suspension or derecognition of an IRAP that fails to comply with the requirements of paragraph (a)(4) of this section and its SRE's requirements.

(g) Participating as an SRE under this subpart does not make the SRE a joint employer with entities that develop or deliver IRAPs.

(h) Each year, an SRE must report to the Administrator, in a format prescribed by the Administrator, and make publicly available the following information on each IRAP it recognizes:

(1) Up-to-date contact information for each IRAP;

(2) The total number of new and continuing apprentices annually training in each IRAP under an apprenticeship agreement;

(3) The total number of apprentices who successfully completed the IRAP annually;

(4) The annual completion rate for apprentices. Annual completion rate must be calculated by comparing the number of apprentices in a designated apprenticeship cohort who successfully completed the IRAP requirements and attained an industry-recognized credential with the number of apprentices in that cohort who initially began training in the IRAP;

(5) The median length of time for IRAP completion;

(6) The post-apprenticeship employment retention rate, calculated 6 and 12 months after program completion;

(7) The industry-recognized credentials attained by apprentices in an

IRAP, and the annual number of such credentials attained;

(8) The annualized average earnings of an IRAP's former apprentices, calculated over the 6 month period after IRAP completion;

(9) Training cost per apprentice; and

(10) Basic demographic information on participants.

(i) An SRE must have policies and procedures that require IRAPs' adherence to applicable Federal, State, and local laws pertaining to EEO, and must facilitate such adherence through the SRE's policies and procedures regarding potential harassment, intimidation, and retaliation (such as the provision of anti-harassment training, and a process for handling EEO and harassment complaints from apprentices); must have policies and procedures that reflect comprehensive outreach strategies to reach diverse populations that may participate in IRAPs; and must assign responsibility to an individual to assist IRAPs with matters relating to this paragraph.

(j) An SRE must have policies and procedures for addressing complaints filed by apprentices, prospective apprentices, an apprentice's authorized representative, a personnel certification body, or an employer against each IRAP the SRE recognizes. An SRE must make publicly available the aggregated number of complaints pertaining to each IRAP in a format and frequency prescribed by the Administrator.

(k) An SRE must notify the public about the right of an apprentice, a prospective apprentice, the apprentice's authorized representative, a personnel certification body, or an employer, to file a complaint with the SRE against an IRAP the complainant is associated with, and the requirements for filing a complaint.

(l) An SRE must notify the public about the right to file a complaint against it with the Administrator as set forth in § 29.25.

(m) If an SRE has received notice of derecognition pursuant to § 29.27(c)(1)(ii) or (c)(3), the SRE must inform each IRAP it has recognized and the public of its derecognition.

(n) An SRE must publicly disclose any fees it charges to IRAPs.

(o) An SRE must ensure that records regarding each IRAP recognized, including whether the IRAP has met all applicable requirements of this subpart, are maintained for a minimum of 5 years.

(p) An SRE must follow any policy or procedure submitted to the Administrator or otherwise required by this subpart, and an SRE must notify the

Administrator when it makes significant changes to its policies or procedures.

#### **§ 29.23 Quality assurance.**

(a) The Administrator may request and review materials from SREs, and may conduct periodic compliance assistance reviews of SREs to ascertain their conformity with the requirements of this subpart.

(b) SREs must provide requested materials to the Administrator, consistent with § 29.22(a)(3).

(c) The information that is described in this subpart may be utilized by the Administrator to discharge the recognition, review, suspension, and derecognition duties outlined in §§ 29.21(c)(1), 29.26, and 29.27.

#### **§ 29.24 Publication of Standards Recognition Entities and Industry-Recognized Apprenticeship Programs.**

The Administrator will make publicly available a list of recognized, suspended, and derecognized SREs and IRAPs.

#### **§ 29.25 Complaints against Standards Recognition Entities.**

(a) A complaint arising from an SRE's compliance with this subpart may be submitted by an apprentice, the apprentice's authorized representative, a personnel certification body, an employer, or an IRAP to the Administrator for review.

(b) The complaint must be in writing and must be submitted within 180 calendar days from the complainant's actual or constructive knowledge of the circumstances giving rise to the complaint. It must set forth the specific matter(s) complained of, together with relevant facts and circumstances.

(c) Complaints under this section are addressed exclusively through the review process outlined in § 29.26.

(d) Nothing in this section precludes a complainant from pursuing any remedy authorized under Federal, State, or local law.

#### **§ 29.26 Review of a Standards Recognition Entity.**

(a) The Administrator may initiate review of an SRE if it receives information indicating that:

(1) The SRE is not in substantial compliance with this subpart; or

(2) The SRE is no longer capable of continuing as an SRE.

(b) As part of the review, the Administrator must provide the SRE written notice of the review and an opportunity to provide information for the review. Such notice must include a statement of the basis for review, including potential areas in which the SRE is not in substantial compliance or

why the SRE may no longer be capable of continuing as an SRE and a detailed description of the information supporting review under paragraphs (a)(1) or (2) of this section, or both.

(c) Upon conclusion of the Administrator's review, the Administrator will give written notice to the SRE of its decision to either take no action against the SRE, or to suspend the SRE as provided under § 29.27.

**§ 29.27 Suspension and derecognition of a Standards Recognition Entity.**

The Administrator may suspend an SRE for 45 calendar days based on the Administrator's review and determination that any of the situations described in § 29.26(a)(1) or (2) exist.

(a) The Administrator must provide notice in writing and state that a request for administrative review may be made within 45 calendar days of receipt of the notice.

(b) The notice must set forth an explanation of the Administrator's decision, including identified areas in which the SRE is not in substantial compliance or an explanation why the SRE is no longer capable of continuing as an SRE, or both, and necessary remedial actions, and must explain that the Administrator will derecognize the SRE in 45 calendar days unless remedial action is taken or a request for administrative review is made.

(c) If, within the 45-day period, the SRE:

(1) Specifies its proposed remedial actions and commits itself to remedying the identified areas in which the SRE is not in substantial compliance or the circumstances that render is no longer capable of continuing as an SRE, or both, the Administrator will extend the 45-day period to allow a reasonable time for the SRE to implement remedial actions.

(i) If the Administrator subsequently determines that the SRE has remedied the identified areas in which the SRE is not in substantial compliance or the circumstances that render is no longer capable of continuing as an SRE, or both, the Administrator must notify the SRE, and the suspension will end.

(ii) If the Administrator subsequently determines that the SRE has not remedied the identified areas in which the SRE is not in substantial compliance or the circumstances that render is no longer capable of continuing as an SRE, or both, after the close of the 45-day period and any extensions previously allowed by the Administrator, the Administrator will derecognize the SRE and must notify the SRE in writing and specify the reasons for its determination. The Administrator must

state that a request for administrative review may be made within 45 calendar days of receipt of the notice.

(2) Makes a request for administrative review, then the Administrator will refer the matter to the Office of Administrative Law Judges to be addressed in accordance with § 29.29.

(3) Does not act under paragraph (c)(1) or (2) of this section, the Administrator will derecognize the SRE.

(d) During the suspension:

(1) The SRE is barred from recognizing new programs.

(2) The Administrator will publish the SRE's suspension on the public list described in § 29.24.

**§ 29.28 Derecognition's effect on Industry-Recognized Apprenticeship Programs.**

(a) Following its SRE's derecognition, an IRAP will maintain its status until 1 year after the Administrator's decision derecognizing the IRAP's SRE becomes final, including any appeals. At the end of 1 year, the IRAP will lose its status unless it is already recognized by another SRE recognized under this subpart.

(b) Upon derecognizing an SRE, the Administrator will update the public list described in § 29.24 to reflect the derecognition, and the Administrator will notify the SRE's IRAP(s) of the derecognition.

**§ 29.29 Requests for administrative review.**

(a) Within 30 calendar days of the filing of a request for administrative review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

(b) The procedures contained in 29 CFR part 18 will apply to the disposition of the request for review except that:

(1) The Administrative Law Judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(2) Technical rules of evidence will not apply to hearings conducted under this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) The Administrative Law Judge should submit proposed findings, a recommended decision, and a certified record of the proceedings to the Administrative Review Board, SRE, and Administrator within 90 calendar days after the close of the record.

(d) Within 20 calendar days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 calendar days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici curiae.

(e) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must issue a decision in any case it accepts for review within 180 calendar days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

(f) The Administrator's decision must be upheld unless the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

**§ 29.30 Scope of Industry-Recognized Apprenticeship Programs Recognition by Standards Recognition Entities.**

(a) The Administrator will not recognize as SREs entities that intend to recognize as IRAPs programs that seek to train apprentices to perform construction activities, consisting of: The erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

(b) SREs that obtain recognition from the Administrator are prohibited from recognizing as IRAPs programs that seek to train apprentices to perform construction activities, consisting of: The erecting of buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

**§ 29.31 Severability.**

Should a court of competent jurisdiction hold any provision(s) of this subpart to be invalid, such action will

not affect any other provision of this subpart.

**John Pallasch,**

*Assistant Secretary for Employment and Training.*

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