

Paragraph 6006 En Route Domestic  
Airspace Areas.

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AGL MI E6 Upper Peninsula, MI  
[Removed]

AGL MI E6 Iron Mountain, MI [Removed]

AGL MI E6 Newberry, MI [Removed]

Issued in Fort Worth, Texas, on April 14, 2021.

Martin A. Skinner,  
Acting Manager, Operations Support Group,  
ATO Central Service Center.

[FR Doc. 2021-08009 Filed 4-19-21; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter II

[Docket ID ED-2021-OESE-0045]

#### Proposed Priorities—Effective Educator Development Division Programs

**AGENCY:** Office of Elementary and  
Secondary Education, Department of  
Education.

**ACTION:** Proposed priorities.

**SUMMARY:** The Department of Education (Department) proposes priorities for the following programs of the Effective Educator Development Division (EED): Teacher and School Leader Incentive Grants (TSL), Assistance Listing Number (ALN) 84.374A; Teacher Quality Partnerships (TQP), ALN 84.336S; and Supporting Effective Educator Development (SEED), ALN 84.423A. We may use these priorities for competitions in fiscal year (FY) 2021 and later years. We propose these priorities to focus on educator development, leadership, and diversity in the various EED programs in order to improve the quality of teaching and school leadership.

**DATES:** We must receive your comments on or before May 20, 2021.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency

documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priorities, address them to Orman Feres, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C124, Washington, DC 20202.

*Privacy Note:* The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

#### FOR FURTHER INFORMATION CONTACT:

Orman Feres, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C124, Washington, DC 20202. Telephone: (202) 453-6921. Email: [orman.feres@ed.gov](mailto:orman.feres@ed.gov).

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

#### SUPPLEMENTARY INFORMATION:

*Invitation to Comment:* We invite you to submit comments regarding the proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to clearly identify the specific section of the proposed priorities that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about the proposed priorities by accessing *Regulations.gov*. Due to the novel coronavirus 2019 (COVID-19) pandemic, the Department buildings are currently not open to the public. However, upon reopening you may also inspect the comments in person in room 3C124, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will

provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Programs:* We are proposing priorities for use in three Department programs: TSL, SEED, and TQP. The purpose of TSL is to assist States, local educational agencies, and nonprofit organizations to develop, implement, improve, or expand comprehensive performance-based compensation systems (PBCS) or human capital management systems (HCMS) for teachers, principals, and other school leaders (especially for teachers, principals, and other school leaders in high-need schools who raise student academic achievement and close the achievement gap between high- and low-performing students). In addition, a portion of TSL funds may be used to study the effectiveness, fairness, quality, consistency, and reliability of PBCS or HCMS for teachers, principals, and other school leaders (educators). The SEED program provides funding to increase the number of highly effective educators by supporting the implementation of evidence-based practices that prepare, develop, or enhance the skills of educators. SEED grants allow eligible entities to develop, expand, and evaluate practices that can serve as models to be sustained and disseminated. The purposes of the TQP program are to improve student achievement; improve the quality of prospective and new teachers by improving the preparation of prospective teachers and enhancing professional development activities for new teachers; hold teacher preparation programs at institutions of higher education accountable for preparing teachers who meet applicable State certification and licensure requirements; and recruit highly qualified individuals, including minorities and individuals from other occupations, into the teaching force.

*Program Authority:* 20 U.S.C. 1221e-3. TSL: Section 2211-2213 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 6631-6633. SEED: Section 2242 of the ESEA, 20 U.S.C. 6672. TQP: Sections 200-204 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021-1022c.

*Proposed Priorities:* This document contains two proposed priorities.

*Proposed Priority 1—Supporting Educators and Their Professional Growth.*

*Background:*

In Proposed Priority 1, the Department emphasizes the importance of promoting the continued development and growth of educators, including through leadership opportunities. It is well established that teacher effectiveness contributes greatly to student academic outcomes, yet there is variation in teacher effectiveness within and across schools, including significant inequity in students' access to effective teachers, particularly for students from low-income backgrounds, students of color, and students with disabilities.

As such, it is essential to attract and retain a well-qualified, experienced, effective, and diverse pool of skilled educators, to ensure that they have access to high-quality comprehensive preparation programs that have high standards for successful completion, and to ensure that they are prepared to teach diverse learners (e.g., through co-teaching models, dual certifications, universal design for learning). Equally important is supporting and retaining qualified and effective educators through practices such as creating or enhancing opportunities for professional growth, including through leadership opportunities, reforming compensation and advancement systems, creating conditions for successful teaching and learning, advanced educator certification such as national board teacher or principal certification, and through paying the tuition of effective current teachers seeking an additional certification in these areas.

This proposed priority focuses on strengthening teacher recruitment, selection, preparation (such as through partnerships with institutions of higher education to implement educator residencies that include one year of high-quality clinical experiences (prior to becoming the teacher of record) in high-need schools), support, development, effectiveness, recognition, and retention in ways that are consistent with the Department's policy goals of supporting teachers as the professionals they are, improving outcomes for all students, and ensuring that students from low-income backgrounds, students of color, students with disabilities, and other historically underserved students have equal access to qualified, experienced, and effective educators.

*Proposed Priority:*

Projects that are designed to increase the number and percentage of well-prepared, experienced, effective, and

diverse educators—which may include one or more of the following: Teachers, principals, paraprofessionals, or other school leaders as defined in section 8101(44) of the ESEA—through evidence-based strategies (as defined in 34 CFR 77.1 or the ESEA) incorporating one or more of the following:

(a) Adopting, implementing, or expanding efforts to recruit, select, prepare, support, and develop talented, diverse individuals to serve as mentors, instructional coaches, principals, or school leaders in high-need schools (as may be defined in the program's authorizing statute or regulations) who have the knowledge and skills to significantly improve instruction.

(b) Implementing practices or strategies that support high-need schools (as may be defined in the program's authorizing statute or regulations) in recruiting, preparing, hiring, supporting, developing, and retaining qualified, experienced, effective, diverse educators.

(c) Increasing the number of teachers with State or national advanced educator certification or certification in a teacher shortage area, as determined by the Secretary, such as special education or bilingual education.

(d) Providing high-quality professional development opportunities to all educators in high-need schools (as may be defined in the program's authorizing statute or regulations) on meeting the needs of diverse learners, including students with disabilities and English learners.

*Proposed Priority 2—Increasing Educator Diversity.*

*Background:*

In Proposed Priority 2, the Department recognizes that diverse educators will play a critical role in ensuring equity in our education system, as discussed in “The State of Racial Diversity in the Educator Workforce” report published by the Department in 2016: [www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf](http://www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf). As that report highlights, research shows that diversity in schools, including racial diversity among teachers, can provide significant benefits to students. While students of color are expected to make up 56 percent of the student population by 2024, the elementary and secondary educator workforce is still overwhelmingly white.<sup>1</sup> In fact, the

most recent U.S. Department of Education National Teacher and Principal Survey (NTPS), a nationally representative survey of teachers and principals, showed that 80 percent of public school teachers identified as white. This figure has hardly changed in more than 15 years as a similar survey conducted by the Department in 2000 found that 84 percent of teachers identified as white.<sup>2</sup>

Improving educator diversity—including racial, cultural, and linguistic diversity—can help all students. Diverse educators are positive role models for all students in breaking down negative stereotypes and preparing students to live and work in a multiracial society. In addition to providing advantages for all students, the racial diversity of the teaching workforce can help to close the achievement gap,<sup>3</sup> emerging research<sup>4</sup> suggests. Both quantitative and qualitative studies find that diverse educators can improve the school experiences of all students; further, diverse educators<sup>5</sup> contribute to improved academic outcomes while serving as strong role models for students.<sup>6</sup>

One report suggests that, compared with their peers, educators of color are more likely to (1) have higher expectations of students of color (as measured by higher numbers of referrals to gifted programs);<sup>7</sup> (2) confront issues of racism; (3) They also serve as

selected teacher characteristics: Selected years, 1987–88 through 2017–18.” Digest of Education Statistics, 2018. [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_209.10.asp?current=yes](https://nces.ed.gov/programs/digest/d19/tables/dt19_209.10.asp?current=yes).

<sup>2</sup> U.S. Department of Education, National Center for Education Statistics. “Table 209.10: Number and percentage distribution of teachers in public and private elementary and secondary schools, by selected teacher characteristics: Selected years, 1987–88 through 2017–18.” Digest of Education Statistics, 2018. [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_209.10.asp?current=yes](https://nces.ed.gov/programs/digest/d19/tables/dt19_209.10.asp?current=yes).

<sup>3</sup> Redding, Christopher. “A Teacher Like Me: A Review of the Effect of Student-Teacher Racial/Ethnic Matching on Teacher Perceptions of Students and Student Academic and Behavioral Outcomes.” Review of Educational Research, 89 (2019) 499–535.

<sup>4</sup> Egalite, Anna, Brian Kisida, and Marcus A. Winters. “Representation in the Classroom: The Effect of Own-race Teachers on Student Achievement,” Economics of Education Review, 45 (April 2015) 44–52.

<sup>5</sup> Grissom, Jason, Sarah Kabourek, and Jenna Kramer. “Exposure to same-race or same-ethnicity teachers and advanced math course-taking in high school: Evidence from a diverse urban district,” Teachers College Record, 122 (2020) 1–42.

<sup>6</sup> Grissom, Jason and Christopher Redding. “Discretion and disproportionality: Explaining the underrepresentation of high-achieving students of color in gifted programs.” AERA Open, 2, (2016) 1–15.

<sup>7</sup> Lindsay, Constance and Cassandra Hart. “Exposure to Same-race Teachers and Student Disciplinary Outcomes for Black Students in North Carolina.” Educational Evaluation and Policy Analysis, 39 (2017) 485–510.

<sup>1</sup> The term “white” in this report refers to a socially constructed category of individuals who self-identify as white and non-Hispanic. U.S. Department of Education, National Center for Education Statistics. “Table 209.10: Number and percentage distribution of teachers in public and private elementary and secondary schools, by

advocates and cultural brokers; and (4) develop more trusting relationships with students, particularly those with whom they share a cultural background.<sup>8</sup>

A 2014 report shows that, despite the critical role that teachers of color can play in helping students of color succeed, every State has a higher percentage of students of color than educators of color.<sup>9</sup> The teaching force has become slightly more diverse in recent years. But recent data from the National Center for Education Statistics (NCES) estimates that the elementary and secondary student population will continue to become less white and more diverse.<sup>10</sup>

Unless current trends change, the disparity between the racial makeup of students and teachers may increase further, fueling the need for substantially more progress in increasing teacher diversity.

This proposed priority is designed to address educator diversity through a broader lens of equity and inclusion due to emerging evidence that emphasizing diversity without a parallel focus on equity and inclusion can minimize the potential benefits of such efforts. As one recent reported concluded: “While the data shows important differences in the practices of organizations with greater diversity, a singular focus on diversity without a commensurate focus on equity and inclusion will not maximize the potential benefits. We see striking evidence that organizations that approach diversity, equity, and inclusion in parallel have the greatest likelihood of realizing the benefits, such as staff engagement and retention.”<sup>11</sup> To this end, the proposed priority focuses on addressing recruitment, outreach, preparation, support, retention, and advancement of educators while advancing diversity, equity, and inclusion.

#### *Proposed Priority:*

Under this priority, applicants must develop projects that are designed to improve the recruitment, outreach, preparation, support, development, and retention of a diverse educator workforce through adopting,

implementing, or expanding one or more of the following:

(a) Educator diversity goals, timelines, and action plans at the State, district, or school level, including incorporating input from diverse educators.

(b) High-quality, comprehensive teacher preparation programs that have a track record of attracting, supporting, graduating, and placing underrepresented teacher candidates, and that include one year of high-quality clinical experiences (prior to becoming the teacher of record) in high-need schools (as may be defined in the program’s authorizing statute or regulations).

(c) High-quality, comprehensive teacher preparation programs in Historically Black Colleges and Universities (eligible institutions under part B of title III and subpart 4 of part A title VII of the HEA), Hispanic Serving Institutions (eligible institutions under section 502 of the HEA), Tribal Colleges and Universities (eligible institutions under section 316 of the HEA), or other Minority Serving Institutions (eligible institutions under title III and title V of the HEA) that include one year of high-quality clinical experiences (prior to becoming the teacher of record) in high-need schools as may be defined in the program’s authorizing statute or regulations) and that incorporate best practices for attracting, supporting, graduating, and placing underrepresented teacher candidates.

(d) Reforms to teacher preparation programs to improve the diversity of teacher candidates, including changes to ensure underrepresented teacher candidates are fully represented in program admission, completion, placement, and retention as educators.

(e) Educator candidate support and preparation strategies and practices focused on underrepresented teacher candidates, and which may include “grow your own programs,” which typically recruit middle or high school students, paraprofessionals, or other school staff and provide them with clear pathways and intensive support to enter into the teaching profession.

(f) Professional growth and leadership opportunities for diverse educators, including opportunities to influence school, district, or State policies and practices in order to improve educator diversity.

(g) High-quality professional development on addressing bias in instructional practice and fostering an inclusive, equitable, and supportive workplace and school climate for educators.

(h) Data systems and reporting structures to provide accurate, public,

and timely data about the racial and other demographics of the educator workforce that can be used to support efforts to diversify the workforce and to measure progress toward teacher and school leader diversity at the State, district, or school level.

#### *Types of Priorities:*

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

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

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

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

#### *Final Priorities:*

We will announce the final priorities in a document published in the **Federal Register**. We will determine the final priorities after considering responses to the proposed priorities and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

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

## **Executive Orders 12866 and 13563**

### *Regulatory Impact Analysis*

Under Executive Order 12866, it must be determined whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

<sup>8</sup> Ferguson, Ronald. “Teachers’ Perceptions and Expectations and the Black-White Test Score Gap.” *Urban Education*, 38, (2003) 460–507.

<sup>9</sup> Boser, Ulrich. “Teacher Diversity Revisited: A New State-by-State Analysis,” Center for American Progress (2014).

<sup>10</sup> Hussar, William, and Tabitha Bailey. *Projections of Education Statistics to 2028* (NCES 2020–024). U.S. Department of Education, National Center for Education Statistics. Washington, DC: Author (2020).

<sup>11</sup> Padamsee, Xiomara, and Becky Crowe. “Unrealized Impact: The Case for Diversity, Equity, and Inclusion,” Oakland, CA: Promise54, July 2017.

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

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

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

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

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

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

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

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

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these

techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing the proposed priorities only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priorities are consistent with the principles in Executive Order 13563.

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

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

#### *Potential Costs and Benefits*

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priorities would not impose any particular burden except when an entity voluntarily elects to apply for a grant. The proposed priorities would help ensure that the Department’s Effective Educator Development programs select high-quality applicants to implement activities that meet the goals of the respective programs. We believe these benefits would outweigh any associated costs.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of

sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?

• Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed priorities easier to understand, see the instructions in the **ADDRESSES** section.

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

This document provides early notification of our specific plans and actions for these programs.

#### *Regulatory Flexibility Act Certification*

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

The small entities that this proposed regulatory action would affect are school districts, nonprofit organizations, and for-profit organizations. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed priorities would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

*Paperwork Reduction Act*

The proposed priorities contain information collection requirements that are approved by OMB under OMB control number 1894-0006; the proposed priorities do not affect the currently approved data collection.

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

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Ruth Ryder,**

*Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.*

[FR Doc. 2021-08193 Filed 4-19-21; 8:45 am]

**BILLING CODE 4000-01-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223

[Docket No. 210414-0079]

RIN 0648-BK49

#### Potential New Turtle Exclusion Device Requirements for Skimmer Trawl Vessels Less Than 40 Feet (12.2 Meters) in Length

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS hereby publishes an advance notice of proposed rulemaking to solicit comments on the possibility of modifying the turtle excluder device (TED) related requirements for skimmer trawl vessels less than 40 feet (12.2 meters) in length operating in the southeast U.S. shrimp fisheries. NMFS is requesting comments on this possible action.

**DATES:** Information related to this document must be received by close of business on May 20, 2021.

**ADDRESSES:** You may submit comments via the Federal e-rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) identified by docket number 210414-0079, or by mail to Michael Barnette, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:**

Michael Barnette, 727-551-5794, [michael.barnette@noaa.gov](mailto:michael.barnette@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the Endangered Species Act (ESA) and its implementing regulations, taking (e.g., harassing, injuring or killing) sea turtles is prohibited, except as identified in 50 CFR 223.206, in compliance with the terms and conditions of a biological opinion issued under section 7 of the ESA, or in accordance with an incidental take permit issued under section 10 of the ESA. Incidental takes of threatened and endangered sea turtles during shrimp trawling are exempt from the taking prohibition of section 9 of the ESA so long as the conservation measures specified in the sea turtle conservation regulations (50 CFR 223.206; 50 CFR 224.104) are followed.

On December 16, 2016 (81 FR 91097), NMFS published a proposed rule that would withdraw the tow time

restriction and require TEDs designed to exclude small sea turtles in all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) rigged for fishing, with the exception of vessels participating in the Biscayne Bay wing net fishery prosecuted in Miami-Dade County, Florida. NMFS ultimately published a final rule on December 20, 2019 (84 FR 70048), requiring skimmer trawl vessels 40 feet (12.2 meters) and greater in length to use TEDs designed to exclude small sea turtles in their nets effective on April 1, 2021. On March 31, 2021 (86 FR 16676), NMFS delayed the effective date of this final rule until August 1, 2021, due to safety and travel restrictions related to the COVID-19 pandemic that prevented necessary training and outreach for fishers. The changes between the proposed and final rules were due to potential economic impacts of the proposed rule, performance and safety issues with TED use on smaller vessels, and lack of testing data with gear types other than skimmer trawls. Analyses for all considered alternatives were included in a final environmental impact statement (FEIS), the notice of availability of which was published on November 15, 2019 (EIS No. 20190270; 84 FR 62530; 11/15/2019).

NMFS has conducted additional testing that has produced TED designs that are effective on skimmer trawl vessels less than 40 feet (12.2 meters) in length. Therefore, NMFS is soliciting public comment on the potential expansion of TED requirements for skimmer trawl vessels less than 40 feet (12.2 meters) in length. NMFS is seeking input from the public on the feasibility of employing these TEDs on smaller length vessels, input on the associated costs of any new TED requirements, and other potential environmental impacts.

#### Request for Comments

NMFS requests comments on potential impacts from a potential expansion of TED requirements to other skimmer trawl vessels, as well as other initiatives to reduce fishery bycatch of threatened and endangered sea turtles in the southeast U.S. shrimp fisheries.

**Authority:** 16 U.S.C. 1531-1543.

Dated: April 15, 2021.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2021-08108 Filed 4-19-21; 8:45 am]

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